

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**KENT, SC.**

**SUPERIOR COURT**

**FILED: JULY 24, 2012**

<b>NORMAN LAWRENCE<sup>1</sup></b>	:	
	:	
<b>v.</b>	:	<b>C.A. No. KM 2011-1240</b>
	:	
<b>STATE OF RHODE ISLAND</b>	:	

**DECISION**

**STONE, J.** This case is before the Court on Petitioner Norman Lawrence’s motion for post-conviction relief. The Petitioner alleges that he has newly discovered evidence that could possibly relieve him of guilt for the felony crime of murder with which he was charged at trial in 2000. Jurisdiction is pursuant to R.I. Gen. Laws 1956 § 10-9.1-1, et seq.

**Facts And Travel**

Petitioner’s case dates back to 2000 when he was first convicted by this Court of first-degree murder and sentenced to life in prison without the possibility of parole. The disturbing facts of the murder can be found in Petitioner’s Supreme Court decision affirming his initial conviction. State v. Laurence, 848 A.2d 238 (R.I. 2004). On appeal, Lawrence alleged prosecutorial misconduct against John O’Connor, an attorney that was involved in his case briefly but who never represented him. Lawrence also asserted that he had involuntarily waived his right to counsel, and for that reason had to represent

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<sup>1</sup> There is some discrepancy as to the spelling of Mr. Lawrence’s last name, some decisions spelling it Lawrence and others using Laurence. For consistency’s sake and because it appears that Mr. Lawrence himself uses this spelling, the Court will refer to him as Mr. Lawrence.

himself pro se. Petitioner's conviction was affirmed in 2004. State v. Laurence, 848 A.2d 238 (R.I. 2004).

In 2005, Lawrence moved for post-conviction relief for the first time based on his allegation that he had received ineffective pretrial representation. In that motion, Lawrence further alleged that his trial preparations were being secretly taped and provided to the state's attorneys, who then used them to subvert his trial efforts; he also alleges that his psychiatric records had been concealed at the suppression hearing. Petitioner again argued that O'Connor had provided ineffective assistance of counsel due to a conflict of interest. Lawrence also believed that his Sixth Amendment rights were violated, claiming that he had been spied upon by prison officials through the use of electronic surveillance hidden in his prison cell at the ACI, before and during his trial.

In response to the motion, attorney Kevin Dwyer, Lawrence's court-appointed defense counsel, delivered a Shatney memorandum to the Court, detailing his opinion of the merits of Lawrence's claims. On the basis of his determinations, Dwyer chose to withdraw as counsel, as he found that "(1) the Supreme Court already decided and denied Laurence's appeal relative to O'Connor's effective assistance; (2) the spying allegations stated a claim for which relief could be granted and Laurence should "be deposed on [his] claim [of spying]"; (3) any statutory or due-process violation caused by the trial justice receiving Laurence's psychiatric records was "harmless in light of other information presented at the sentencing hearing." State v. Laurence, 18 A.3d 512, 518 (R.I. 2011).

At the 2007 hearing regarding Lawrence's first post-conviction relief motion, the State heeded Dwyer's advice in his Shatney memorandum and focused arguments on Lawrence's spying allegations alone; a claim which Lawrence also raises in the post-conviction relief motion before the Court here. The State argued that Lawrence had

never actually presented evidence of the electronic surveillance he complained of and therefore, that prong of his case could not survive a summary judgment motion. Before giving Lawrence the chance to respond to the State's argument, the trial justice noted that "nothing \* \* \* went on in the trial" that gave him "any reason to believe" that the State had "improperly intruded into [Lawrence's] cell or any place else at the prison in order to secretly tape him or watch him or listen to him putting his case together in order to defend himself." State v. Laurence, 18 A.3d 512, 519 (R.I. 2011). The Superior Court denied this motion on February 2, 2007 and denied Lawrence the right to conduct more discovery prior to the denial.

Petitioner appealed that decision to the Supreme Court, which affirmed the denial of his motion in April of 2011, finding that cause was not shown to grant him relief. State v. Laurence, 18 A.3d 512 (R.I. 2011). On appeal, Lawrence raised the same issues as he does here: first, O'Connor denied him effective assistance of counsel because of a conflict of interest; second, Sollitto denied him effective assistance of counsel for not exposing the O'Connor conflict and for withholding psychiatric records; and third, he claimed that corrections officers were secretly watching him in his cell at the ACI while he prepared for trial. State v. Laurence, 18 A.3d 512, 520-521 (R.I. 2011). The Court found as follows: first, that the O'Connor issue was "ripe for disposal through the doctrine of res judicata;" second, that Lawrence had abandoned the Sollitto claim effectively by failing to argue it before the trial justice, and so it too was disposed to avoid an "inefficient use of judicial resources;" and third, that there was "not a shred of credible evidence...relative to the use of videotaping or any other intrusion into [Lawrence's] preparations." State v. Laurence, 18 A.3d 512, 525.

At present, Lawrence has filed a second motion for post-conviction relief based upon similar grounds to the 2005 motion. Petitioner now alleges in this second motion that he has been deprived access to his legal records throughout the course of the legal proceedings due to wrongdoing by court appointed attorney Russell Sollitto; and that through the fault of the Court had been deprived of the right to present his psychiatric records as evidence that he was mentally ill before and after the murder. Petitioner reiterates the claim presented in the previous motion that he was “mentally abused by high security guards with electronic surveillance since 2003 who interfered with [his] appeal and postconviction process.” Finally, Lawrence asks that the Court grant his request to subpoena psychiatric records which amount to approximately three-hundred and fifty documents.

