THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
SEP 27 2013
S.C. Supreme Court

CERTIORARI TO DORCHESTER COUNTY
COURT OF COMMON PLEAS

The Honorable Carmen T. Mullen, Circuit Court Judge
Case No. 2011-CP-18-1416

BRYAN L. MULLIGAN,

Respondent,

v.

STATE OF SOUTH CAROLINA

Petitioner.

NOTICE OF APPEAL

The State of South Carolina hereby appeals from the Order of Dismissal of the Honorable Carmen T. Mullen, Presiding Judge, dated August 1, 2013, filed August 6, 2013, and received by the State on August 12, 2013, and the Denial of the 59(e), SCRCP, of the Honorable Carmen T. Mullen, Presiding Judge for the First Judicial Circuit, dated August 27, 2013, filed September 19, 2013, and received by the State on September 23, 2013, in the matter of Bryan L. Mulligan v. State of South Carolina, Case No. 2011-CP-18-1416.

Megan E. Harrigan

Megan E. Harrigan, Assistant Attorney General
South Carolina Bar No. 100108
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3319

September 27, 2013

RECEIVED
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THE STATE OF SOUTH CAROLINA
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CERTIORARI TO DORCHESTER COUNTY
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The Honorable Carmen T. Mullen, Circuit Court Judge
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BRYAN L. MULLIGAN,

Respondent,

v.

STATE OF SOUTH CAROLINA

Petitioner.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on September 27, 2013, to Tara D. Shurling, Esquire, his attorney of record, to the address below.

Tara D. Shurling, Esquire
Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

Megan E. Harrigan
Megan E. Harrigan
Assistant Attorney General

SWORN to before me this
27th day of September, 2013

Notary Public for South Carolina.
My Commission Expires: 10/28/2014

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-18-1416

BRYAN L. MULLIGAN, #344736 — PLAINTIFF(S)

STATE OF SOUTH CAROLINA — DEFENDANT(S)

DATE CANCELLED

DATE CANCELLED

2013 SEP PM 1:07

Submitted by: THE HONORABLE CARMEN T. MULLEN

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. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: The Court respectfully denies Respondent's Motion to Reconsider, Alter, or Amend Pursuant to Rule 59 without a hearing.

ORDER INFORMATION

This order ☒ ends ☒ ~~does~~ does not end the case.
Additional Information for the Clerk :

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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

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

2142 — **Judge Code**

8-27-13 — **Date**

This judgment was entered on **9/19/2013**, and a copy mailed first class or placed in the appropriate attorney's box on **9/19/2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Tara Dawn Shurling 3614 Landmark Drive Suite A Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

Megan E. Harrigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham - Clerk of Court

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.

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT
Bryan L. Mulligan, #344736, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2011-CP-18-1416 **RESPONDENT'S MOTION TO RECONSIDER, ALTER OR AMEND PURSUANT TO RULE 59, SCRCP**

Respondent, by and through undersigned counsel, making its Motion to Reconsider, Alter or Amend, pursuant to Rule 59, SCRCP, would respectfully show unto this Court:

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed July 20, 2011. The Respondent made its Return on October 18, 2011. An evidentiary hearing into the matter was convened on November 1, 2012, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by Tara Dawn Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office and Senior Assistant Deputy Attorney General Salley W. Elliott. At the hearing, the Court heard testimony from Applicant's plea counsel, Andrew J. Savage, III, Esquire (hereafter "Counsel").

Following Counsel's testimony, Applicant orally moved to amend his application with the new allegation that Counsel was ineffective for failing to object to the plea court's comments during sentence and requested the Court grant him a new sentencing hearing; Applicant abandoned all other allegations and his original prayer for relief – new trial. At the conclusion of the hearing, this Court left the record open to allow additional testimony from Counsel regarding

this late amendment. A deposition of Counsel was taken on January 25, 2013 in Charleston, South Carolina.

