

THE STATE OF SOUTH CAROLINA **RECEIVED**
In The Supreme Court

JUN 20 2013

APPEAL FROM RICHLAND COUNTY **S.C. Supreme Court**
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-8477

Jonathan Sinclair Porterfield, #328448,

Appellant,

v.

State of South Carolina,

Respondent.

JEANNETTE W. McBRIDE
C.C.P. & C.S.

2013 JUN 20 PM 2:16

RICHLAND COUNTY
FILED

NOTICE OF APPEAL

The Appellant, Jonathan Sinclair Porterfield, appeals the Order of Dismissal filed March 27, 2013, and the Order filed June 18, 2013 denying Appellant's motion to alter or amend the judgment, and any other rulings preserved for appeal. Copies of the referenced Orders/Judgments are attached hereto.

June 20, 2013



Rowland P. Alston III
The Law Office of Rowland P. Alston III, LLC
1314 Lincoln Street, Suite 214
Columbia, SC 29201
(803) 708-0460
Attorney for Indigent Appellant

Other Counsel of Record:
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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Case No. 2010-CP-40-8477

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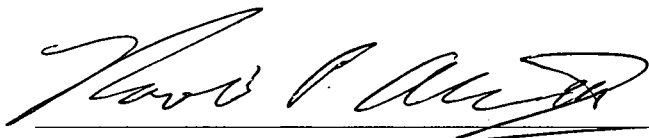
2013 JUN 20 PM 2:16

RICHLAND COUNTY
FILED

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on June 20, 2013, addressed to the attorney of record, Megan E. Harrigan, Esq., Post Office Box 11549, Columbia, South Carolina, 29211-1549.

June 20, 2013



Rowland P. Alston III
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(803) 708-0460
Attorney for Indigent Appellant

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

JUDGM. IN A CIVIL CASE

CASE NUMBER: 2010CP4008477

Jonathan Sinclair #328448 Porterfield

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

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 a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonset); Rule 43(k), SCRCP (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; 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 PUBLIC 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:

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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 27 March 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan Sinclair #328448 Rowland P. Alston III
Porterfield

Brian T. Petrano

Jonathan Sinclair #328448
Porterfield

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

RICHLAND COUNTY
FILED
2013 MAR 27 PM 3:37
JEANETTE W. MCBRIDE
CLERK OF COURT

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 Jonathan Porterfield, #328448,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-08477

ORDER OF DISMISSAL
 (With Consent to Sentence Modification)

2013 MAR 27 PM 3:39
 JANETTE W. McBRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed December 2, 2010. An evidentiary hearing into the matter was convened before this Court on Wednesday, May 23, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, Rowland P. Alston, III, Esquire. Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former plea attorney, Greg Collins, Esquire; former attorney on the motion to reconsider, Ashley Thomas, Esquire; and the prosecuting solicitor in the matter, Anna Good, Esquire. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the March and April 2008 terms of the Richland County Grand Jury for two (2) counts of Armed Robbery (2008-GS-40-011925, -

12450). On May 20, 2008, Applicant appeared with counsel, Greg Collins, Esquire, before the Honorable J. Michelle Childs, where he waived presentment to the Grand Jury of two (2) additional counts of Armed Robbery and one (1) count of Attempted Armed Robbery (2008-GS-40-11804, -11805, -11807). Applicant pled guilty at that time to the Attempted Armed Robbery and three (3) counts of Armed Robbery as indicted, as well as one count of the lesser included Strong Arm Robbery. Judge Childs sentenced Applicant, in accordance with the state's recommendation, to ten (10) years imprisonment on each Armed Robbery and Attempted Armed Robbery, as well as five (5) years imprisonment for the Strong Arm Robbery, to run concurrently. No direct appeal was filed.

On September 25, 2008, Applicant appeared again before Judge Childs with counsel, Greg Collins, for a hearing on Applicant's motion to enforce the plea agreement. In particular, Applicant alleged there were two (2) outstanding warrants (Armed Robbery and Possession of a Weapon During the Commission of a Violent Crime) which had not been disposed of with his May 2008 guilty plea, which he understood at the time to be to for *all* outstanding charges. Judge Childs denied Applicant's request to enforce the plea agreement, but allowed Applicant to withdraw the May 20, 2008, plea to allow he and the state to re-enter plea negotiations for disposal of all outstanding charges.

