

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Richland County  
R. Knox McMahon, Circuit Court Judge  
\_\_\_\_\_

Volume III of III

RECEIVED

SEP 16 2013

S.C. Supreme Court

KEITH SIMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213330  
\_\_\_\_\_

APPENDIX  
\_\_\_\_\_

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ATTORNEYS FOR RESPONDENT

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and Tr. pg 704 L. 1-4) Tr. p. 703 L 21. "Malice and a meanness, evilness, wickedness one person shows to the other. You can express: 'I'm going to kill you'; or it can be inferred by the use of a deadly weapon; the 9mil, Take the inference. That's the only way you can prove it in alot of cases. He used the 9mil. He shot him. That's an inference of malice.

The Judge ~~is~~ Unconstitutionally shifted burden of proof and that violates my "Due Process rights"! > (Sandstrom v. Montana)

State of South Carolina )  
County of Richland )  
Keith A. Sims # 314569 )  
Vs. )  
The State of South Carolina )

In the Court of Common Pleas

Case No. 2011CP4001881

MOTION TO ALTER OR AMEND ORDER

PURSUANT TO Rule 59"E" PRO

JEANETTE W. McBRIDE  
C.P. & G.S.

2012 NOV 15 PM 3:42

RICHLAND COUNTY  
FILED

COMES NOW the applicant Keith Sims 314569 Respectfully Motioning this court Pursuant to South Carolina Rule of Court Rule 59"E" to ALTER and/or to AMEND The Order in a PCR Action Sims Vs. STATE.2011CP4001881 TO Reflect specific Finding or Facts and conclusion of Law on the following issues;

- (1) My Due Process rights were violated when I was constitutionally deprived the ability to Put forth a complete defense and the right to a Fair trial. "Please note this is not an issue about Trial Court error, this is an issue strictly concerning Constitutionally Due Process rights".
- (2) My Trial Lawyer was Ineffective for not objecting to Solicitor Vouching for Credibility of its witness.
- (3) Ineffective Assistance of Counsel for Failure to object to Solicitors closing argument that improperly pitted applicant against state witness.
- (4) Ineffective Assistance of Trial Counsel and Prosecutorial Misconduct. "Please note this is an issue of Ineffective Assistance of Trial Counsel and a separate issue of Prosecutorial Misconduct". Please note this requires two different and distinct analysis to evaluate these Constitutionally issues.
- (5) Trial Counsel was ineffective For Failing to object to trial Judge erroneous admission of irrelevant evidence.
- (6) Violation of my Due Process rights by Unconstitutionally shifted burden of Proof "and my right to a Fair Trial." "Please note this is a Constitutionally Due process issue which is not Governed by Belcher case "Precedent" Belcher Vs. State was determined by S. C. Supreme Court strictly under common law)" evaluations, Belcher is inapplicable and distinguishable from my case because my claim is solely a constitutionally Due Process rights Claim under (Sandstrom V. Montana) 442 US. 510, 99 S.Ct. 2450, 61 L.Ed.2d 49 (1979). And my lawyer was ineffective for not objecting to the jury charge "Tate V. State 570 S.E2d 522 – unconstitutionally shifted burden of proof.
- (7) Ineffective Assistance of Counsel for Failing to object to Testimony on Applicant's Invocation of Constitutionally Rights.

- (8) Lack of Subject Matter Jurisdiction/Personal Jurisdiction and Trial Lawyer was Ineffective for not having a Rebuttal Expert Witness.

WHEREFORE The Applicant prays this court order and or Amend it's Findings and it's order to specifically address all issues presented in PCR Applicant and amended issue, The briefs and Exhibits admitted, the testimony and evidence presented at the PCR Hearing plus amended issue outline this Rule 59"E" Motion, and all other relevant evidence and information.

1) "Inability to Put Forth a Complete Defense"

This issue is not a Trial Court Error: That is restricted to direct Appeal Review – but it is the effect of the Judge action that "infringes" on my Due Process Right. U. S. Constitutional Due Process (14<sup>th</sup> Amendment). This issue is about the trial court action's impact on my constitutional rights to present a complete defense and the trial court action's impact on my constitutional rights to a Fair trial. My Due Process rights were violated when I was constitutionally deprived the ability to put Forth a complete defense and the right to a Fair trial.

