

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

RECEIVED

Noel E. Gray, Jr. #307590)

CASE NO. 2018-CP-02-02522

APR 03 2020

S.C. SUPREME COURT

Applicant,)

v.)

MOTION FOR THE RECUSAL OF THE HONORABLE

CUFTON NEWMAN CHIEF ADMINISTRATIVE

JUDGE for the SECOND JUDICIAL CIRCUIT

State of South Carolina)

Respondent.)

This matter comes before this Court by way of Applicant's Motion for the Recusal of the Honorable Newman pursuant to Floyd v. State, 400 S.E. 2d 145, 146 (S.C. 1991) and Rule 501 COJC SCACR Canon 3 (E)(1)(A) for befriending the Respondent by unlawfully signing a Conditional Order of Dismissal on December 30, 2019 clearly knowing the Respondent had failed to file her Return within the mandatory Statutoral requirement under SC Code Ann. §17-27-20(A) within 30 days.

The dead line to file the Return was January 23, 2019 and the Respondent held no regard as to her being in default over 306 days and files a Motion for Extension of Time to file a Return on November 25, 2019. No Extension of Time was granted

The Applicant filed a Motion for Default as to this Failure on November 15, 2019.

By the Honorable Newman signing the invalid Conditional Order of Dismissal that is untimely, this unconstitutional error falls under the erroneous abuse of Discretion" Standard citing e.g. —

State v. Edens, 250 S.E.2d 116, 118 (S.C. 1978); State v. Pierce, -
207 S.E.2d 414, 417 (S.C. 1974), and deprived the applicant of his
Constitutional right to "Equal Protection of the Law" and a complete
denial of a "Protected Liberty Interest under the Procedural Due
Process of Law Clause citing the Fifth and Fourteenth Amendments
of the United States Constitution. Article 1 § 3 S.C. Constitution.

the unlawful signing also constitutes as a deprivation of the
Uniform Post-Conviction Procedure Act citing S.C. Code Ann. § 17-27-10
to -160 and Rule 71.1 SCRCP, and Article 1 § 22 S.C. Constitution.

The untimely Conditional Order of Dismissal contained erroneous
findings of fact and misapplication of law used to unlawfully
decree the Court to cover up the genuine material fact that the
applicant's continued confinement is in clear violation of the
United States Constitution and that has two sentences and convictions
for CSC 2nd, S.C. Code Ann. § 16-3-655 (2) and S.C. Code Ann. § 17-25-45
Recidivist Statute WUP is unlawful and unconstitutional."

These unconstitutional acts constitutes as Extrinsic and
intrinsic fraud on the Court.

The newly discovered evidence was provided by the Honorable
Clerical Court Katie Williams Deputy Clerk of the Criminal Division
on September 25, 2018. An Official Court document entitled Terms
of Circuit and Family Court + October 2004.

On October 2, 2018 the applicant files this new evidence on a
PCR Application 6 days later, pursuant to McCoy v. State, 401 S.C. 363,
737 S.E.2d 623 (2013) citing S.C. Code Ann. § 17-27-45 (c) in which

holds: 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".

The Respondent and the Honorable Court has deliberately withheld appointing any Counsel, filing any Returns or granting a hearing. This application has been sitting for over 17 months. The Court held in Allen v. Leeke, (D.C.S.C. 1971) 328 F.Supp. 292 "An inordinate and unjustified delay in the States Corrective process may well result in the frustration of the petitioner's Constitutional rights and be such a circumstance as to render the process ineffective." See also Smith v. State of Kansas, 356 F.2d 654 (1966) at N. [6] Habeas Corpus Key 45. 2 (2).

The Honorable Newman has also unlawfully deprived the applicant of his First Amendment Right to have equal and physical access to the Court, by denying him of Motion hearings filed under this PCR Action that is "still pending"

1. Motion for Summary Judgment filed on the Respondent on December 3, 2018.
2. Objections filed by the applicant on January 14, 2019;
3. February 19, 2019;
4. February 26, 2019;
5. December 10, 2019;
6. January 21, 2020;
7. Applicant's Motion for Default Judgment filed on November 15, 2019

8. Motion for Leave of Court to Amend Newly Discovered Case law, Lesser-included offense not communicated; and the alleged victims Medical Records not at trial. all still pending.