Thereafter, this Court instructed counsel for Applicant to prepare a proposed Order Granting Resentencing. This Order was signed August 1, 2013 and filed on August 6, 2013. Respondent received a copy of the Order on August 12, 2013. This Motion to Reconsider follows.

ARGUMENT IN SUPPORT OF RECONSIDERATION

Respondent moves this Court to reverse its earlier decision and deny post-conviction relief where Applicant failed to meet his burden as set forth in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, an applicant must first prove that counsel's performance was deficient as measured by its "reasonableness under professional norms." Id. Second, an applicant must establish that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). Respondent asserts that Applicant has failed to carry his burden in regards to each prong, as set forth below:

Applicant Failed to Establish Deficiency

In the Order, this Court found that Counsel was "deficient for failing to object to the Court holding the Applicant's exercise of his right to see all the discovery materials in this case before accepting a plea agreement against him in determining the appropriate sentences on his charges." Additionally, in the Order, this Court found that Counsel was deficient "for failing to

point out to the sentencing judge that there was in fact no evidence supporting the conclusion that Applicant was the ***'active participant'*** in the sexual battery other than the self-serving statements of the co-defendants in this case. (emphasis in Order). Respondent asserts that Applicant has failed to establish that Counsel's performance fell below a standard of "reasonableness under professional norms." Strickland, 466 U.S. 668. In support of this position, Respondent would respectfully direct this Court's attention to the following portions of the record:

1. THE [PLEA] COURT: I want to hear the packages, but none of the guys should expect to walk out of here with 30 years, but to the extent that it is anything less than that, well, I take into consideration that Mr. Monroe and Mr. Larkin were first on board with cooperating and that, you know, had some, you know, factor in making the State's investigation easier, which then they were able to present to Mulligan with this is it, pal. We're going to trial and we're going to conviction you and we're going to ask fort a lot more time than you get if you went to plead guilty. So, you know, maybe they deserve a little bit of credit for this.

   MR. SAVAGE: Your Honor, may I be heard on that?

   THE COURT: Yeah.

   MR. SAVAGE: He was not caught red handed like his codefendant with the guns.

   THE COURT: I figured that, and I knew you would jump on that. There was not a full confession.

   MR. SAVAGE: [Mulligan] did not delay the plea from October. The reason the plea was delayed was because - - -

   THE COURT: You were waiting on DNA. I understand that . . .

   Tr. p. 51 lines 12-15.

   Based on the above exchange, the plea court clearly understood that Applicant's plea was delayed through no fault of his own and was waiting on full discovery before entering his guilty plea. Additionally, it shows that Counsel actively took steps to correct

any misstatements regarding the delay, and was thwarted by the Court. Counsel's performance was not deficient.

2. THE [PCR] COURT: Okay. So my question is, where did Roger Young get the idea that your client was the culpable person other than somebody else's?
   THE WITNESS [COUNSEL]: My theory is it came from the solicitor. I have no idea where he could have gotten it.
   THE COURT: In conversations from previous plea. All you can do is surmise.
   THE WITNESS: Yeah, I have no idea, but he was pretty certain about his position. ***You can see where I tried to contest that.***
   PCR Tr. p. 21 lines 8-18.

   Again, Counsel testified that he actively tried to contest the plea court's comments during sentencing and was abruptly stopped by the plea court. Additionally, a review of the rest of the plea transcript shows that the plea court did not give Counsel, or any other party, an opportunity to be heard for the remainder of the proceeding. Tr. p. 51 – 53. Counsel was not deficient in this regard.

3. Q [APPLICANT'S COUNSEL]: Okay, So at the point when Judge Young makes it clear that his primary focus is on this terrible CSC event and that there is a big differentiator between your client and the codefendants based on everything pointing to your client as being the active participant with regard to the CSC, at that juncture why didn't you respond and remind His Honor on the record that there – that everything pointing to your client was not accurate, that there was no eyewitness identification of your client in that regard, that there was no DNA connecting your client as an active participant, and that really the only thing they had were the self-serving statements of the very people he was about to cut a break in sentencing?
   A [COUNSEL]: If you look on page 51, he says, so, you know, maybe they deserve a little bit of credit, and he is referring to the two codefendants. Will you read the next line?
   Q. Yes.

