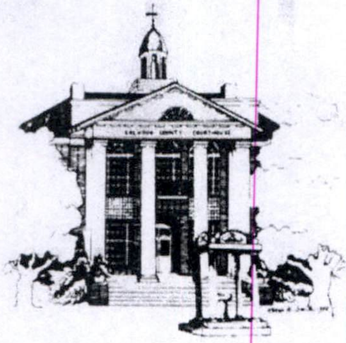

CALHOUN COUNTY CLERK OF COURT

Lakeisha Moorer

May 3, 2024

Dear Charles Winston,

My name is Aria'yanna Davis and I'm the Deputy Clerk of Court for Calhoun County Courthouse. I've received your documents and I'm mailing back clocked copies. I'm also sending clocked copies to your attorney.

Sincerely,

Aria'yanna Davis

Ariaya Dai

Calhoun County Deputy COC

902 F.R. Huff Dr. (PO Box 709) St. Matthews, SC 29135 Phone 803-874-3524 Fax 803-874-1942

RECEIVED

FEB 10 2025

S.C. SUPREME COURT

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2024 MAY 15 AM 9:27
LAKEISHA MOORER
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

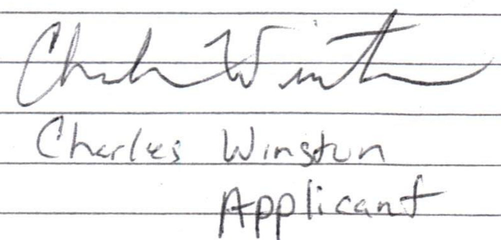
Charles Winston #368128
1057 Revolutionary Trail
Fairfax, SC, 29827
April 20, 2024

The Honorable
Judge Paul M. Burch
5200 E Jim Bilton Blvd.
St. George, SC, 29477

Re: Charles Winston #368128 V. South Carolina
PCR No. 2019-CP-09-00058
Motion To Amend, Alter Judgement
Rule 59(e) SCRCP

Your Honor,

Please find enclosed one copy of applicant's motion to amend, alter judgement pursuant to Rule 59(e) of SCRCP and one copy of SCDC form 10-29 Receipt of Legal Correspondence. I was informed by my mother on April 7, 202 that my PCR counsel advised her that you dismissed my PCR application, but did not state why. He said that he would send me the paperwork as soon as you sent it out stating why. I took it upon myself to get the address for the Georgetown courthouse and send them a letter on April 9, 2024 to get a copy of the order. On April 16 I received the order of dismissal, and within the 10 day period from the receipt of the order sent and filed the original motion and form with the Calhoun County Clerk of Court, whom I received the order from. I still have yet to talk to or receive any mail from my PCR counsel.



Charles Winston
Applicant

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Receipt of Legal Correspondence Verification

This is to verify that legal correspondence from (Name and Address):

Calhoun County Clerk of Court
PO Box 709
Saint Matthews, SC 29135

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2024 MAY 15 AM 9:27
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

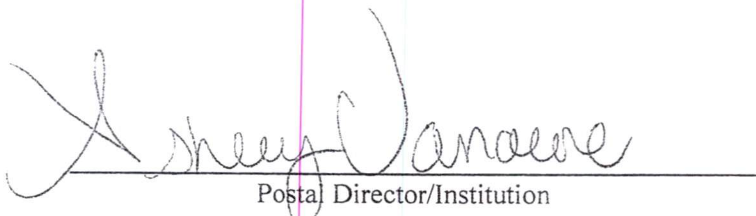
Addressed to (Inmate Name, SCDC#, and Address):

Charles Winston
368128
1057 Revolutionary Trail
Fairfax, SC 29827

was received and logged in on SCDC Form 10-12, "Legal/Privileged/Certified Mail Delivery Log," at the Allendale Correctional Mailroom on (Date) 04.16.24.

On (Date) 04.16.24, the above referenced correspondence was delivered to Inmate Charles Winston, SCDC # 368128, and his signature was obtained on SCDC Form 10-12, "Legal/Privileged/Certified Mail Delivery Log".

Additional Notes:



Postal Director/Institution

04.17.24
Date

SCDC Form 10-29 (Created April 2018)

State of South Carolina) In The Court of Common Pleas
County of Calhoun) For The First Judicial Circuit

FILED
2024 MAY 15 AM 9: 28
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

Charles Winston #368128,)
) Case No. 2019-CP-09-00058
Applicant)
)
v.) Motion To Alter, Amend Judgment
)
State of South Carolina,)
) Rule 59 (e) SCRCP
Respondent)
)

The applicant, Charles Winston #368128, in the above captioned case asks this court to, (pursuant to rule 59(e) of the South Carolina Rules of Civil Procedure), reconsider, alter, and amend it's order of dismissal of the Post-Conviction Relief in this case, heard by the Honorable Judge Paul M. Burch on February 6, 2024 in the Dorchester County Courthouse in Georgetown, SC. The applicant respectfully requests that relief be granted of trial conviction reversal and remanded for new trial.