On March 15, 2010, Applicant appeared once more before Judge Childs with counsel, Greg Collins, where he pled guilty to four (4) counts of Armed Robbery, one (1) count of Strong Arm Robbery, one (1) count of Attempted Armed Robbery and one (1) count of Assault on a Correctional Officer pursuant to a state negotiated plea offer for a sentencing range between twelve (12) and fifteen (15) years imprisonment. The plea negotiations were to dispose of *all* outstanding charges against Applicant. Judge Childs accepted the plea with the negotiations, and

testimony accordingly. 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), SCRPC; 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.

Modification of Sentence by Consent

As a preliminary note, it appears both parties have agreed Applicant is entitled to modification of his sentence as it is currently being calculated by the South Carolina Department of Corrections based upon Judge Childs's August 12, 2010, order reconsidering Applicant's sentences. Specifically, in the order issued following the hearing on Applicant's motion to reconsider, Judge Childs ordered Applicant's "sentences shall be amended to twelve (12) year for the Armed Robbery charges", for Applicant to "be incarcerated in the South Carolina Department of Corrections for twelve (12) years, plus six (6) months to be served consecutively for the charge of Assault on a Correctional Officer".

Based upon the correspondence with the Department of Corrections introduced to this Court, it appears only three (3) of Applicant's four (4) Armed Robbery sentences have been changed from the original fourteen-and-a-half (14 ½) year sentence to the amended twelve (12) year term of imprisonment. In the Department's June 10, 2011, letter to PCR counsel, it noted Judge Childs's August 12, 2010, order does *not* specifically reference modification of the sentence on Armed Robbery indictment number 2010-GS-40-00152 and, therefore, the sentence on that conviction has not been altered.

In reviewing the order in its entirety, it is clear to this Court and both parties to the action that it was Judge Childs's intent to modify the sentences of **all four** Armed Robbery charges to twelve (12) years. However, the final Armed Robbery is erroneously cited as "2008-GS-40-04246, Warrant No. I-898710". While the warrant number set forth in the order is, in fact, the correct warrant related to the final Armed Robbery charge, the indictment number listed is that of Applicant's Assault on a Correctional Officer charge. Therefore, the correct indictment number for Armed Robbery (2010-GS-40-00152, Warrant No. I-898710) is never referenced in the order

sentenced Applicant to concurrent terms of fourteen and-a-half (14 ½) years imprisonment on each Armed Robbery, ten (10) years imprisonment of Attempted Armed Robbery, and five (5) years imprisonment for Strong Arm Robbery, all to be followed consecutively by six (6) months imprisonment for the Assault on a Correctional Officer, for an aggregate fifteen (15) year sentence.

A motion to reconsider sentence was filed and a hearing was held before Judge Childs on March 19, 2010. Applicant was present at the hearing with reconsideration counsel, Ashley Thomas, Esquire. By order filed August 12, 2010, Judge Childs ordered Applicant's sentences be amended to twelve (12) years imprisonment "for the Armed Robbery charges".

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

- a. That public defender for Applicant did not properly monitor the charges that the Applicant pled guilty to on May 20, 2008, and ensure that Applicant was pleading to all outstanding charges with the correct warrant and indictment numbers.
- b. That, as a result, Applicant had to re-plea, and was sentenced to more time than agreed to on May 20, 2008.

- c. That public defender did not properly review the Order of August 12, 2010, to ensure that all contained therein was accurate and correct, and would not prejudice Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

modifying the sentences. It is apparent to this Court and both parties when taken in light of the entirety of the August 12, 2010, order, this was a mere scrivener's error.

Therefore, Respondent and Applicant have consented to modification of Applicant's sentence on his final Armed Robbery charge (2010-GS-40-00152, Warrant No. I-898710) **from** the currently imposed fourteen-and-a-half (14 ½) year term of imprisonment **to** a twelve (12) year term of imprisonment to run concurrently with the remaining three Armed Robbery sentences, all of which are to be followed consecutively by a six (6) month term of imprisonment for the Assault on a Correctional Officer conviction (2008-GS-40-04246). The intention of this Court is to modify Applicant's sentence to comply with the clear meaning of Judge Childs's order, thereby imposing an aggregate twelve-and-a-half (12 ½) year sentence. This modification is in no way intended to otherwise affect Applicant's sentences or the remainder of Judge Childs's August 12, 2010, order.

Specific Performance of Plea Agreement

Applicant further requests this Court grant relief in the form of specific performance of the previous plea agreement entered May 20, 2008, for the imposition of an aggregate ten (10) year term of imprisonment to dispose of *all* of Applicant's 2008 and 2010 charges. For the reasons set forth below, this Court declines to order such specific performance and, rather, grants Applicant's relief solely through modification of his final Armed Robbery sentence as set forth above.