A. I said, Your Honor, may I be heard on that? ***That's exactly what I was doing, was contesting the fact of the differentiation between the three.*** I pointed out that Mr. Mulligan had turned himself in while the other two go caught red handed. You see his response. I figured that. I knew you would jump on that. There was not a full confession. I started saying he did not delay the plea from October. The reason the plea was delayed is because he cut me off. You were waiting on the DNA. I understand that because the sequence of events – it goes on and on and on. The bottom line, he says, on the bottom of page 52, there is no question in my mind that he deserves every day of the 30 years. You know, ***clearly [Judge Young] had made up his mind, and he believed, for whatever reason, he didn't state, that Bryan was the perpetrator.*** The [PCR] Court asked me, where do you get that information? There is nothing in the record that would have provided that to him. The only explanation is that it was a conversation with the solicitor or somebody from the State.

PCR Tr. p. 23 line 16- p. 25 line 6.

Counsel again testified that he was contesting the plea court's differentiation between the three codefendants and highlighting to the plea court that his client alone came forward and cooperated with law enforcement in mitigation on Applicant's behalf. Counsel's performance was reasonable based on professional norms.

4. Q [APPLICANT'S COUNSEL]: On line 14 of page 51, Andy, Mr. Savage, it says you were waiting on DNA. To your knowledge, do you have any reason to believe that Judge Young had been made aware of the results of the DNA test? I mean, there is nothing in the record about it, but do you have any knowledge about Judge Young being made aware of the results of the DNA test?

   A [COUNSEL]: I have no idea. I have no idea what he knew or didn't know. I know that he knew it was an issue. ***I know he knew that if the State didn't say the DNA came back positive and it was Bryan Mulligan's, I mean, common sense would tell if you they had that that would have been brought to hamper Bryan or whoever's DNA it was.***

   PCR Tr. p. 28 line 23 – p. 28 line 11.

Counsel testified that the plea court was well aware DNA testing had been performed and that the only logical and rational conclusion to be drawn from State's omission of DNA evidence was that the DNA testing was inconclusive and did not implicate, or exonerate, Applicant or either codefendant. Counsel was not deficient for pointing out something that the plea court already knew by reasonable inference.

5. Q [APPLICANT'S COUNSEL]: But my question is, if you were doing such a plea, could you not have put on the record that your client had consistently denied and sexual, physical contact with the victim and that he was pleading only to the theory of accomplice liability, that he was pleading only based on the State's theory that he was equally responsible for it because he was there and witnessed it as opposed to pleading because he admitted being a physical participant? Couldn't you have put that on the record at the plea?

   A [COUNSEL]: ***But he didn't. He didn't say somebody else had oral sex with her. He said it didn't happen.*** That's what he was telling me. He said, I don't know anything about this.

   Q: All right. So couldn't you have put on the record that he was pleading guilty in recognition of the State's theory of accomplice liability but that he was not acquiescing to the allegation that he had physically sexually assaulted the woman?

   A: No, I don't do that. I'm pretty straight up with the Court what we're doing, why we're doing it. ***I always encourage a client, don't go in and make excuses.*** If he's pleading guilty, he's pleading guilty, and that has to be a clean, sterile guilty plea.

   PCR Tr. 56 line 5- p. 57 line 3.

   Counsel's testimony reveals that Applicant informed his counsel that the sex act never occurred, not that he only witnessed the act. This is an important distinction, because all other witnesses involved, including the victims, testified that the sex act did occur. Both codefendants identified Applicant as the perpetrator, while Applicant denied that the act ever took place. Counsel testified that he did not object to say that his client was only a

passive observer because this was not congruent with what his client had informed him. Counsel was not deficient in this regard.

