

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

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Case No. 2011-CP-40-5587

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William H. Warner, Jr.

Appellant,

v.

State of South Carolina

Respondent.

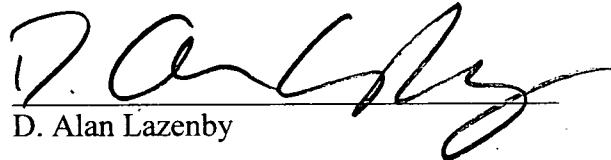
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**NOTICE OF APPEAL**

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William H. Warner, Jr. appeals the Order of the Honorable R. Knox McMahon, dated April 12, 2013. Appellant received written notice of entry of this Order on May 13, 2013.

June 6, 2013

  
D. Alan Lazenby

LAZENBY LAW FIRM LLC  
PO Box 6099  
Spartanburg, SC 29304  
Phone: (864) 804-5050  
Attorney for Appellant

Other Counsel of Record:  
Megan Harrigan, Esquire  
S.C. Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent  
(803) 734-3319

**RECEIVED**

JUN 10 2013

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on Suzanne H. White by depositing a copy of it in the United States Mail, postage prepaid, on June 6, 2013, addressed to its attorney of record, Megan Harrigan, PO Box 11549, Columbia, South Carolina 29211.

June 6, 2013

  
D. Alan Lazenby

LAZENBY LAW FIRM LLC  
PO Box 6099  
Spartanburg, SC 29304  
Phone: (864) 804-5050  
Attorney for Appellant

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2011CP4005587

William Harvey Warner

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented  Agent

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 24 day of May, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert Patrick Martin  
ATTORNEY(S) FOR THE PLAINTIFF(S)

Megan E. Harrigan  
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. McBride

JEANETTE W. MCBRIDE  
 C.C.P. & G.S.  
 2013 MAY 7 PM 2:35  
 FILED  
 RICHLAND COUNTY

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

William Warner )  
 Plaintiff )

v. )

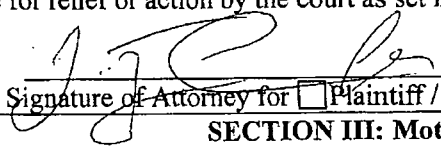
State Of South Carolina )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
2011-CP-400-5587

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

FILED  
RICHLAND COUNTY  
2013 MAY - 7 PM 12:35  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

Plaintiff's Attorney: Robert P. Martin, Bar No. Address: Post Office Box 2980 Greenville, S C 29602 phone: fax: e-mail: other:	Defendant's Attorney: Megan E. Harrigan, Bar No. Address: Post Office Box 11549 Columbia, South Carolina 29211 phone: 803-734-3737 fax: 803-734-4112 e-mail: mharrigan@scag.gov other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	
April 29, 2013 Date submitted	
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> 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: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Date Filed: _____ Collected by: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	



In the current Application, the Applicant alleged the following:

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

- (a) Mr. Warner is not being held in custody. Mr. Warner believes that his sentence is subject to collateral attack because the SC DMV
- (b) improperly revoked his license under SC Code Ann §56-1-745, which
- (c) had already been repealed and no longer in effect at the time he was sentenced.

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

I wish for the State to remove the suspension of my driver's license from my record so that I can resume employment.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the arguments presented by both parties at the evidentiary hearing. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application: Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable



professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

*Repeal of S.C. Code § 56-1-745*

Applicant alleges his driver's license was improperly suspended as a result of his April 2011 guilty plea to Possession of Marijuana (Over One Ounce) as the statute was repealed prior to his plea and sentencing. Applicant alternatively argues counsel was ineffective for failing to advise him that suspension of his license was a probable result of his conviction.