Plea counsel, Greg Collins, Esquire, testified that Applicant first pled guilty in May of 2008 to "several" armed robberies for a negotiated¹ ten (10) year term of imprisonment. After the plea was entered, counsel said, it came to he and the state's attention that there were still two (2) outstanding warrants for Armed Robbery against Applicant which were not disposed of as part of

¹ The plea transcript reflects the plea offer was a ten (10) year "recommendation" by the State.

the May plea, so he requested Applicant be allowed to withdraw the plea. He stated he did recall the September 2008 hearing at which he requested specific performance of the ten year plea agreement to cover all of the charges including the two "new" warrants, but said Judge Childs declined to do so, instead allowing Applicant to withdraw his plea to renegotiate a plea offer with the state. Counsel said he was aware of the facts relating to the two outstanding warrants as Applicant had confessed to all of the charges he pled to, plus some additional crimes. Counsel agreed the facts of the additional two robberies were discussed during the course of the May 2008 plea hearing, but noted it was never said that the plea was "global" or was intended to dispose of *all* outstanding charges.

Ashley Thomas, Esquire, testified thereafter that she served as counsel for Applicant and was the attorney who entered into plea negotiations for Applicant *after* the original plea was withdrawn. She stated she asked the state to re-offer the original ten (10) year plea deal, but said that offer was "never on the table" after the original plea was withdrawn. She noted the state said it would not re-offer that ten year plea deal because this time they were disposing of more charges than the first time around in May of 2008. She went on to say the Assault on a Correctional Officer charge was new during this set of negotiations as that incident was not indicted until after the May 2008 plea was entered. Thomas stated Applicant re-entered his plea in March of 2010 with full understanding that it was for a negotiated sentencing range of 12 to 15 years, and he was well aware there was no way he could receive the original ten year sentence if the Court accepted those plea negotiations. Thomas finished by agreeing the ten year plea offer in May of 2008 is referred to in the plea transcript as having been a "recommended" plea offer, not a negotiated one; however, she said, the "records" refer to it as having been negotiated.

Applicant testified he believed he was pleading to *all* outstanding charges at the time he pled in May of 2008 and said he is seeking relief from this Court in the form of specific performance of the ten year plea deal. Applicant alleged he was aware of all six (6) Armed Robbery warrants at the time of his May 2008 plea, even though counsel testified previously that even he wasn't aware of the remaining two warrants at that time. Applicant agreed the Assault on a Correctional Officer charge did not surface until after his May 2008 plea, so there was no way that could have been included as part of the plea package in May of 2008. Applicant noted he never wanted to go to trial to challenge the charges, and stated he believed the March 2010 plea was for a recommended term of imprisonment, not a negotiated one, so he believed he could still get the ten year term at that time.

Finally, the prosecuting solicitor in the matter, Anna Good, Esquire, testified as to her involvement in the matter. Good said the solicitor's office was unaware of the two (2) outstanding warrants at the time of the May 2008 plea and certainly did not intend for those charges to be disposed of through the 2008 plea offer. She explicitly stated that had she known of those charges at the time or intended for them to be disposed of through the May 2008 plea deal, she would have never extended a the plea offer for ten years. Rather, she said, the term of imprisonment agreed to in negotiations would have been much higher, namely because six (6) counts of Armed Robbery would have been disposed of as a result. Further, Good said, any plea deal negotiated for the May 2008 hearing would not have included the Assault on a Correctional Officer charge since that charge had not yet surfaced in May of 2008.

Based on a thorough review of the record and the testimony presented, this Court must deny Applicant's request for specific performance of a ten (10) year plea deal as extended by the state prior to the May 2008 plea.

As a preliminary matter, this Court finds this issue is improperly raised through the current action and, therefore, must be summarily dismissed without turning to the merits of the claim. Specifically, Applicant is requesting this Court re-examine his entitlement to specific performance of the May 2008 plea deal, a matter that was previously raised and ruled upon by the circuit court. A motion for specific performance of the plea deal was raised by counsel at the September 25, 2008, hearing before Judge Childs, at which the judge denied the request and allowed Applicant to withdraw his previously entered plea to re-enter plea negotiations. Accordingly, any alleged error in denying the request is a direct appeal issue improperly raised through this action. Under S.C. Code § 17-27-20(b), a claim of trial court error is improper for post-conviction relief as PCR is not a substitute for direct review. Further, a post-conviction relief application cannot assert any issue that *could have been* raised at trial *or on direct appeal*. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973) (emphasis added). Whether Judge Childs erred in denying Applicant's request for specific performance of the plea deal is a direct appeal issue improperly raised herein. Therefore, this allegation must be summarily dismissed.

