

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas  
HONORABLE BRIAN M. GIBBONS  
2022-CP-11-00282

**RECEIVED**  
MAR 29 2023  
S.C. SUPREME COURT

SHAUN ROGERS, JR., SCDC# 381643

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

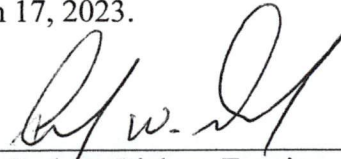
RESPONDENT.

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**NOTICE OF APPEAL**

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Shaun Rogers, Jr. appeals the denial of his Post-Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Brian M. Gibbons, Circuit Judge on October 18, 2022 an Order issued on March 2, 2023 and filed on March 13, 2023. The Appellant received notice of the judgment on March 17, 2023.



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MAR 29 2023

S.C. SUPREME COURT

BRANDY W. MCBEE

2023 MAR 13 A 7:43

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
COUNTY OF CHEROKEE )  
)  
)  
Shaun Rogers, Jr., #381643, )  
Applicant, )  
)  
v. )  
)  
State of South Carolina, )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2022-CP-11-00282

**ORDER OF DISMISSAL**

This matter comes before this Court by way of Applicant's post-conviction relief application filed April 22, 2022. Respondent made its return on August 16, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on October 18, 2022, at the Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsels Tracy and Russell Racine, Esquires, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice.

Findings of fact and conclusions of law are set forth below.

**Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its April 2019 term, the Cherokee County Grand Jury indicted Applicant for murder (count one) and possession of a firearm during commission of a violent crime (count two) (2019-GS-11-00690), attempted murder (2019-GS-11-00692) and discharging a firearm into a dwelling (2019-GS-11-00693).

Applicant was represented by Tracy and Russ Racine, Esquires. Solicitor Barry Barnette of the

Seventh Circuit Solicitor's Office prosecuted the case. On November 23, 2021, Applicant appeared before the Honorable R. Keith Kelly, circuit court judge, and entered an *Alford* plea to the lesser-included offense of voluntary manslaughter and a negotiated twenty-five years, a negotiated five-year sentence for weapons possession, a negotiated ten-year sentence for discharging a firearm into a dwelling, and a negotiated twenty-five-year sentence for attempted murder. Judge Kelly accepted the plea and sentenced Applicant in accordance with the negotiations.

Applicant filed a timely notice of appeal on December 10, 2021. The South Carolina Court of Appeals dismissed the appeal for failure provide a sufficient explanation pursuant to Rule 203(d)(1)(B)(iv), SCACR. The remittitur was issued on March 25, 2022.

#### **Summary of Relevant Facts**

When the police arrived on scene, they found Overton Good laying just inside the front door with what appeared to be a gunshot wound. (Tr. 12). His girlfriend was in the residence at the time. (Tr. 12). She called 911 and dogs were heard in the background of the call. (Tr. 12). She told the police she saw two black men pull up in a gray car, exit the car, and approach the house. (Tr. 12-13). She saw an arm of someone wearing a red jacket and holding a pink gun. (Tr. 13). Overton shut the door and the girlfriend called the police. (Tr. 13). Overton identified Applicant's co-defendant and the girlfriend identified Applicant. (Tr. 13). Four or five shots were fired, and Overton was hit. (Tr. 13). The girlfriend identified the co-defendant as the shooter and Applicant as the driver. (Tr. 14).

#### **Current Action Before this Court**

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:



1. Involuntary guilty plea.
  - a. *Alford* plea was involuntarily given.
2. Ineffective Counsel.
  - a. Counsel failed to investigate.
3. Violation of constitutional rights.
4. Prosecutor misconduct.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel.
  - a. Failure to secure a more favorable plea offer.
  - b. Failure to investigate.
2. Invalid Plea.
  - a. Trial tax.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

#### Summary of the Testimony

##### *Applicant*

Applicant testified that he is presently incarcerated. He stated he filed a PCR application based upon ineffective assistance of counsel claims. He stated he was represented by Joshua Schultz at trial, where he was convicted on some charges, but not others. He stated that he pled to the remaining charges while being represented by the Racines. He stated he wanted a twenty-year concurrent sentence, or he wanted to go to trial. He stated that Counsel told him to plead, or he would receive a life sentence for murder. He stated that Counsel told him that the plea offer was his best option. He stated that Counsel told him that if he went to trial, he would lose all credit for time served. He stated that he did not think he would be found guilty on all charges. He stated that there was evidence showing he did not commit the crime. Applicant wavered when asked if he knew his sentences could be run consecutively.