6. Q [APPLICANT'S COUNSEL]: Okay, And I believe you may have answered this already, but when the judge, to our mind, your mind, and mine, incorrectly said that everything pointed out Bryan Mulligan as the active participant in the criminal sexual conduct charge, why didn't you point out, Your Honor, there is no evidence other than the codefendants' statement, that the victim didn't ID him, and the DNA results, as Your Honor knows, do not tie my client to that assault? Because, as read, it appears that the judge thinks –

   A [COUNSEL]: Have you read page 51?

   Q: Many, many times.

   A: Well, when he said that, I come back and I said, Well, the other guy is getting caught red handed. Bryan turned himself in there. I don't remember whether I reflected there he was interviewed by the FBI at that time. He was not caught red-handed like his codefendant with the guns. The Court says, I figured that, and I knew you would jump on it. ***You can tell the tone of the Court at that time.*** There was not a full confession. He's blaming me that the – you know, he's telling me that Bryan didn't immediately make a full confession. Well, there is a Fifth Amendment right, even in Charleston County. He didn't – I say he did not delay the plea from October. The reason he plea was delayed is – ***he cuts me off. Now, maybe the inference and the tone of the Court is not reflected in the transcript, but when I started making an explanation for his situation, not an excuse for his conduct, but an explanation of what happened, [the plea court] didn't want any part of it.***

   PCR Tr. p. 64 line 15 – p. 65 line 21.

   Counsel again testifies that he tried to interject during the plea court's sentencing colloquy, but was cut off by the Court. Counsel's testimony is that the Court was getting agitated with him (and possibly his client) at this time, and Counsel made the decision, based on decades of criminal law experience, not to interrupt the Court further, especially considering that the plea was a "straight-up plea" with no assurance that the plea court would give Applicant concurrent sentences.

7. Q [ASSISTANT ATTORNEY GENERAL]: Would you say it was a strategic decision not to interrupt Judge Young an additional time during his comments directly before sentencing?

   A [COUNSEL]: I don't remember the particulars of it, but ***I know that I made my position pretty clear. What the transcript doesn't reveal in any of these cases is the nonverbal communications between the Court and the defendant or the Court and defense counsel. It was clear to me that I was on the verge of going too far with the Court in terms of arguing with the Court. No Court likes you to argue with them once they have made a decision. I think the Court probably made this decision and my arguments didn't really have an impact on him at all.***

   Deposition of Andrew Savage, III, p. 12 line 5 – p. 14 line 2.

   Counsel testifies that he made a strategic decision not to interrupt the Court further, citing that he was "on the verge of going too far." Counsel testified several times that the plea was "straight-up" without a negotiation or recommendation for concurrent time. See PCR Tr. p. 46 line 21 – p. 47 line 7. It is reasonable for Counsel to make such a strategic decision when his client is not bound by any plea negotiation and is wholly at the mercy of the plea court.

8. Q [APPLICANT'S COUNSEL]: And my question is once the judge interjected in sentencing that in his mind the big differentiator between your client and the other two was that everything pointed to Mulligan as being the active participant and being involved in a physical sense, why did you not feel it necessary and appropriate to point out to the judge that, Your Honor, the only thing that says that it was Bryan Mulligan and not one of the others is their word against his?

   A [COUNSEL]: Why didn't I say that?

   Q: Why didn't you point that out before His Honor decided on the final sentence?

   A: ***It was pretty clear. I don't think I had to point out the obvious.*** The whole idea behind getting the DNA was to get some objective testimony. ***I don't think anybody***

involved in the case thought otherwise and that it was the two codefendants. It wasn't something that needed to be pointed out.