Main Fatal legal and Constitutional Flaw is trial court evaluated my "State of Mind" for officer Scott McDonald's police report and testimony under the analysis of "Prior difficulties" and "Prior Incidents of Violence" evaluated my motion to admit officer Scott McDonald police report and testimony under incorrect analysis.

The flaw of trial courts evaluation and determination of denying my motion to admit the police report and testimony of Scott McDonald culminates to Due Process Violation because it deprived me my ability to establish and present a complete demonstration of evidence to the jury in order for the jury to constitutionally evaluate the "reasonableness" of my action of shooting Brian Anderson. The jury needed to be able to determine my State of Mind the moment the killing transpired. "Absent of a complete evidential presentation of my "State of Mind" the jury cannot constitutionally evaluate the "reasonableness" of my action of killing Bryan Anderson in determining whether this is a homicide or self-defense killing. You cannot exclude my "State of Mind Evidence" that created a tipping point in trial to conviction, it violates my Due Process Rights to present a complete defense and violate my right to a fair trial. Self-Defense is a Complete Defense and the jury was charged as such, so I am entitled to present all admissible evidence to advance my complete defense. Proximity of assault and not being the particular victim in a particular incident are not valid legal grounds to deny my motion to present evidence to show his "State of Mind" and conduct Bryan more harshly by knowledge of his gunfire fight. Applicant needed to be able to present evidence of "State of Mind" in order for jury to constitutionally evaluate if he was a reasonable prudent person of ordinary firmness and courage would have had the same "belief" that defending oneself made killing Bryan Anderson a justified killing factually and legally. See <State v Rash> and <State v Fuller>. This issue was objected to twice and preserved on Trip 761 L. 17-24. Again, this is not a Trial Court error but a serious violation of Applicant Due Process Rights and relief should be granted.

## 2) Defective Indictment (Prosecutorial Misconduct)

Certified documents from South Carolina Court of Administration were submitted as exhibits. Certified documents stated no Grand Jury met on the date of February 12, 2004 for True Billing of Applicant Indictment. A Certified Court Term Calendar from South Carolina Court of Administration signed by Ms. Michelle Owens showed clearly that on the 12<sup>th</sup> day of February 2004, it was no General Sessions held in Richland County to True Billed. On the 12<sup>th</sup> of February 2004 it was no General Sessions in Richland County but was held in Kershaw County by Judge "Manning, L.". A True Bill Indictment cannot be handed down if there is no General Session being held for a Grand Jury to convene. (14-9-170) – Grand jury must meet with General Session at a Term of Court to return indictment for trial of a case. 14-9-210(Solicitor must submit bills of Indictment to Grand Jury while it is in attendance upon General Sessions Court). You cannot get a True Billed Indictment if there is not court being held on the 12<sup>th</sup> day of February 2004 that's True Billed stamped on Applicant Indictment. South Carolina law is very specific concerning matters of false information in state document. It is an offense against Public Justice to willfully give false information in a state document, S. C. code Ann{16-19-10 "Perjury and Subomation of Perjury.

S. C. Constitution Article 1 (11 and Article V (22 and S. C. Code Ann {17-19-10(2003) no person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by grand jury...

Prosecutors has a special responsibility to see that justice is done, and is held to the highest standards of professional ethics. In fact Prosecutor holds a quasi-judicial position. See Quattlebaum and State V. King 71 S.E2d 793 and State v. Durden 212 S.E2d 587. Prosecutor violated Rule 407 Rules of Professional Conduct Rule"3.8." Prosecutor must see that no conviction takes place except in strict conformity with the law and that the accused is not deprived of any constitutional right or privilege. Solicitor caused false information to be printed and published in Applicant indictment. Both perjury and gross prosecutorial misconduct are established in Applicant case. The proof is certified documents from S.C. court Admin showing not General Session was held n the 12<sup>th</sup> of February 2004 in RichlandCounty to true billed Applicant indictment. If there is any ambiguity then the courts must rely on the facts in front of them which is certified document from S. C. Court of Administration. Trial lawyer was Ineffective for not challenging the false indictment information. For this reason relief should be granted.