The Court held in Bounds v. Smith, 430 U.S. 817 97 S.Ct. at 1498 (1977) The Constitution has been interpreted to mandate that an indigent defendant have physical access to the Courts and a full and fair and meaningful opportunity to present [his] claims.

The new evidence provided by the Court on September 25, 2018 is Genuine Material fact to support the following violation of the Applicants Federal Interstate Agreement on Detainers Act Contract in which makes the Current Sentences and Conviction void and the State did not have the jurisdiction to impose the Sentences or Convictions pursuant to SC Code Ann. § 17-27-20 (a) 1, 2, 4. and 2 citing State v. Holbrook, 274 S.C. 4, 260 S.E.2d 181 (1979) Article IV (c); V (c), SC Code Ann. § 17-11-10 (2014); Sixth and Fourteenth Amendments of the United States Constitution, Article 133 and §14 of the South Carolina Constitution; 51 American Law Report, 6th 1 (2010) § 32 Open-Court Speedy Trial Requirement, Construction and Application of Article IV of the ZADA citing Dillon v. State, 844 S.W.2d 139 (Tenn. 1992); State v. Hill, 409 S.C. 50, 760 S.E.2d 802 (2014) at * 59.

1. Trial Counsel committed fraud upon the Court on October 29, 2004 by violating Rule 407 COPC SCACR Rule 8.4 by engaging in unlawful conduct by dishonesty, Deceit, fraud, misrepresentation, acts of bad faith, and engaging in conduct that is prejudicial to the administration of justice, by lying to the Honorable Resinald C. Lloyd

Chief Administrative Judge for the Second Judicial Circuit in order to obtain an unlawful Order of Continuance that was intended to use, by giving the State a tactical advantage to falsely prosecute and convict the applicant of bogus CSC 2nd Charges, and to violate the ZADA Contract

2. Trial Counsel lied about the applicant giving her permission to file a Continuance;

3. Trial Counsel lied about the State being prepared to try this case in the October 2004 term of Court;

4. The Continuance was unlawfully obtained out of Court and not on record as the provisions of the ZADA mandate.

5. Trial Counsel lied to the Honorable Judge A. Early, III. for the Second Judicial Circuit on February 2, 2009 at the applicant's initial PCR Action 2018-CP-02-0734 that requires reversal of PCR for erroneous abuse of Discretion and the Order of Dismissal with prejudice was Void.

6. Trial Counsel lied to Ericka M. Williams Office of Disciplinary Counsel on October 14, 2009 Matter No. 09-DE-L-0877.

The Court held in Murray v. Carrier, 477 U.S. 496, 91 L.Ed. 2d 397, 106 S.Ct. 2639 (1986) p. 2649 There is an additional safeguard against miscarriage of justice, in criminal cases, [it] is the right to effective assistance of Counsel, which, as the Court has indicated, may in a particular case be violated by even an isolated error of Counsel if that error is sufficiently egregious and prejudicial see U.S. v. Cronin, 466 U.S. 648.

The Court also held in Ake v. Oklahoma, 470 U.S. 78, 84 L.Ed. 53,

105 S.Ct. 1087 (1985) Fundamental Fairness entitles indigent inmates to "an adequate opportunity to present their claims fairly within the adversary system" Id. at 612, 94 S.Ct. at 2444.

By the Honorable Newman unlawfully signing a invalid Conditional Order of Dismissal clearly knowing it is in Default constitutes as erroneous abuse of Discretion citing State v. Edens; Supra; State v. Pierce, Supra, but also constitutes as a "Gross - Miscarriage of Justice" citing Arce, 409 S.C.2d at 394 for his unconstitutional denial and refusal to hear this valid application claims and the pending Motions and Objections.

The applicant has made a Prima Facie case by showing by and through Genuine Material fact and case law that his continued confinement for a State Court Conviction violates Federal Law and evidence was provided in which these claims rests on the United States Constitution see Anderson, 459 U.S. at 4.

Therefore, the application was timely filed within 6 days of the date of actual discovery. Discovered on September 25, 2018, filed on PCR October 2, 2018 = 6 days.

The Respondent's Return pursuant to SC Code Ann. § 17-27-70(A) 30 days was due on January 23, 2019

Applicant's Motion for Default Judgment was filed on November 15, 2019

The untimely filed Conditional Order of Dismissal was signed on December 30, 2019

Therefore, based on this failure to abide by the Statute (a)

provisions Mandated under Statutory Law and Protected under a Liberty Interest of the Procedural Due Process of law clause citing the Fifth and Fourteenth Amendments of the United States Constitution

The applicant is entitled to his relief as a matter of law, and due to the Respondent's failure to file the Mandatory Return, she has waived her rights to oppose any of the allegations contained herein.