The following issues are presented in support of the motion:

Ineffective Assistance Of Counsel

Failing To Supress Involuntary Statement

I will start by addressing the one ground of ineffective assistance of counsel that was not covered in the order of dismissal. A defendant objecting to the admission of a

confession is entitled to a fair hearing in which both the underlying factual issue and the voluntariness of their confession are actually and reliably determined. Jackson V. Denno 84 SCT 1774. Counsel's undermining of the proper functioning of the adversarial process by not advocating applicant's cause and rights, completely prejudiced applicant. Counsel testifies applicant cut victim with a knife, and that there were no issues regarding who committed the crime. Counsel never had a conversation with applicant regarding whether or not applicant committed crime, counsel just assumes applicant did the crime. Applicant even states at trial he did not commit crime (page 125 line 1):

And for what it's worth, I know she probably don't believe me. But I did say no.

The only chance counsel had to find out what happened in regards to the involuntary statement was when trial judge inquired whether a Jackson V. Denno hearing was needed. Counsel chose not to even attempt to find out if one was necessary nor did he take the time to even think to argue against a crucial part of state's case against his client. Counsel states (page 33 line 8):

You know that never even came up in our discussions.

So how could counsel testify that he did not have any concerns about voluntariness of applicant's involuntary statement, when he never once had a conversation with applicant in regards to the involuntary statement. Applicant testifies at hearing and counsel does not deny, that he advises applicant that the hearing was nothing, not to worry about it, and just agree to it. Applicant was never threatened by police, but felt he was not given a choice in regards to involuntary statement (page 35 line 7):

Trial Judge: They didn't threaten you or coerce you in any way?

Applicant: No they did not threaten me, your Honor.

The test of admissibility of confessions as voluntary was whether state officials behavior had been such as to overbear defendants will to resist and bring about confession not freely self-determined, not the probable truth or falsity of confessions. Rodgers V. Richmond 81 SCT 735. It was like counsel was on a fast break with the ball in trial judge's hands and she throws him the perfect alley-oop, and instead of slamming it home, he just stopped and watch the pass float out of bounds without even trying. Counsel testifies that state had forensic evidence, but state had no weapon, no fingerprints, nor any DNA at crime scene, nor on or from victim or applicant. Counsel testifies that state had testimony of victim:

(page 14 line 12): I felt him. He came behind me; he like jumped on me.

(page 15 line 2): and the light went off. He came behind me; he jumped on me.

(page 17 line 12): he fled. But I didn't see which way -- I didn't look to see where he was going

Not once during testimony or in any of her statements did victim ever state saw or look in the face of her attacker. Victim also wears glasses and repeatedly states that the lights got turned off, it was dark, and she repeatedly put her head down. These are just a few of counsel's unproffessional errors, and the are more to follow in this motion, that prove that there is more than a reasonable probability

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that the result of the proceeding would have been different.

Conflict Of Interest

Counsel's function in representing a criminal defendant is to assist defendant, and hence counsel owes client duty of loyalty, and a duty to avoid conflicts of interest. Strickland V. Washington 104 SCT 2052. This ground was not because solicitor and judge worked in the same courthouse, but because solicitor, counsel, and trial judge worked with mayor's daughter whom is not only neighbor of victim, but also family member of victim. She served as court reporter from 2009 to 2012 in that very courtroom and served alongside all three, and applicant testified he had the paperwork on hand at hearing to prove it. Solicitor and counsel sat with victim and her family at hearing. And during trial counsel takes the time to apologize to, comfort, and show personal compassion for the opposition of his client (p. 19 line 21):

Counsel: Ms. Glover, how are you?

Glover: Okay

Counsel: I'm sorry for what you've gone through.

Counsel testifies that a phantom individual is the reason why applicant wanted a change of venue, but at trial counsel states (page 5 line 20):

this person is the niece of our current mayor of the town of Saint Matthews.

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And the mayor is certainly not a phantom, nor is her daughter, who was the previous court reporter, which counsel conveinently fails to mention. Any justice, judge, or magistrate shall disqualify herself from any proceeding if impartiality might be reasonably questioned. Title 28 Chapter 21 South Carolina Code of Laws Annotated. Trial judge states (page 6 line 13):

I don't know the victim or anyone in the victim's family.