Applicant was arrested on March 15, 2011, in Richland County and charged with Possession of Marijuana in Excess of One Ounce.<sup>1</sup> On April 28, 2011, Applicant pled guilty to Possession of Marijuana under S.C. Code § 44-53-370(d)(2), which provides any person in possession of a Schedule I (d) controlled substance such as marijuana "is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six (6) months or fined not more than one thousand dollars (\$1,000)." Applicant was sentenced to six (6) months imprisonment or a three hundred dollar (\$300) fine upon entry of his plea.

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<sup>1</sup> The arrest warrant served on Applicant on March 15, 2011, references a "Manufacturing Marijuana" charge under S.C. Code § 44-53-370(b)(4); however, in his trial brief, Applicant sets forth that the charge was in fact possession.



On April 12, 2011, between Applicant's arrest and plea date, Governor Haley signed House Bill 3668, R. 30 into effect as "2011 Act 13", repealing S.C. Code § 56-1-745 which provided in part "[t]he driver's license of a person convicted of a controlled substance violation must be suspended for a period of six months." The law had defined a "controlled substance violation" in subsection (d)(1) as "a violation of Chapter 53 of Title 44 of the South Carolina Code of Laws". Because Applicant had a pending charge under Code § 53-44-370 prior to the enactment of 2011 Act 13, his driver's license was suspended.

Applicant first contends his conviction was not subject to the mandatory license suspension provision because, at the time he entered his plea and was sentenced, that portion of the code had been repealed. He noted that the statute which required suspension of his license specifically applied to "person[s] *convicted* of a controlled substance violation", but he was not *convicted* of the charge until the entry of his plea roughly two (2) weeks after the statute was repealed.

This Court finds Applicant's prayer for relief to be without merit. First, the Act repealing the law has a savings clause which explicitly applies to Applicant's situation. Specifically, in Section 2, the Act explicitly states:

"The repeal...by this act of any law; whether...civil or criminal, does not affect pending actions...founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purposes of sustaining any pending...criminal prosecution or appeal existing as of the effective date of this act, and for the enforcement of...penalties...as they stood under the repealed or amended laws."

Based on the plain and unambiguous language set forth in the Savings Clause, it is clear the Act was not intended to apply retroactively to cases such as Applicant's regardless of its "effective date" being prior to Applicant's actual conviction. The plain language set forth in the savings clause specifically indicates the legislature's intent that the Act be applied prospectively in repealing Code § 56-1-745.

This case is very similar to the recent case of State v. Dawson, 27238, 2013 WL 1319782 (S.C. Apr. 3, 2013). In Dawson, the South Carolina Supreme Court determined that the Defendant was not entitled to be sentenced under the Omnibus Crime Reduction and Sentencing Reform Act of 2010, S.C. Acts NO. 273 (the Act), which became effective after the Defendant committed the crime but before she was sentenced. The Act contained a savings clause identical to the savings clause at issue in the present case. The Court in Dawson held that

the Act unambiguously states its sentencing amendments do not apply to actions arising under the amended laws. Specifically, the Act's savings clause states the Act 'does not affect pending actions' founded on an amended or repealed law' or alter, discharge, release, or extinguish any penalty...incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide.

*Id.* The Court went on to hold that "because Appellant committed [the offense] in October 2009- prior to the Act's effective date-her criminal prosecution arose from, and her penalty was incurred under, the former version of [the section]." *Id.* When applied to the present case, Dawson makes clear that Applicant was still subject to the penalties set forth in S.C. Code § 56-1-745(a).

Accordingly, his claim is without merit.

This Court also finds State v. Bolin instructive. In Bolin, the South Carolina Court of Appeals addressed the issue of whether a criminal statute repealed by an Act *with* a savings clause applies to a conviction/sentence entered after the Act's effective date. State v. Bolin, 381 S.C. 557, 673 S.E.2d 885 (Ct. App. 2009). In Bolin, the Court found a statute repealed by an Act (which contained an *identically* worded savings clause as the one in the case at hand) still applied to Bolin's