Q: Weren't you concerned based on His Honor's comments on the record that somehow he had been given the impression that all of the evidence and that being an undefined term, everything points that your client, that there was some misconception on the judge's part that there was some evidence other than codefendant testimony?

A: ***No.*** There wasn't any evidence of any other testimony or, you know, witnesses. There was no testimony there.

Q: I understand that you knew, but my question is didn't His Honor's comments give you reason to be concerned that somehow he either had arrived at an erroneous conclusion or had been given from some source an erroneous impression that there was evidence other than the codefendant's statement pointing to your client's physical culpability?

A: ***No, I don't think there was any misconstruing that.*** I think the judge made the decision. That was the decision that he was going to give, and that's the basis for the decision. I mean, ***it is evidence. It is competent evidence.*** We didn't have an opportunity to cross-examine him, but ***I think that the Court knew full well that the whole sex act hinged on the codefendants' statement.*** There wasn't anything else.

Deposition of Andrew Savage, III, p. 17 line 14 – p. 19 line 11.

Counsel testimony reveals that it was obvious to the plea court and all parties involved that the codefendants' statements were the evidence which implicated Applicant as the active participant in the CSC. Counsel cannot be deficient for failing to interrupt the plea court to state something that is readily apparent to all participants in the proceeding.

9. Milton Stratos (Counsel for Co-Defendant Joshua Monroe): I also want to bring out the fact that there are two individuals here that are involved in the most heinous of the crime here, and that is the sexual assault upon that little girl, and that shakes the ground of all of us that stand on it, but I'm here to tell you, that albeit they were involved in that, ***they weren't the perpetrators, and that they should be given credit for that.*** And hand of one, hand of all, they were involved to the degree that they were there, but ***in watching***

the video, they individual was in the room was not them, and I would ask the Court to consider that as well as when we're talking about how much of the youth of this child we are going to have to extract in order to impose retribution for the things that he's done. Tr. p. 38 lines 5-19.

This portion of the guilty plea transcript reveals that there was a video of the incident giving rise to the CSC charges, and codefendants (and their counsel) argued to the plea court that the video supported codefendants' assertions that Applicant was actively involved in the CSC. The finding that codefendants' statements were the only evidence on which the plea court made its decision is incorrect.

Based on the above passages along with the record in its entirety, Respondent submits that Applicant has failed to meet his burden on establishing that Counsel was deficient during the sentencing phase of his guilty plea.

Applicant Failed to Establish Prejudice

In the Order, this Court found that a reasonable probability exists that the outcome of Applicant's sentencing would have been different had Counsel reminded the plea court that the delay in his plea was through no fault of his own and that the only evidence that Applicant was the active participant in the CSC was statements from codefendants. Respondent respectfully submits that Applicant failed meet his burden of showing prejudice from Counsel's alleged deficiencies. Counsel testified several times throughout the evidentiary hearing and deposition that Applicant was seeking a favorable plea offer from the beginning and did not want to go to trial. See PCR Tr. p. 30 line 14 – 24. Additionally, testimony from Counsel and the various exhibits entered into evidence, including both plea offers from the State and the email correspondence between Counsel and various members of the Ninth Circuit Solicitor's office, reveal that Applicant intended to plead guilty with full knowledge that the State refused to make

a recommendation for concurrent sentences or a cap of thirty years. Testimony establishes that even once Counsel received assurances from the plea court that Applicant would receive concurrent sentences, effectively capping his exposure at thirty years imprisonment, Applicant still readily pled guilty. Respondent submits that Applicant cannot prove prejudice from Counsel's alleged deficiencies when he intended to plead guilty all along with a full understanding that he was facing a sentence of thirty years or more. See Thompson v. State, 30 S.C. 112, 531 S.E.2d 294 (2000) (holding that applicant established prejudice necessary for post-conviction relief stemming from counsel's failure to object during sentencing where he was unsure if he would pled guilty and was under the impression that the state would not make a sentencing request). As Applicant intended to reach an "acceptable resolution of this case from day one," he has failed to establish prejudice when he received a sentence that he was fully aware he would likely receive if he pled guilty.