3) "Failure to object to testimony on Applicant's Invocation of Constitutional Rights". At trial, Officer Eldon McCraw gave a testimony led by Solicitor John Meadows. McCraw gave details about the interview of Applicant. McCraw asked Applicant "Why did you kill victim" at which time Applicant "became agitated, very nervous, wouldn't look at McCraw, kept swallowing, crossing his arms and legs...and then stated that he might need an attorney. Tr.pp. 421 L. 24-p 422.L.14). McGraw noted the interview was terminated thereafter. " Interview did not end after Sims stated that he might need an attorney on Tr.pp. 422.L.4-5. Officer McCraw

still questions Sims from Tr.pp. 422.L.5-14. Line 5 McCraw asked Sims who would be his attorney. Line 6. Sims stated that he didn't know his name but that his dad was going to get him one that was in the Shriners with him from Charleston. Lin 7-14. Sims then asked if that was all the questions he had. We then asked him if we could see his hands and take fingernail clippings from him. Sims stated no. At this time a search warrant was obtained for his fingernails. The interview was then terminated after the fingernail clippings were taken - line 14. At the moment Sims stated that he might need an attorney on Tr.pp 422 -line 4. Then interview should have stopped. Instead, Officer McCraw kept questioning Mr. Sims on through Tr. pp 422 line 14, which violated his Miranda Rights. See State v. Willian 731 S.E2d 338. Also State V. Weston 625 S. E2d 641(2006). Also Miranda V. Arizona 384 U. S 436, 86 S.CT. 1602, 16 L.Ed2d 694). Story told for first time at trial, by cross-examining him about Post-arrest silence after receiving Miranda FN1 Warnings 426 U.S at 611, 96 S.Ct 2240. The rationale for *Doyle* is that it would be a violation of Due Process to allow the state to comment on the silence which "Miranda Rights have encouraged *Doyle v. Ohio* 426 U.S at 611, 96. Officer McCraw violated Sims Miranda Right and Post Silence Arrest by keep questioning him after he asked for an attorney. Trial Lawyer should have objected to Officer MCCraw comment on Applicant silence and his behavior making the jury think Sims had something to hide. Furthermore, counsel said she "thinks" they offered Sims a 20 year plea and he turned it down, which was actually an open plea from 0-30 voluntary manslaughter. Officer McCray testimony was crucial to Sims case which led the jury to believe he had things to hide and never told authority that he killed Anderson: Questioning should have stopped when Sims said he wanted a lawyer and trial lawyer should have objected which violated Sims Constitutional Right to Post-Silence and his Miranda Rights. For these reason Applicant should receive relief.

4) "Failure to Timely Object to Introduction of Ammunition – Later Removed From Evidence".

Trial Counsel failed to object at first opportunity when the State introduced ammunition through Officer John E. Tool Tr.pp 362. At this time Solicitor produced this evidence in sight of the jury inflaming the jury's mind. John E. Tool said the ammunition was found beside the stand dresser in drawer in Applicant's residence. Trial Counsel did not object until later when the state tried to submit this ammunition as evidence. Trial Counsel objected then and was overruled by Judge Cooper. Later in the trial the judge revisited the issue of the irrelevant evidence thought about changing his ruling Tr.pp 389 L. 21 – Tr.pp 390 L.22, but it was too late, the jury had already seen these crucial evidences. Only way it could have been corrected was to give the applicant a new jury. This evidence shown was a serious blow to the defendant and was tragic to his case and Trial Counsel should have motioned for a mistrial. Evidence is relevant when it logically tends to prove or disprove material fact in issue." State V. Galloway 407 S.E2d 662 (S.C. App.1991); evidence is unfairly prejudicial if it has the due tendency to suggest a decision on an improper basis. State V. Saltz, 551 S.E2d 240(S.C. 2001); Rule 403 S.C.R.E. The Applicant submits that counsel failure to object to Solicitor's introduction of irrelevant and inadmissible evidence to jury was ineffective assistance of counsel that

prejudiced his defense. *Nichols V. State*, 417 S.E.2d 860(S.C. 1992). Counsel should have objected and motion for a mistrial. For these reasons the Applicant should receive relief.

5) " Failure to object to Improper Vouching and Pitting of Witness in Closing"

In closing, the Solicitor made the following comments regarding the chief witness, Sierra (Nikki) Davis. " Solicitor: You heard Natalie through Nikki, which is co-conspirator testimony which is allowed to come out under the rules, say, "he murdered somebody (victim). "No truer words were spoken in this case" (Emphasis added) by Solicitor Tr.pp. 707, L.5-9. Solicitor must never vouch for the credibility of their witness.

Impermissible vouching by government for its' witness generally occurs when prosecution's action are such that jury could reasonably believe that prosecutor is indicating personal belief in the credibility of the witness. *State V. Kelly*, 540 S.E2d 851 (S.C. 2001).