charges despite his trial and sentencing not occurring until roughly two (2) months *after* the Act's effective date. The Bolin court specifically noted that because the Act went into effect "four months after the *events*" leading to Bolin's charges, the Act would only apply to make the statute irrelevant if there was legislative intent showing the act was meant to apply retroactively. Id. at 561, 673 S.E.2d 887 (emphasis added). The Court went on to say the savings clause contained in the Act, which was *identical* to the one contained in 2011 Act 13, "specifically indicate[d] the legislature's intent that the Act be applied prospectively" only. Id. The "events" leading to Applicant's eventual plea and sentence occurred on March 15, 2011, nearly a full month before the Act went into effect. The Act contained a savings clause which "specifically indicated" legislature's intent that the Act be applied only prospectively. Therefore, Applicant was still subject to the penalties set forth in S.C. Code § 56-1-745(a).

Additionally, in the context of any alleged Strickland v. Washington claim of ineffective assistance of counsel, this Court finds neither deficiency nor resulting prejudice. Applicant contends counsel was ineffective for failing to advise him that, as a result of his plea, Applicant would be subject to a suspension of his driver's license. This Court finds no deficiency in this regard as suspension of a driver's license is a collateral consequence of a conviction. "The imposition of a sentence may have a number of collateral consequences, however, a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is *not* informed of the collateral consequences." Smith v. State, 329 S.C. 280, 284, 494 S.E.2d 626, 628 (1997) (emphasis in original). Defendants need not be affirmatively informed about collateral consequences of a conviction by counsel. Id., citing Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991); Cuthrell v. Director, Patuxent Inst., 475 F.2d 1364 (4th Cir. 1973)("[B]efore pleading, the defendant need not be advised of all collateral consequences of his plea, or...all 'ancillary or consequential results which are peculiar to the individual and which may flow from a conviction of a plea of guilty'."), quoting United States v. Sambro, 454 F.2d 918, 920 (1971). This Court finds the suspension of Applicant's driver's license to



be an "ancillary", "consequential", and collateral consequence of the Applicant's plea which counsel is not ineffective for not advising Applicant of prior to his plea.

Further, this Court finds the Applicant has failed to carry his burden in proving that but for counsel's alleged deficiency in failing to advise him of such, there is a reasonable probability Applicant would not have pled but rather would have proceeded to trial. Therefore, this allegation is also without merit. Accordingly, the application must be denied and dismissed with prejudice.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

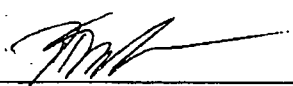
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and

file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice.

**AND IT IS SO ORDERED** this 12 day of April, 2013.

  
\_\_\_\_\_  
R. Knox McMahon  
Presiding Judge  
Fifth Judicial Circuit  
Columbia, South Carolina.

**LAZENBY LAW FIRM, LLC**  
ATTORNEYS AT LAW

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GINGER D. GOFORTH

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June 6, 2013

The Honorable Daniel E. Shearouse  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

**Re: *William H. Warner, Jr. v. State of South Carolina***  
**In the Court of Common Pleas for Richland County**  
**C.A. No.: 2011-CP-40-5587**

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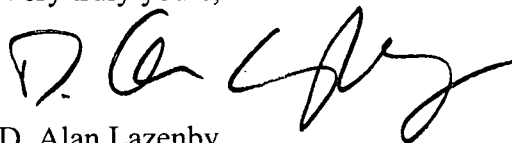
Dear Mr. Shearouse,

Enclosed for filing is a Notice for Appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the Respondent.
- (2) A copy of the Order which is to be challenged on appeal.

Because this is an appeal on a post-conviction relief matter, I understand that no filing fee is required in this matter.

Very truly yours,



D. Alan Lazenby  
[alan@lazenbylawfirm.com](mailto:alan@lazenbylawfirm.com)

**RECEIVED**

JUN 10 2013

**S.C. SUPREME COURT**

DAL:jeh  
Enclosure  
cc: Megan Harrigan, Esq.

LAZENBY LAW FIRM  
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SPARTANBURG, SC 29304

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COLUMBIA SC 29211-1330