Which was another alley-oop given to him by trial judge for counsel to come forward with the information supplied to him by applicant, that applicant would have stated himself if he had been allowed to attend.

Applicant Absence At Pre-Trial Motion

The defendant must be present at the initial appearance, the initial arraignment, the plea, every trial stage, and sentencing. Rule 43 Federal Rules of Criminal Procedure. Applicant testifies at hearing that he wanted a change of venue, counsel wanted a bench trial. It is proven that applicant wanted jury trial at another venue several times. If applicant wanted a bench trial, then why would applicant file for a change of venue? The applicant clearly wanted a change of venue, thus motion was filed as Solicitor states (page 5 line 10):

Your Honor, I think what he's talking about is he wants to make a motion for change of venue.

Trial judge asks (page 6 line 8):

Well, Mr. Banks, I guess first things first, are you waiving your client's presence per these stipulations put on the record here today?

Constitutional right of defendant to be present at trial is rooted to a large extent in the confrontation clause of the sixth amendment, but that right is protected also by the due process clause in some situations where defendant is not actually confronting witnesses or evidence against him. US V. Gagnon 105 SCT 1482. Applicant testifies at hearing that he never gave counsel permission to waive his presence at anytime for any reason. Applicant was readily available to attend hearing. That significant decision made by counsel without applicant's approval prejudiced applicant's case rendering inadequate assistance by not exercising reasonable professional judgement. Counsel states (page 6 line 22):

If you grant the change of venue or a jury coming from another community, he would probably opt for a jury trial.

Which proves clearly that applicant wanted a jury trial, and the decision to go forward with the bench trial violated sixth amendment right and also South Carolina Constitution Article 1 Section 14. In response to counsel's statement, trial judge states (page 6 line 24):

Well, certainly he's entitled to a jury trial. However, I think the question is premature because we haven't even attempted to qualify a jury. I think certainly that would be the first step to see if we can panel a fairly impartial jury.

The motion was already made and was clearly stated by both counsel and the solicitor that applicant wanted change of venue. Had the applicant been allowed to attend hearing the next step would have been taken in the process of a motion for change of venue. Instead what took place was a violation of applicant's fourteenth amendment right and South Carolina Constitution Article 1 Section 3. And even though

what was decided by counsel, solicitor, and trial judge on Monday, was put on the record on Tuesday, applicant still was not given the opportunity to be heard. Trial judge instead of having colloquy with applicant like she did in regards to his fifth amendment right, violated Rule 14(c) of the Rules of Criminal Procedure and chose not to have colloquy in regards to applicant's sixth amendment right, knowing that applicant wanted a jury trial just in a different venue.

Applicant's Waiver Of Right To Jury Trial

Attorney's have a duty to consult with their clients regarding "important decisions" including questions of overarching "defensive strategy." This does not require counsel to obtain defendant's consent on every strategic decision, but certain decisions regarding the waiver of basic trial rights cannot be made for the defendant by surrogate. Id. A defendant has the "ultimate authority" to determine whether to "plead guilty, waive a jury trial, testify on his own behalf, or take an appeal." Counsel testifies that he spoke to applicant several times in regards to a bench trial. No matter how many times counsel speaks with a client, it is NEVER counsel's decision to make on whether or not to waive a trial by jury. Counsel even states himself (page 6 line 22):

If you grant the change of venue or a jury coming from another community, he would probably opt for a jury trial.

Which without a doubt shows that applicant's sixth amendment right was violated. And that is a constitutional right that no one can take away. Even applicant's apellate counsel's Initial Brief for Direct Appeal, (Appellate Case Number

2016-001029), in subscript on page 3 counsel notates:

The record does not contain a waiver from appellant in regard to his right to a jury trial. This issue may need to be raised on Post-Conviction Relief.

In all cases, the trial judge shall ensure that the defendant's rights under the state and federal constitutions to a trial by jury are preserved. Rules of Criminal Procedure 14(c). Applicant did not waive right to jury trial due to concerns about jury pool in Calhoun County, applicant requested a change of venue due to concerns of jury pool in Calhoun County.

Failure To Object To Solicitor's Comments

When counsel makes an improper closing argument, opposing counsel should immediately object and have a record made of the statements of language complained of and ask the court for a distinct ruling there on. Washington V. State 440 SC 550. Counsel never objects once during trial and fails to preserve any issues for direct appeal. There are so many instances where counsel's performance was deficient for not objecting. Solicitor states (page 75 line 9):

That is certainly an attempt to avoid punishment.