Furthermore, Counsel testified that his associate visited with Applicant immediately following his guilty plea to inquire as to whether Applicant wanted to pursue an appeal or a motion to reconsider. Counsel testified that he believed the plea court was "wrong for a legal reason" and that he "urged Bryan to file an appeal, which is highly unusual . . . in today's world in state court, from a guilty plea . . ." PCR Tr. p. 14 line 25 – p. 15 line 5. Counsel testified that he was prepared to file the necessary affidavits to appeal a guilty plea on Applicant's behalf. Deposition of Andrew Savage, III, p. 20 lines 22-24. Counsel elaborated:

> "We discussed [whether to file an appeal or a motion to reconsider] in the office, and we thought that it would be - - what that would allow us to do is let everybody calm down. This was a pretty highly emotional case. You know, any sex case is a bit more emotional. This was a pretty violent act. Yeah, he had a

very firm, he wanted to move on. He didn't want to - - he wanted to just go and do his time. We didn't think that it was the right answer, but that is the answer he gave us."

Deposition of Andrew Savage, III, p. 21 line 22 – p. 22 line 6. Based on the above, Applicant has failed to prove prejudice, where he voluntarily elected to forego the proper avenue for relief – an appeal or motion to reconsider, as the purported error was a legal one based on Counsel's testimony, not one of ineffective assistance of counsel.

CONCLUSION

Based on all the foregoing, this Respondent requests that this Court reconsider its prior ruling and deny Applicant post-conviction relief. Respondent requests a hearing to fully argue this 59(e) motion and address each of the raised issues before this Court.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan

Attorneys for Respondent
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

August 20, 2013

FORM 4

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1801416

OF SOUTH CAROLINA
TY OF DORCHESTER
HE COURT OF COMMON PLEAS

2013 AUG -6 PM 4:02

PLAINTIFF(S)	DEFENDANT(S)
Bryan Leon Mulligan	South Carolina State of
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE 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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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.**

Carmen T. Mullen — 8/6/2013
Circuit Court Judge — **Judge Code** — **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on **8/6/2013**, and a copy mailed first class or placed in the appropriate attorney's box on **8/6/2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Tara Dawn Shurling 3614 Landmark Drive Suite A Columbia, SC 29204

Megan E. Harrigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

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.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

2013 AUG -6 PM 4:02

BRYAN LEON MULLIGAN, 344736
Applicant,

v.

THE STATE OF SOUTH CAROLINA,
Respondent.

2011-CP-18-1416

ORDER

THIS MATTER comes before the Court by way of an Application for Post-Conviction Relief filed on July 20, 2011. The State filed its Return on October 18, 2011. An evidentiary hearing was convened on November 1, 2012 during which the Applicant was present and represented by Tara Dawn Shurling, Esquire and the State was represented by Assistant Attorney General, Megan Harrigan and Senior Assistant Deputy Salley W. Elliott. The Applicant's original Application, filed on July 20, 2011, only listed the seven (7) Dorchester County charges pleaded to on this date. The transcript of the February 3, 2011 plea lists *only* these seven (7) charges on its cover. To further complicate matter, the SCDC summary sheet for this Applicant list seven (7) charges and sentences as well. All thirteen charges addressed below from Dorchester and Charleston County were pleaded to before the Honorable Roger M. Young, Sr., on February 3, 2011 and concurrent sentences were imposed on all counts. The Applicant filed an Amended Application for Post-Conviction Relief on October 30, 2012, adding the Charleston County judgments and sentences to this collateral action.