Based on the foregoing, the applicant moves the newly appointed Honorable Court to vacate the Honorable Newmans unconstitutional Order and Remand by written Order overriding the previous "illegal" Order, to schedule a PCR hearing with appointment of Counsel to aid the applicant in obtaining his entitled relief as prescribed in State v. Holbrook, Supra. Article V (c), S.C. Code Ann. § 17-11-60 (2016) pursuant to Sharper v. State, 274 S.C. 264, 305 S.E.2d 274 (1983); U.S. v. Meyers, 892 F.2d 642 (CA7 1990). in order to fully resolve this case.

Genuine Material Fact does support Trial Counsel and Respondent's fraudulent acts in order to deprive the applicant from obtaining his Constitutionally valid entitlement to relief as a matter of law, and as of Statutory Law and a Protected Liberty Interest, and Equal Protection of the law.

Respectfully Submitted
Noel Gray
Noel Gray #302590
Pro-Se

executed on this 31st day of March 2020
Columbia, SC.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Noel E Gray, Jr. #307590
applicant,

CASE NO. 2018-CP-02-02522

v.

CERTIFICATE OF SERVICE

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S.C. SUPREME COURT

State of South Carolina,

Respondent.

I Noel E. Gray Jr. #307590 does here-by swear under the penalty of perjury that every thing contained here-in are True and Correct to the Best of my knowledge and beliefs and this Motion of Recusal has been sent to the following parties Postage Prepaid and addressed to:

1. The Hon. Clifton Newman Chief Admin. Judge P.O. Box 516 Kingstree, SC 29556
2. Brianna L. Schill AAG P.O. Box #¹¹⁵⁴⁹330 Columbia, SC 29211 Cert Mail NO. 7019-1640-0001-7696-8216
3. The Hon. Daniel E. Shearouse Clerk of Court in the Supreme Court. Po Box 11330 Columbia, SC, 29211

Executed on this 31st day of MARCH 2020

SWORN AND SUBSCRIBED BEFORE ME

on this 31st day of MARCH 2020

X Kanara Robinson %

Notary Public for South Carolina

my Commission Expires: 8/5/2024

Respectfully Submitted

Noel E. Gray, Jr.

Noel E. Gray Jr. #307590

BRCI/Marion #152 B

4460 Broad River Rd.

Columbia, SC. 29210

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

AFFIDAVIT OF NOEL E. GRAY, JR #307590
S.C. SUPREME COURT

I, Noel E. Gray, Jr. #307590, having been duly sworn, depose and say the following:

The new evidence was discovered on September 25, 2018 and was filed in a PCR action 6 days later on October 2, 2018. This new evidence was timely filed under the "Discovery Rule", and a Evidentiary hearing is ripe under S.C Code Ann. § 17-27-45(c), and is Genuine material fact that supports Trial Counsel's ineffective assistance of Counsel and does require a Vacation of the 2 Sentences of LWOP and the Convictions as well. The Honorable Newman is full aware of the unlawful actions of Trial Counsel and the Respondent is in Default over 306 days. Judge Newman also has deliberately deprived the applicant of his entitlement of a PCR Action, and that he is serving a unlawful Sentence and Conviction under the U.S. Constitution and the Federal IDPA Contract. The State has failed to file it's Return within the 30 day mandate citing S.C Code Ann. § 17-27-20(a) and by this failure it waived it's right to present any opposition as to the allegations contained there-in. and the applicant is entitled to his relief and the Granting of the Default Judgment filed on November 15, 2019. Therefore, the erroneous abuse of Discretion of Judge Newman does require a Vacation of the un-Constitutional Order and a Remand for a Evidentiary hearing with appointment of Counsel pursuant to Rule 71.1(d) SCRPC and the Fifth and Fourteenth Amendments of the U.S. Constitution and Art. 1 § 22 S.C. Const.
Respectfully Submitted

Noel Gray E. Jr.
Affiant's Signature

Noel E. Gray, Jr. #307590
Affiant's Name

Sworn to and subscribed before me this

31st Day of March, 2020

Notary Public Kanara Robinson Commission Expires 8/5/2024