Further, assuming *arguendo* the issue was properly raised herein as a claim of ineffective assistance of counsel, this Court finds Applicant's request for specific performance to be without merit. Counsel was not deficient in his performance in attempting to enforce the plea agreement, nor did any alleged deficiency on his part result in prejudice to Applicant's case. In Missouri v. Frye, 132 S.Ct. 1399 (2012), the United States Supreme Court outlined the standard for a proving ineffective assistance of counsel in plea bargaining situations in accordance with the two-prong analysis of Strickland v. Washington. The Court opined that to satisfy the prejudice prong of Strickland v. Washington in plea circumstances, Applicants "must...demonstrate a reasonable probability the plea would have been entered into without the prosecution

cancelling...or the trial court refusing to accept” the plea deal extended. The prosecuting solicitor responsible for developing the plea offers in Applicant’s case provided extremely **credible** testimony at the PCR hearing that firmly convinces this Court there is **no** reasonable probability the state would have allowed the plea to be entered for a ten year term of imprisonment to dispose of *all* six (6) of Applicant’s outstanding Armed Robbery charges. Good’s credible testimony plainly reflects it was never her intention to extend the ten year plea offer in May of 2008 to dispose of all six (6) of Applicant’s Armed Robbery charges, and she plainly and credibly testified she would have never extended a ten year plea offer to dispose of those charges. With the credible testimony, it is clear Applicant cannot prove resulting prejudice resulting from any of counsel’s alleged deficient performance as there is **no** reasonable probability that, but-for counsel’s alleged deficiency, Applicant would have been able to enter the ten year plea to dispose of all six outstanding Armed Robbery charges without the state stepping in and cancelling the plea offer extended. Accordingly, even if this issue is properly raised through the current action, Applicant cannot meet his burden in proving counsel was ineffective in his representation in this regard.

Additionally, even if Applicant were entitled to relief based upon the allegations set forth in the current action, specific performance would not be the proper remedy. “[A] defendant does not have a constitutional right to plea bargain, a trial judge is not required to accept a plea bargain, and...ordinarily a plea offer is nothing more than an offer until it is accepted by the defendant by entering a court-approved plea of guilty.” Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007), *citing* Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999). The general exception to the rule is based upon detrimental reliance where “a defendant may enforce an oral plea agreement only upon a showing of detrimental reliance on a prosecutorial promise in plea

bargaining.” *Id.* at 10, 644 S.E.2d 39. Applicant here has failed to set forth any claim of, or evidence to support a claim of, detrimental reliance. Rather, Applicant has alleged he entered his plea with the understanding that it would dispose of all outstanding charges, regardless of whether they were specifically mentioned at the plea hearing.² This Court would interpret such a claim to be one of an involuntary guilty plea, for which the proper remedy would be vacation of the underlying plea in its entirety. That is the *precise* relief previously granted to Applicant by Judge Childs in September of 2008 following the hearing on the motion to enforce the plea agreement. Accordingly, Applicant cannot prove resulting prejudice as he has already been afforded the precise relief available under such a PCR allegation. Further, as set forth above, Applicant has failed to present any credible evidence to convince this Court his plea was entered involuntarily or unintelligently.

It is also important to note that according to the transcript of the May 2008 plea hearing, the plea offer extended to Applicant was merely a state “recommendation” for a ten year term of imprisonment. Such a plea offer would not be binding on the plea judge upon entry of Applicant’s plea. Therefore, any claim that Applicant relied upon a ten (10) year sentence is unpersuasive to this Court as it is clear Applicant pled guilty with the knowledge that the plea court would make the ultimate decision whether to follow or deviate from the state recommended plea offer.

Finally, the testimony before this Court is clear in showing the Assault on a Correctional Officer charge was not part of the May 2008 plea negotiations. Therefore, even if Applicant was able to enforce the May 2008 plea agreement and have the ten (10) year term of imprisonment enforced to dispose of the six (6) Armed Robbery charges, the Assault charge would still be

² As a side note, this Court finds Applicant’s testimony about his “understanding “of the terms of the May 2008 plea offer and his knowledge of the two additional Armed Robbery warrants to be entirely **not** credible.

outstanding. Under the relevant law at the time, Assault on a Correctional Officer carried a potential sentence of six (6) months to five (5) years imprisonment, with the mandatory requirement that any sentence be run consecutively to any other sentence(s) being served. See S.C. Code Ann. § 16-3-430 (2003). With that in mind, Applicant certainly cannot prove that had the original ten (10) year plea agreement been enforced, there is a “reasonable probability” of a different outcome on the charges as he still would have been facing a potential five (5) year consecutive sentence on the Assault charge, amounting to an aggregate fifteen (15) year term of imprisonment. Regardless of this final analysis, this Court finds Applicant’s request for relief to be improperly raised through this action, as well as wholly without merit.