PROCEDURAL HISTORY

The Applicant was indicted by the Dorchester County Grand jury, along with his two co-defendants, for one (1) count of Assault and Battery of a High and Aggravated Nature (ABHAN)

(2008-GS-18-1107), one (1) count of Possession of a Weapon During the Commission of a Violent Crime, two (2) counts of Armed Robbery(2008-GS-18-1121, 2008-GS-18-1112), and three (3) counts of Kidnapping (2008-GS-18-1108, 2008-GS-18-1120, 2008-GS-18-1113). He was additionally indicted by the Charleston County grand jury for three (3) counts of Kidnapping (2008-GS-10-8072, 2008-GS-10- 8127, 2008-GS-10-8137), two (2) counts of Armed Robbery (2008-GS-10-8126, 2008-GS-10-8141) one (1) count of Attempted Armed Robbery (2008-GS-10-8073) and one (1) count of First Degree Criminal Sexual Conduct (2008-GS-10-8135).

The Applicant was represented by Andrew J. Savage, Esquire on these charges. On February 3, 2010, Applicant appeared before the Honorable Roger Young and pleaded guilty to all the charges listed above with the exception of the charge of Possession of a Weapon During the Commission of a Violent Crime; that charge was dismissed as part of the Applicant's plea agreement with the State.

- ABHAN: ten (10) years imprisonment;
- Six (6) counts of Kidnapping: thirty (30) years imprisonment on each charge;
- Four (4) counts of Armed Robbery; thirty (30) years imprisonment on each charge.
- Attempted Armed Robbery, twenty (20) years imprisonment.
- Criminal Sexual Conduct, First Degree, thirty (30) years imprisonment.

All sentences were ordered to run concurrently giving the Applicant an aggregate term of 30 years. The Applicant's co-defendant's received ten (10) years for ABHAN. Twenty (20) years for Attempted-Armed Robbery and twenty-five (25) years on each of their other judgments for an aggregate term of twenty-five (25) years. The Applicant did not appeal his pleas or sentences.

In his Application for Post-Conviction Relief filed July 20, 2011, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. The Applicant received ineffective assistance of counsel prior and during his plea in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

2. The Applicant's pleas of guilty were not voluntary and intelligently entered. The judgments and sentences against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel.

In support of those allegations, the Applicant specifically alleged that:

1. Trial Counsel failed to give the Applicant adequate legal advise prior to the Applicant's guilty plea proceeding. Trial counsel failed to advise the Applicant of the potential consequences of delaying the acceptance of a plea bargain until after the discovery process was completed.

2. Counsel failed to provide client effective assistance of counsel prior to and during his guilty plea proceeding. The Applicant's ability to optimize the benefits available to him through plea negotiations with the State were irreparably prejudiced by counsel's failure to sufficiently advise the Applicant of the likely consequenses of delaying his acceptance of a plea bargain until after all the discovery process was completed.

3. Trial Counsel was ineffective for neglecting to adequately explain the law of accomplice liability to the Applicant as it applied to the charge of Criminal Sexual Conduct, 1st Degree.

During the Applicant's PCR hearing on November 1, 2012, the Applicant elected to waive all his allegations with the exception of his claim that he received ineffective assistance of counsel during his sentencing. He waived his previous request for a new trial and asked only for a new sentencing proceeding. The Applicant was thoroughly questioned by the Court concerning this decision. This Court found that the Applicant was making a knowing and voluntary decision to narrow the focus of his PCR action and therefore, granted his request to amend. In addition, the Applicant was advised that if he won a new sentencing proceeding, it was possible for the presiding judge to give him a more severe sentence that which he originally received. Notwithstanding this advice, the Applicant indicated that he wished to go forward with his claims related to his Defense

Attorney's failure to provide him effective assistance of counsel during the sentencing phase of his plea proceeding. PCR Tr. P. 79, l. 21 – p. 80, l. 15.

