

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Jun 24 2024**

S.C. SUPREME COURT

APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable Walton J. McLeod, IV, Circuit Court Judge

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Case No. 2019-CP-46-1504

Kalvin R. Brown,

Petitioner,

vs.

The State of South Carolina,

Respondent.

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**NOTICE OF APPEAL**

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Notice is hereby given that Petitioner hereby appeals the Order Denying Applicant's Rule 59 Motion filed May 28, 2024. A copy of the order is attached.

Respectfully submitted,

/s/ Elizabeth Franklin-Best  
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**June 24, 2024**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Kalvin R. Brown, #173109  
Applicant,

vs.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

NO.: 2019-CP-46-1504

**ORDER DENYING APPLICANT'S RULE  
59 MOTION**

ANGIE M. BRYANT  
C.C.P. & GS  
YORK COUNTY, SC

FILED-RECEIVED  
2024 MAY 28 PM 12 01

This matter is before the Court by way of a post-conviction relief (PCR) action commenced by Calvin R. Brown, #173109 ("Applicant"). An application for PCR was filed on April 30, 2019, and amended on June 11, 2021. The Court convened an evidentiary hearing into the matter on December 7, 2022, at the Moss Justice Center in York, South Carolina. Following the hearing, the Court issued an order denying and dismissing Applicant's PCR action on December 21, 2023 ("prior order"). Applicant filed a Motion to Alter or Amend Judgment on January 2, 2024 and Respondent filed a response on May 7, 2024. For the reasons set forth herein, Applicant's Motion to Alter or Amend and for Reconsideration pursuant to Rule 59(e), SCRPC, is DENIED.

Applicant argues that reconsideration of the Order of Dismissal is necessary and appropriate for the following reasons:

- a) The Court did not err in its prior order by not finding that the trial counsel was inefficient in failing to preserve for appeal the validity of the stop and search of the automobile he was driving.

Applicant asserts the Court erred in its prior order by not finding trial counsel ineffective for permitting the introduction of evidence seized during the stop and search of Applicant's car

without renewing his objection. A showing of prejudice is necessary to establish a claim for ineffective assistance of counsel. Here, the Court found that the objection would have been meritless; thus, Applicant has not shown prejudice from Counsel's omission of the objection. The Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts as it relates to trial counsel permitting the introduction of evidence seized during the stop and search of Applicant's car without objection.

b) The Court did not err in holding that a pre-trial hearing occurred.

The Court found in the prior order that the parties convened for a pre-trial hearing on Applicant's motion to suppress. Applicant argues that the Court erred in the prior order finding because no testimony was taken. The Court finds Applicant's argument is without merit as there is no error of law or facts asserted as to the Court's finding. Therefore, this Court did not err in considering the result of the pre-trial suppression hearing in evaluating the likelihood of success had Counsel renewed his suppression motion at the proper time

c) The Court did not err in accepting the statement by the trial court that "you've got a lot of reasonable suspicions going on here."

Applicant argues the Court erred in accepting the statement by the trial court that "[Y]ou've got a lot of reasonable suspicions going on here." Applicant argues the statement is not a factual finding as the statements was not made based upon any testimony take at the pre-trial motion. The Court's prior order simply states evidence from the record that that the trial court notes "you've got a lot of reasonable suspicions going on here." Therefore, this Court did not err in noting statements made by the trial court in the Court's overall analysis.

- d) The Court did not err in making a factual conclusion based upon the testimony of the arresting officer.

Applicant argues that the Court erred in making factual conclusions in the prior order based upon the testimony of the arresting officer because the arresting officer did not testify at the Post Conviction hearing. Applicant relies on *Milledge v. State*, 422 S.C. 366, 380, 811 S.E.2d 796, 804 (2018), which states that “in determining whether a PCR applicant has established prejudice, the PCR court does not act as a finder of fact and substitute its judgment for that of the trial court. Rather, in instances like the case before us, the PCR court must view the trial court’s ruling through the same lens that would be applied on appeal, which here requires giving appropriate deference to the trial court’s finding.”

The Court agrees with the *Milledge* holding, yet finds the argument not relevant as the Court did not reach a factual conclusion based upon the testimony of the arresting officer. In considering the testimony of the arresting officer, the Court was making a finding as to whether the Applicant had met his burden of proving a Fourth Amendment violation. Therefore, this Court did not err by making a factual conclusion as to testimony of the arresting officer.

- e) The Court did not err in not finding trial counsel ineffective as to a proper *Jackson v. Deno* hearing.

Applicant contends that trial counsel never conducted a *Jackson v. Deno* hearing when such was required. The prior order found that Applicant did not meet his burden of establishing ineffective assistance because, among other arguments, Applicant had not produced any evidence that the statement was involuntary, a necessary requirement for a *Jackson v. Denno*. Applicant argues the Court reached this finding by improperly considering the credibility of trial testimony. Again, this Court was citing to evidence in the record to identify the issue before the Court, without

making a determination as to the credibility. Therefore, this Court did not err in not finding trial counsel ineffective as to a proper *Jackson v. Deno* hearing.

f) The Court did not err in not finding trial counsel ineffective as to the waiver of a jury trial.

Applicant argues the Court erred in failing to consider the testimony between the two trial attorneys in regards to the decision to waive a jury trial was contradictory and not credible. While there is discrepancy in the time line of when Applicant was advised of the option to waive a jury trial, there is also discrepancy in Applicant's testimony as to the events around the decision to waive a jury trial. The Court weighed all of these factors and determined that Applicant had failed to establish deficiency or prejudice as to the waiver of jury trial. Therefore, this Court did not err in not finding trial counsel ineffective as to the waiver of jury trial.

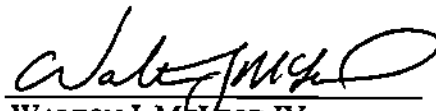
#### **CONCLUSION**

For the aforementioned reasons, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts as it relates to the Court's prior order denying and dismissing Applicant's PCR action.

**IT IS THEREFORE ORDERED** that Applicant's Motion to Alter or Amend and for Reconsideration pursuant to Rule 59(e), SCRPC, is **DENIED**. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR, for the procedures following the filing and service of the notice of appeal.

**IT IS SO ORDERED.**

  
WALTON J. MCLEOD IV  
Presiding Judge  
Sixteenth Judicial Circuit



**State of South Carolina**  
**The Circuit Court of the Eleventh Judicial Circuit**

**Walton J. McLeod, IV**  
Judge

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May 21, 2024

Clerk of Court, York County  
P.O. Box 649  
York, SC 29745

Re: Calvin R. Brown, #173109 v. State of South Carolina

Dear Clerk:

Please find enclosed a signed *Order Denying Applicant's Rule 59 Motion* regarding the above referenced case. I would appreciate you filing this Order and providing a clocked copy to the attorneys of record. Thank you for your assistance, and please do not hesitate to contact me if I can answer any questions for you.

With kind regards,

Sincerely,

Margaret Mullins  
Judicial Law Clerk  
The Honorable Walton J. McLeod, IV