For all of these reasons, this Court finds Applicant’s request for specific performance of the May 2008 plea offer 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, aside from the modification of his sentence based upon the consent of both parties. Therefore, notwithstanding that one portion reached by consent, the remainder of this application for post-conviction relief must be denied and 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. BMI, 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.

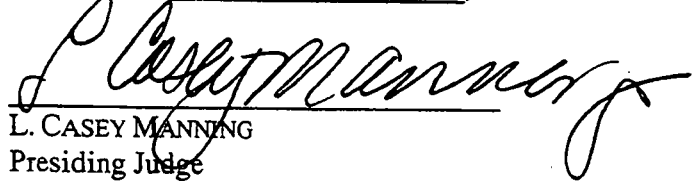
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, 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 South Carolina Department of Corrections (SCDC) take the appropriate steps necessary to amend Applicant's final Armed Robbery sentence (2010-GS-40-00152; Warrant No. I-898710) to impose a twelve (12) year term of imprisonment; this twelve (12) year term of imprisonment is to run concurrently with the other twelve (12) year sentences on Applicant's other Armed Robbery convictions, **all** of which are followed consecutively by a six (6) month term of imprisonment for Assault on a Correctional Officer (2008-GS-40-04246). The intention of this Court is to modify Applicant's sentence to comply with the unambiguous intention of Judge Childs's August 12, 2010, order, thereby imposing an **aggregate** twelve-and-a-half (12 ½) year term of imprisonment for the charges presented at the March 15, 2010, guilty plea;

2. The remainder of the application for Post-Conviction Relief must be denied and dismissed **with prejudice**; and
3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26 day of March, 2013.


L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4008477

Jonathan Sinclair #328448 Porterfield

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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- 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 PUBLIC INDEX

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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 18 June 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan Sinclair #328448 Rowland P. Alston III
Porterfield

Megan E. Harrigan

Jonathan Sinclair #328448
Porterfield

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jonathan Sinclair
Megan E. Harrigan

RICHLAND COUNTY
FILED
JAN 21 2013
11:35 AM
JANICE B. BRIDGES
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Jonathan S. Porterfield, #328448,)
Applicant,)

Case No. 2010-CP-40-8477

v.)

**ORDER DISMISSING APPLICANT'S
MOTION TO ALTER OR AMEND**

State of South Carolina,)
Respondent.)

FILED
JUN 17 PM 1:33
C.C.P. & G.S.
RICHLAND COUNTY

This matter comes before the Court by way of Applicant's "Motion to Alter or Amend A Judgment" this Court's Order of Dismissal, denying and dismissing his application for post-conviction relief. On March 26, 2013, this Court issued an Order denying and dismissing Applicant's application for post-conviction relief with prejudice. This Order was filed on March 27, 2013 and was received by Applicant's counsel on April 1, 2013.

On March 2, 2013, Applicant filed a "Motion to Alter or Amend a Judgment" in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief. Respondent made its Return to this motion on or about April 25, 2013, asking that the motion be denied. This Court has reviewed Applicant's motion, Respondent's return and the record in this

matter and finds the following:

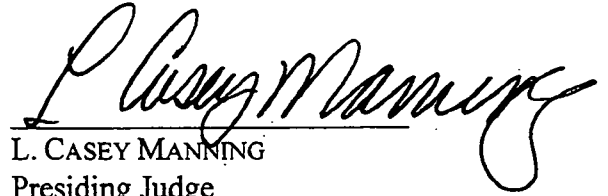
The Order of Dismissal dated March 26, 2013, and filed March 27, 2013, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRPC. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of the Applicant's motion and supporting testimony, this Court is not persuaded to

alter, amend, or reconsider the judgment.

IT IS THEREFORE ORDERED that the Applicant's Motion to Alter or Amend is **DENIED**.

AND IT IS SO ORDERED this 7 day of June, 2013.



L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

Cola, South Carolina

5 MH

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Jonathan S. Porterfield)

Plaintiff)

v.)

State Of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2010-CP-400-8477

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Rowland P. Alston, 111, Bar No. Address: 1314 Lincoln Street Columbia, S C 29211 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: 803-734-4113 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)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<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.	
SECTION III: Motion Fee	
<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:	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

RICHLAND COUNTY
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 CLERK OF COURT
 W. McBRIDE
 C.C.P. & G.S.