##### *Tracy Racine*

Ms. Racine testified that she represented Applicant after taking the case over for Joshua

Schultz after Applicant's mistrial. She stated she talked to Applicant. She stated he stated he was unwilling to plead at first. She stated that she was fine with proceeding to trial but told him he was looking at thirty years to life imprisonment if he was found guilty. She stated Applicant received a plea offer that cut down the amount of time he had to serve. She stated Applicant ultimately decided to plead guilty. She stated that the evidence was incriminatory and would likely lead to a life sentence. She stated that the victim's family identified Applicant and that Applicant's co-defendant would testify against him at trial. She stated there was a call from co-defendant that indicated Applicant knew what happened. She stated he would be found guilty under hand of one hand of all. She stated she told Applicant that he could be found guilty even if he was not the shooter. She stated that Applicant said he was not the shooter. She stated she asked for a twenty-year sentence, which Solicitor rejected because he was already pleading to a reduced charge. She stated she reviewed discovery with Applicant.

***Russell Racine***

Mr. Racine testified that he was co-counsel on this case. He stated he was engaged in the case after Ms. Racine was. He stated he represented Applicant pro bono. He stated that Applicant initially wanted to proceed to trial, which is why he was added to the case. He stated he remained on the case through the plea proceedings. He stated that there was a recording of Applicant's co-defendant's statement. He stated that this interview destroyed any trial defense they otherwise may have had. He stated Applicant was facing life imprisonment. He stated that this was a strong case for the State. He stated Applicant understood the charges he was facing and rights he was waiving by entering the plea.

**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 and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

### *Ineffective Assistance of Counsel*

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCPP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the

range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”

*Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.



### *Involuntary Plea*

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made

by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.” *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

The Court finds the plea was freely, knowingly, intelligently, and voluntarily entered. Applicant confirmed he understood the counts, elements, sentencing ranges, negotiations, and violent and most serious distinctions, if applicable. (Tr. 4-7). Applicant confirmed he knew he was waiving his rights to a jury trial, to call and confront witnesses, and to remain silent. (Tr. 7). Applicant stated Counsel reviewed all discovery materials with him. (Tr. 9). Applicant stated he was pleading under *Alford* freely and voluntarily. (Tr. 9). He stated no one threatened or coerced him into pleading. (Tr. 9-10). Applicant expressed he was satisfied with Counsel and that she did everything she could to help him. (Tr. 10). After the State recited the facts of the case, Applicant stated that the facts were accurate and could be shared with a jury. (Tr. 15-16). This Court concurs and finds the plea was freely, voluntarily, knowingly, and intelligently entered and cannot be withdrawn now.

#### ***Failure to Investigate***

Applicant alleges ineffective assistance of counsel for “failure to investigate.” *Strickland* makes clear that defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness [under] all the

circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* At the PCR hearing, Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

Additionally, whether Applicant was prejudiced by Counsel’s failure to investigate is contingent on whether the evidence presented would have led Counsel to change his recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Applicant failed to state with any specificity what he wanted Counsel to investigate, how Counsel was unreasonable in failing to investigate this, or how it would impact his decision regarding the plea. Accordingly, Applicant has failed to meet his burden of proof and relief is denied accordingly.

#### ***Trial Tax***

Applicant claims his plea was coerced because he was afraid if he did not plead and proceeded to trial instead, he would face life imprisonment. Fear of receiving more time if he went to trial is not enough to undermine the validity of the plea. Accordingly, relief is denied on this ground.