Solicitor states (page 109 line 16):

He had the opportunity he wouldn't do it.

Trial judge states (page 122 line 9):

And he told her he was going to kill her.

None of the statements were ever stated by applicant at trial, nor in the involuntary statement. Counsel failing to object to use of involuntary statement opened a path for everyone from the judge, to the solicitor, to the victim (page 17 line 24):

I'm not sure if that's what he did we went to the back because he said, "Hold on. I'm going to the bathroom."

To all state their opinions that the defendant went to the back to retrieve a knife. There are atleast four statements where defendant was alleged to go to the back to get a knife, and counsel does not object to any of them (page 73 line 4):

Solicitor: Wouldn't going to get a knife indicate planning?

(page 73 line 9) solicitor states:

If he had to the back of the house to get a knife, that would indicate planning, going to retrieve the weapon?

(page 110 line 6) solicitor states:

He wouldn't admit that's when he got the knife, but he didn't deny it either.

The failure by counsel to object to solicitor's comments clearly prejudiced applicant's case as trial judge states in her verdict (page 119 line 19):

And there was aforethought when the defendant went to retrieve the knife prior to committing the crime.

No one ever testifies to applicant retrieving a knife. Applicant does not state it in involuntary statement. No one ever sees

applicant with a knife. There is no knife in evidence. Victim states she never sees applicant with a knife. Even defense's expert witness testifies (page 73 line 5):

It could indicate an opportunity not to have gotten a knife. And so, is the knife sitting next to me? I don't where the knife was retrieved or whether it was on his body.

Counsel's conduct, strategies, and tactics failed to subject prosecutions case to meaningful adversarial testing in so many aspects, that the trial cannot be relied upon as having produced a just result.

Failure To Move Applicant's Notebook Into Evidence

An unbelievable error that proves counsel's performance fell below an objective standard of reasonable professional judgement. Counsil put his own expert witness in a position where her testimony and epertise would have no bearing on trial by going against her expert opinion to stipulate applicant was not competent to stand trial. Which gave the state the opportunity to relentlessly attack her testimony and credibility. Clearly prejudicing applicant's case and doctor's testimony, because if counsel was not going to agree with her, then why have her as only witness to defense. She clearly based her expert opinion on her conversations with applicant, the notebook that she introduced into her testimony, and the conversations with an officer in the courthouse who counsel refused to call as a witness. The notebook would have helped to prove the preponderence of evidence needed to help achieve the verdict counsel was supposedly striving for. Yet again counsel fumbles the

ball (page 58 line 24):

Trial Judge: Well, specifically if she used it to base her opinion on -- Mr. Banks, are you moving it into evidence?

Where the evidence proposed to be introduced forms a link in the chain of testimony or tends to establish the fact in controversy, the evidence should be recieved.

Counsel's Stipulation To Applicant Competency To Stand Trial

Defense counsel has duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. Strickland V. Washington 80 LED 2D 674. Everything that counsel testifies to is a direct contradiction of his own strategy of bringing in his own expert witness. If counsel wanted to go with MUSC evaluation so that applicant could testify at trial, then why bring in his own expert to state the opposite? If counsel wanted applicant to testify at trial then why did counsel advise applicant, during break in trial, that in his opinion it was not best for applicant to testify. Which counsel testified to at hearing. Counsel poked holes in his own defense and threw away opportunities given to him, and clearly was not functioning as the "counsel" garuanteed to the applicant by the sixth amendment. The acts of counsel are clearly a result of unreasonable judgement that fall well short of competent assistance, and the combination of errors made were so serious that they deprived applicant of a fair trial.

Prosecutorial Misconduct

Solicitor's Comments Regarding Applicant Not Testifying

This was not just an issue of an improper comment. This is a solicitor violating a defendant's fifth amendment right. It is improper for the State to refer or comment upon a defendant exercising a constitutional right. Such comments may not be made either directly or indirectly. Edmund V. State 341 SC 340. There was no need for the solicitor to use applicant's exercised fifth amendment right to attack defense's expert witness, as applicant's counsel already damaged expert witness credibility beyond repair stipulating. Solicitor testifies that he was not commenting on applicant's fifth amendment right, but no matter what his excuse is, it is exactly what he does. If it was as solicitor testifies to, a conclusively proven case, then he should not have had to resort to that type of tactic, and be put in a position of having his comments challanged. Before the solicitor took the stand, counsel testifies that he advised applicant not to testify. Which clearly proves solicitor solemnized silence of applicant into evidence against, because only applicant could have refuted the comment made by solicitor.