Applicant submits that counsels failure to object to solicitor vouching for it witness was ineffective assistance of counsel and prejudice clearly flowed from counsel failure to object to the vouching warranty reversal of his conviction for murder, as Nikki Davis was solicitors key witness and her credibility was crucial to Solicitors case as applicant presented a "self-defense", such that believing witness only for jury could convict applicant, and Nikki Davis credibility was questionable in light of her being charged as a co-conspirator, and her interest in providing favorable testimony for state to obtain leniency in her case. See *GilChrist v. State* 565 S.E.2d 281 (S.C. 2002). My lawyer performance was deficient by not objecting to solicitor vouching. My result for trial would have been different if jury would have never took the solicitors' words of belief to be legally true, especially when credibility was crucial in my case.

Main issue solicitor improperly pitted me against state's witness.

"Solicitor: His demeanor, his emotion, what happen? You all heard it through several witnesses but you first heard it through Nikki, and almost, credibility, believability, you can look to Nikki and you can look at the defendant Tr.pp. 711 L. 3-7, "Solicitor: You can also look to Nikki and Bernard for credibility versus the defendant Tr.pp. 721, L. 23-25.

Credibility was crucial in this case. When improper pitting of witness is prejudicial and cannot be deemed harmless. "*State V. Benning* 524 S.E2d and *Burgess V. State* 495 S.E2d.

Lawyer failed to object to the Pitting and improper argument in this instance that assistance of counsel that prejudiced my defense "*Green V. State* 527. 2d. For these reasons, Applicant was prejudiced and he should be granted relief.

6) "Failure to Object to Improper Jury Charge on Inference of Malice"

My Due Process rights were violated by the judge unconstitutionally shifting burden of proof and my right to a fair trial. Judge in charging jury "Malice may be inferred by use of deadly weapon" on Tr.pp 735 L. 16-17 and 22. Judge charge "And of course, a pistol is a deadly weapon". Due Process clause of the 14<sup>th</sup> Amendment is violated when a jury charge creates a mandatory presumption and impermissibly shifts the burden of proof to the defendant.

"Burden- shifting deprive a defendant of Due Process of Law and are therefore unconstitutional. "Due Process Clause" Forbids a state from placing the burden on the accused to prove his actions, "Not talking about Belcher". This requires two split rulings. Due Process issue / Ineffective Assistance of Trial Counsel.

The Infer of Malice from the use of a deadly weapon fades the case, and the jury must find malice, if at all, from the evidence without any aid from the court as to what weight should be attached to killing with a deadly weapon. The lawyer was ineffective for not objecting to the jury charge given by the judge. Tate V. State 570 S.E2d 522. Tate V. State 570 S.E2d 522 – Unconstitutionally shifted burden of proof – constitutional 6<sup>th</sup> Amendment. Trial Counsel was ineffective in failing to object to the presumption of malice charges as erroneous burden shifting instruction and unconstitutional.

- 7) "Subject Matter Jurisdiction", Personal Jurisdiction, Lawyer Ineffective for not Calling a Rebuttal Expert Witness.

Richland County lack Subject Matter Jurisdiction and Personal Jurisdiction because the place of death in not certain. The shooting happened in Richland County at the Applicant home but victim was still breathing after the shooting. The Applicant home is seconds from the Fairfield County line. Driving with the victim the Applicant crossed through two county lines. First, Fairfield County, which is moments from his home and then reaching his destination in Newberry County. The Pathologist stated in his Autopsy Report that the deceased, Bryan Anderson, assault took place and "Molly Rock" was the place of death. Richland County indicted the Applicant saying the victim was shot and killed in Richland County without certainty. Richland County had no jurisdiction to Indict Sims because the Pathologist said Anderson died in Newberry County. Anderson was still breathing leaving the victims home, he could have died in Fairfield County in route to Newberry. We will not question an expert without proof that's why my Trial Lawyer was Ineffective for not having a Rebuttal Expert Witness to have a second opinion of the place of death. The place of death has to be correct because death is the main element in a murder charge. By pathologists "Joel S. Sexton, M.D. and Janice E. Ross, M.D. saying the death took place in Newberry County, that gives Newberry County Jurisdiction, not Richland County. The Applicant is being held under an Invalid Indictment. A person cannot die in two or three different places and the place of death has to be correct – State V. Blakeney, 33 111, 11 S.E 637. Your Honor, this issue must be ruled upon before we can go to the next step. Applicant should not be locked-up under an Indictment obtained from Richland County because they had Jurisdiction. See Autopsy Report you received. "Place of Injury" – Molly rock. "County of Death" Newberry, S.C. "Date of Death" 12-31-03. Richland County Lacked Subject Matter Jurisdiction and Personal Jurisdiction. Applicant is being held unlawfully. Richland County has no Personal Jurisdiction. Look at the Indictment for Richland County and the Pathologist Report. It should be no Conflict about the place of death, it has to be correct before you can get a Murder conviction. For these issue and facts, the Applicant should be granted release.