This Court has already issued an Administrative Order stating it would not accept any new complaints, petitions, pleadings, filings, or papers from Petitioner unless represented by counsel. Such Order also stipulates that counsel sign any new complaint or other papers pursuant to Rule 11 of the Super. R. Civ. P. Administrative Order, Judge Hurst, August 31, 2011 (R.I. Super. Ct.).

#### **Standard of Review**

In Rhode Island, an application for “post-conviction relief” is available to a defendant convicted of a crime who contends that his [or her] original conviction or sentence violated rights protected by the state or federal constitution. See State v. Laurence, 18 A.3d 512, 521 (R.I. 2011) (quoting Otero v. State, 996 A.2d 667, 670 (R.I. 2010)). Section 10-9.1-1(a) established a statutory right to post-conviction relief. It provides:

“(a) Any person who has been convicted of, or sentenced for, a crime, a violation of law, or a violation of probationary or deferred sentence status and who claims:

- (1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his or her sentence has expired, his or her probation, parole, or conditional release unlawfully revoked, or he or she is otherwise unlawfully held in custody or other restraint; or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory, or other writ, motion, petition, proceeding, or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.” Section 10-9.1-1(a).

Post-conviction relief applications are “civil in nature.” Ferrell v. A.T. Wall, 889 A.2d 177, 184 (R.I. 2005) (quoting Quimette v. Moran, 541 A.2d 855, 856 (R.I. 1988)). As such “[a]ll rules and statutes applicable in civil proceedings apply.” Ferrell, 899 A.2d at 184.

### Analysis

“A post-conviction relief application may be dismissed summarily in accordance with § 10-9.1-6(b) which provides:

“When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a genuine issue of material fact.” Sifuentes v. State, 43 A.3d 49, (R.I. 2012).

The State has moved to dismiss this motion based on the fact that petitioner already filed for post-conviction relief on similar grounds. The state argues that petitioner is therefore collaterally estopped from pursuing this motion on the same grounds as his prior motion. Section 10-9.1-8 provides that:

“All grounds for relief available to an applicant at the time he or she commences a proceeding under this chapter must be raised in his or her original, or a 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 that in the interest of justice the applicant should be permitted to assert such a ground for relief.” Section 10-9.1-8.

In keeping with this rule, the Supreme Court has held that a “judgment on the merits in the first case not only is conclusive with regard to the issues that were actually determined but also precludes reconsideration of all other issues that might have been raised in the prior proceeding.” Mattatall v. State, 947 A.2d 896, 904 (R.I. 2008). Furthermore, a “prior post-conviction relief denial is conclusive as to any issue that was

or could have been litigated in a prior proceeding.” Winters v. State, 2012 WL 1141480 (R.I. Super.) (March, 30, 2012) (quoting Ferrell, 971 A.2d at 620.).

In this case, Petitioner has sent the Court dozens of letters in support of his Motion. The vast majority of these letters reference electronic surveillance at the ACI and subversive tactics used by Attorney O’Connor and Attorney Sollitto that violated his rights to effective assistance of counsel in various ways. Petitioner repeatedly references the fact that he has been unable to use his psychiatric records to argue that he was mentally ill at the time of the murder. All three of these issues were already resolved by this Court in Petitioner’s 2005 post-conviction relief motion as well as the initial appeal of Lawrence’s conviction. While Petitioner references newly discovered evidence of prosecutorial misconduct, he subsequently repeats the same allegations of misconduct by O’Connor, allegations which were referred to as “oft-repeated argument[s]” that were “ripe for disposal through the doctrine of *res judicata*” by the Supreme Court when the Court affirmed the denial of Lawrence’s first post-conviction motion in 2011. State v. Laurence, 18 A.3d 512, 522.

On two separate occasions – while ruling on his appeal and his first post-conviction relief motion – the Supreme Court of Rhode Island has ruled that Lawrence was not entitled to relief based on: 1) his claims of ineffective assistance of counsel due to the conduct of attorneys O’Connor and Sollitto; 2) his claim that corrections officers had interfered with his trial preparation by electronically surveilling him in his prison cell; and 3) his claim that his rights were violated when he was denied the right to use psychiatric records as part of his defense. In this Motion, petitioner is asking for relief based on the same grounds.

This Court is satisfied that on the basis of Petitioner's application that his post-conviction relief motion may be dismissed summarily without an evidentiary hearing. In accordance with Rhode Island law, the applicant has been provided "an opportunity to reply to the proposed dismissal." Sosa v. State, 949 A.2d 1014, 1017 (R.I. 2008). "If the applicant's reply reveals that there are no genuine issues of material fact in dispute, then an evidentiary hearing need not be provided and the court can proceed to rule on the application without a hearing." O'Neil v. State, 814 A.2d 366, 367 (R.I. 2002). Based on the principles of *res judicata*, and the fact final judgment has entered in these issues not once, but twice, Petitioner's Motion must be denied.

### **Conclusion**

For the reasons set forth herein, the Applicant's instant Application for Post-Conviction Relief must be denied by virtue of the fact that his claims have already been subject to final adjudication in this Court. Pursuant to this Court's Administrative Order from August of 2011, the Court will not accept any further complaints, petitions, pleadings, filings, or papers from Mr. Lawrence unless he is represented by counsel.