#### ***Favorable Plea Offer***

Applicant claims Counsel was ineffective for failure to secure a twenty-year plea offer. Applicant had no constitutional right to a plea offer. “Prosecutors have broad powers in the plea bargain process[.]” *Reed v. Becka*, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999). *See Collins v. State*, 422 S.C. 250, 261, 810 S.E.2d 871, 877 (2018) (“[T]he decision whether to revive the expired plea offer rested exclusively with the solicitor.”); *State v. Langford*, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 (2012) (stating “[u]ndoubtedly, the solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and

whether he brings it to trial or offers a plea bargain”); *see also Weatherford v. Bursey*, 429 U.S. 545, 561 (1977) (finding “there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial”).

“Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety.” *Reed*, 333 S.C. at 684, 511 S.E.2d at 400-01. “The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor’s actions.” *Id.* Yet, plea offers must be analyzed within the bounds of judicial restraint. *Id.*

“[A] defendant has no constitutional right to plea bargain,” *id.* (citing *State v. Easter*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *aff’d as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997)), and “a trial judge is not required to accept a plea. *Id.* (citing *Santobello v. New York*, 404 U.S. 257 (1971)). “A plea agreement is only an ‘offer’ until the defendant enters a court-approved guilty plea. A defendant accepts the ‘offer’ by pleading guilty. Thus, until formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant, the State, or the court.” *Id.*, 333 S.C. at 688, 511 S.E.2d at 402 (citing *Harden v. State*, 453 So.2d 550 (Fla. Dist. Ct. App. 1984); *see also State v. Nesbitt*, 411 S.C. 194, 201 n.7, 768 S.E.2d 67, 71 n.7 (2015) (finding that “if the defendant enters into a negotiated plea agreement prior to the court’s acceptance of his guilty plea, that agreement is a mere executory promise that, standing alone, has no constitutional significance, as it binds neither the government nor the defendant.”).

Counsel credibly testified that she requested a twenty-year offer be extended, but the State rejected the offer. The State has no duty to accept Applicant’s counteroffer for a more lenient sentence. Accordingly, relief is denied on this ground.



**Conclusion**

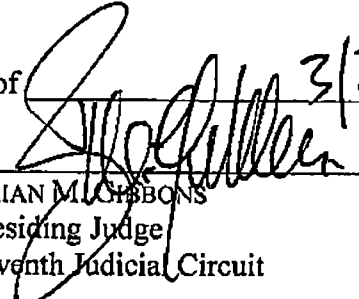
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.


This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to 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 Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

**IT IS THEREFORE ORDERED:**

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

  
\_\_\_\_\_  
BRIAN M. GIBBONS  
Presiding Judge  
Seventh Judicial Circuit

  
\_\_\_\_\_, South Carolina.

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2022CP1100282

|                 |                        |  |
|-----------------|------------------------|--|
| Shaun Rogers Jr | Sate Of South Carolina |  |
|-----------------|------------------------|--|

|               |   |
|---------------|---|
| PLAINTIFF(S)  | DEFENDANT(S)  |
| Submitted by: | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br><input type="checkbox"/> 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.  See Page 2 for additional information.
- 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: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY
- 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 \_\_\_\_\_

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

FILED IN OFFICE OF  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.  
 2023 MAR 17  
 10:28  
 BRANDY  
 MOORE

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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|--|--|--|
| N/A  |  |  |
|  |  |  |
|  |  |  |

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.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

|                     |            |           |
|---------------------|------------|-----------|
| S/ Brian M. Gibbons | 2168       | 3/13/2023 |
| Circuit Court Judge | Judge Code | Date      |

For Clerk of Court Office Use Only

This judgment was entered on 03/13/23, and a copy mailed first class or placed in the appropriate attorney's box on 03/13/23, to attorneys of record or to parties (when appearing pro se) as follows:

Rodney Wade Richey PO Box 10916 Greenville, SC  
29603-0916

Alan McCrory Wilson S.C. Attorney General's Office PO  
Box 11549 Columbia, SC 29211-1549

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

*Brandy W. McBee*

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Court Reporter

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Brandy W. McBee - Clerk of Court

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

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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