Respectfully Submitted,

Keith Sims POA Betty Sims

Date: 11-15-12

Keith Sims 314569

4460 Broad River Rd. B.R.C.I

Columbia, S.C. 29210

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 Keith Sims, #314569, )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT

2011-CP-40-01881

RETURN TO RULE 59(e), SCRPC,  
 MOTION TO ALTER OR AMEND

2012 JAN 24 PM 12:37  
 RICHLAND COUNTY  
 FILED  
 CHRISTOPHER W. MCBRIDE  
 CLERK P. & C.S.

This matter comes before the Court by way of Applicant's *pro se* Rule 59(e), SCRPC, Motion to Alter or Amend Judgment filed with the Richland County Clerk of Court on November 15, 2012.

As a brief background, an evidentiary hearing into Applicant's PCR action was convened before this Court on August 14, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, Tynika Claxton, Esquire. The state was represented by Robert D. Corney of the South Carolina Attorney General's Office. At the hearing, both Applicant and Applicant's former trial counsel, LaNelle DuRant, Esquire, testified. By order filed October 30, 2012, this Court denied Applicant's request for relief with prejudice. The current *pro se* post-hearing motion followed. Counsel for Applicant, Ms. Claxton, has informed Respondent she intends to adopt Applicant's *pro se* motion as her own to avoid impermissible hybrid representation, as she is counsel of record in the action.

Respondent respectfully requests this Court deny the current motion to alter or amend as the October 30, 2012, order of dismissal entered contains all of the required findings of facts and conclusions of law required by S.C. Code § 17-27-80 and Rule 52(a), SCRPC. See also Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). Respondent submits the current order of dismissal

makes accurate, complete and appropriate findings based upon the testimony and arguments presented at the PCR hearing. Therefore, Applicant's Rule 59(e), SCRPC, motion to alter or amend should be denied. Further, Respondent submits convening a hearing on the motion will be of no help to this Court's consideration of the merits of the motion and therefore, the motion should be denied without hearing.

WHEREFORE, having made its Return to the motion, the State requests the current motion be denied and said motion be dismissed.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

ROBERT D. CORNEY  
Assistant Attorney General

BY:



ATTORNEYS FOR RESPONDENT

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(803) 734-3737

Columbia, South Carolina  
January 22, 2013



1012

FORM 4

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

JUDGMENT IN A CIVIL CASE *Case d*  
*Case # 2011040*  
CASE NUMBER: 2011CP4001881 *#04# 3H*

Keith A #314569 Sims

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), 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 \_\_\_\_\_

RICHLAND COUNTY  
FILED  
2011 FEB 13 AM 9:51  
JEANETTE W. BRIDE  
CIRCUIT COURT

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.

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

Keith A #314569 Sims  
Charlie Jay Johnson Jr.

Tynika Adams Claxton

Robert Daniel Corney

Keith A #314569 Sims

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

Clerk of Court *Jeanette W. Bride*

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 Keith Sims, #314569, )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT

2011-CP-40-01881

ORDER DENYING RULE 59(e), SCRPC  
 MOTION TO ALTER OR AMEND

2013 FEB 13 AM 9:49  
 JEANE C. W. MCBRIDE  
 & G.S.  
 RICHLAND COUNTY  
 FILED

This matter comes before this Court by way of Applicant's *pro se* Rule 59(e), SCRPC, Motion to Alter or Amend a Judgment filed with the Richland County Clerk of Court on November 15, 2012.

An evidentiary hearing into Applicant's PCR action was convened before this Court on August 14, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, Tynika Claxton, Esquire. The state was represented by Robert D. Corney of the South Carolina Attorney General's Office. At the hearing, both Applicant and Applicant's former trial counsel, LaNelle DuRant, Esquire, testified. By order filed October 30, 2012, this Court denied Applicant's request for relief with prejudice. The current *pro se* post-hearing motion followed. Counsel for Applicant, Ms. Claxton, has informed this Court she intends to adopt Applicant's *pro se* motion as her own to avoid impermissible hybrid representation, as she is Applicant's current counsel of record.