Solicitor's False Evidence Of Applicant Retrieving A Knife

Counsel has the freedom at trial to argue reasonable inferences from the evidence, but counsel cannot misstate evidence. US V. Carter 236 F3D 777. Solicitor testifies that in a bench trial, the trial judge would understand what evidence she could consider. Which is totally contradicted by trial judge's actions (page 120 line 8):

He's consistently been able to conform his conduct to the requirements of the law without any other psychological

treatments since he's been incarcerated for two years.

(page 122 line 9):

And he told her he was going to kill her.

(page 122 line 14):

The only time the defendant has sought prior treatment for any alleged condition is because of judicial enforcement.

None of the statements were proven, but were stated in her verdict. The comments by solicitor clearly prejudiced case, because the only person that declares applicant went to back to retrieve a knife is solicitor (page 73 line 4):

Wouldn't going to get a knife indicate planning.

(page 73 line 9):

If he had to the back of the house to get a knife, that would indicate planning, going to retrieve the weapon.

And the trial judge declares in her verdict (p.119 line 19):

And there was aforethought when the defendant went to retrieve the knife prior to committing the crime.

Not even in the involuntary statement does applicant state that he retrieved a knife from the back of the house. Yet again another material misstatement where the trial judge's conclusion has no evidence to support it, a clear violation of South Carolina Constitution Article 5 Section 21.

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Presenting False Testimony

(page 25 line 20):

Solicitor: And jumping ahead, ultimately, did you interview defendant?

Regalis: I did.

The state violates a defendant's right to due process of law when, although not soliciting false evidence, it allows false evidence to go uncorrected when it appears. Haynes V. Brown 399 F3D 972. Solicitor tries to aid Regalis into testimony to help bolster State's case (page 27 line 12):

Solicitor: And you interviewed defendant, correct?

Regalis: Correct.

This was second time asking same question as he was trying to support and solidify Regalis' opinions on mindset and behavior of applicant. Regalis never had a conversation with applicant ever, and Regalis's testimony was false and mostly hearsay. Lt. Graham and Sgt. Orso were the ones to transport and get involuntary statement from applicant. Graham was lead investigator, his name appears on almost all paperwork involving the case. Regalis' name only appears once in all paperwork related to the case, and that once is when he is noted as one of the officers that reported to the crime scene. Yet Regalis continously perjures himself referring to a conversation that he never had with defendant. Applicant testifies at hearing the only time there was any contact with Regalis was when he walked in, in the last minute or so of the involuntary statement being

given. Regalis later testifies (page 30 line 17):

I hadn't listened to the whole -- it's been a while since I heard it.

But if Regalis was truly the officer to arrest and get involuntary statement from applicant, then why when trying to recall events of that day he refers to what he heard from a recording. Graham nor Orso showed up to the trial, but they were the ones with applicant the entire time of arrest until they finally took applicant to jail. Regalis never makes any mention of Graham the solicitor does. That's because solicitor actually had the paperwork, Regalis was barely involved with the case, thus he should have never testified.

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Conclusion

Based on the foregoing reasons, the applicant respectfully asks that the court reconsider it's order of dismissal of applicant's Post-Conviction Relief application and alter or amend judgement to grant the relief sought by applicant of his conviction reversed and his case remanded for a new trial.

Respectfully Submitted

[signature]

Charles Winston # 368128
1057 Revolutionary Trail
Fairfax, SC, 29827

This 20th day of April, 2024.

2019-CP-09-00058

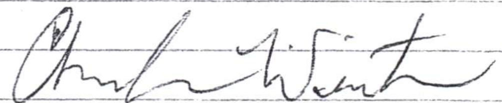
State of South Carolina) In the Court of Common Pleas
County of Calhoun) of the First Judicial Circuit

FILED
2024 MAY 15 AM 9:28
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

Charles Winston #368128,)
) Case No. 2019-CP-09-00058
Applicant)
)
v.) Motion to Alter, Amend Judgement
)
State of South Carolina,)
) Rule 59(e) SCRCP
Respondent)

Certificate of Service

The undersigned hereby certifies that a copy of this Motion to Alter, Amend Judgement in the above captioned case has been served upon The Honorable Judge Paul M. Burch at 5200 E Jim Bilton Blvd. St. George, SC, 29477 and Assistant Attorney General Bryan T. Hall at P.O. Box 11549, Columbia, SC, 29211, this 20th day of April, 2024.



Charles Winston

Applicant