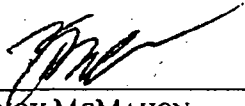
Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and supporting documents, this Court is not persuaded to alter or amend the judgment. This Court further finds the October 30, 2012, order of dismissal entered contains all of the required findings of facts and conclusions of law required by S.C. Code § 17-27-

80 and Rule 52(a), SCRCP. See also Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). After a full review of the case, this Court finds the current order of dismissal makes accurate, complete and appropriate findings based upon the testimony and arguments presented at the PCR hearing. Therefore, Applicant's Rule 59(e), SCRCP, motion to alter or amend is denied. Further, this Court finds oral argument will not aid in reconsideration of the original judgment.

**IT IS THEREFORE ORDERED:**

1. Applicant's Rule 59(e), SCRCP, motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 6 day of Feb, 2013.

  
\_\_\_\_\_  
R. KNOX MCMAHON  
Presiding Judge  
Fifth Judicial Circuit

Lexington, South Carolina

WITNESSES

(8) Inv. Howell Sinar, RC8D

DOCKET NO. 2004-08-40-1037

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2004

52

ARREST WARRANT NUMBER

DP04081

THE STATE

vs.

KEITH A. SIMS

ACTION OF GRAND JURY

TRUE BILL

Person of Grand Jury FEB 12 2004

VERDICT

Indictment for

MURDER

SC Code: 16-3-10  
CDR Code: 0116  
Class FEL/EXM(V)

Foreperson of Petit Jury

Date:

CERTIFIED TRUE COPY  
OF ORIGINAL FILED,  
C.C.C.P.S. AND G.S.  
SOUTH CAROLINA  
RICHLAND COUNTY

After being fully advised as to my legal rights, I hereby waive my right to the Grand Jury.

Defendant

I hereby appear in my own proper person and am guilty to the within indictment or to

Defendant

Witness

C.C.C.P.S. AND G.S.

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

INDICTMENT

At a Court of General Sessions, convened on February 11, 2004, the Grand Jurors of Richland County present upon their oath:

**MURDER**

That Keith A. Sims did in Richland County on or about December 31, 2003, feloniously, willfully and with malice aforethought, kill one Bryan A. Anderson by means of shooting the victim with a handgun and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*Warren B. Giese*  
Warren B. Giese, SOLICITOR

CERTIFIED TRUE COPY  
OF ORIGINAL FILED,  
*Jeanette W. McBride*  
C.C.C.P.&G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland  
STATE VS  
Keith A. Sims

INDICTMENT/CASE#: 1037  
A.W.# DP 04081  
Date of Offense: 12-31-03  
S.C. Code §: 16-3-10  
CDR Code #: 0 1 1 1 1 6

AKA:  
Race: B Sex: M Age: 37  
DOB: [REDACTED] SS#: [REDACTED]  
Address:  
City, State, Zip: WILKESBORO, S.C. 29180  
DL# \_\_\_\_\_ SID# \_\_\_\_\_

CASE RESTORED SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: [REDACTED]

in violation of § \_\_\_\_\_ of the S.C. Code of Laws, bearing CDR Cod # \_\_\_\_\_  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser included Offense,  Defendant Waives Presentment to Grand Jury.  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:  
[Signature] Solicitor Keith A. Sims Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 40 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 set by SCDPPPS

PTUP \_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly pmts of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

Recipient:	
*Fine	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ _____
§14-1-211(A)(2) (DU Surcharge)	\$100 \$ _____
§56-5-2995 (DU Assessment)	\$12 \$ _____
§ 35-13 (Public Def Prob)	\$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ _____
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114 (BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ 3.75 \$ _____
TOTAL	\$ 128.75

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

Barbara A. Scott  
Clerk of Court Deputy Clerk  
Court Reporter J. Williams

PRESIDING JUDGE \_\_\_\_\_  
Judge Clerk \_\_\_\_\_  
Sentence Date: 5-24-06

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ORIGINAL FILED,  
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RICHLAND COUNTY  
SOUTH CAROLINA  
SCCA/217 (7/2003)

White Clerk Green Corrections (County) Probation Pink Defendant