EVIDENCE BEFORE THE COURT

In addition to the testimony presented during the evidentiary hearing held in this case and the exhibits introduced during that proceeding, in deciding this collateral action this Court also has before it a copy of the plea record, a copy of the deposition of Andrew Savage, III, dated January 25, 2013, the Applicant's records from the South Carolina Department of Corrections and the records of the Dorchester and Charleston County Clerks of Court regarding the subject judgments and sentences. What follows below are this Court's findings of fact and rulings of law as required by S.C. Ann. §17-27-80.[1]

STANDARD OF REVIEW

This Application for Post-Conviction Relief raises numerous specific allegations of ineffective assistance of counsel. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. *U. S. Const. Amend. VI; Lomax v. State, 379 S.C. 93, 665 S.E.2d 164(2008).* The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. *Suber v. State, 371 S.C. 554, 558, 640 S.E. 2d 884, 886 (2007); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rule 71.1(e), SCRCP.* In evaluating an Application for Post-Conviction Relief, the moving party must demonstrate that Trial Counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial.

[1] For purposes of supporting this Order on appeal, the findings of fact and rulings of law contained herein may be viewed as interchangeable as may be necessary to affirm the ruling of this Court on any appeal which may follow.

Strickland v. Washington, 466 U.S. 668 (1984); Speaks v. State, 377 S.C. 396, 399, 600 S.E.2d 512, 514 (2008). In other words, the Applicant must show that, but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. *Id.; Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).* A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. *Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011); Ard v. Catoe, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007); Rhodes v. State, 349 S.C. 25, 31, 561 S.E.2d 606, 609 (2002).*

On the one hand, where Trial Counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of trial counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). In order to satisfy the first prong of the Strickland standard, a PCR applicant must show that counsel's performance fell below an objective standard of reasonableness. *Franklin v. Catoe, 346, S.C. 563, 570-571, 582 S.E.2d 718, 722 (2001).* On the other hand, counsel may not explain away errors and omissions which acted to prejudice his client's ability to receive a fair trial simply by labeling them matters of trial strategy or tactics. In the case of *Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002)*, the Supreme Court of South Carolina found that

> Counsel must articulate a **valid** reason for employing a certain strategy to avoid a finding of ineffectiveness. Where counsel articulates a strategy, it is measured against an objective standard of reasonableness.

RELEVANT FACTS

The testimony and exhibits introduced during the Applicant's PCR proceeding, as well as the subsequent deposition of trial counsel, Andrew J. Savage, III, document the fact that extensive plea negotiations preceded the Applicant's pleas in this case. The evidence before the Court documents that a spirit of animus developed between Defense Counsel and the State during these lengthy plea negotiations. At the heart of the discord was the insistence of an Administrative Assistant Solicitor that a plea offer extended to the Applicant be accepted or rejected before the Applicant received the results of DNA testing conducted as part of the investigation of this case. Defense Counsel took the position that this requirement violated a long standing Supreme Court Order directing that the discovery process be complete before a defendant is required to respond to a plea offer. Ultimately, after intervention from Solicitor Scarlett Wilson, the Applicant pleaded guilty to the same charges as his co-defendants and had the same charges dismissed in exchange for his pleas to both Charleston and Dorchester County charges. PCR Tr. p. 16 ll. 10-20, Deposition of Defense Counsel, Plaintiff's PCR Exhibits 1-4. Other than the dismissal of the charges discussed above, the State made no further concessions in exchange for the pleas entered by the Applicant or his co-defendants. The State made no recommendations concerning sentencing for the Applicant or his co-defendants. Plea Tr. P. 23, l. 25- p. 24, l. 1. Neither the Applicant, nor his co-defendants, had any prior criminal history. Plea Tr. p. 23 ll. 24-25 and Plea Tr. p. 26, ll. 2-8.

In his comments on the record before imposing sentences in this case, the presiding judge remarked on the difficult task of sentencing and noted that ***"you got people that plead guilty and cooperate with the police sooner than other people and you take that into consideration."*** Plea Tr. p. 46, ll. 20-23. The Court also emphasized that none of the three defendants had a prior record

and acknowledged the fact that they were all *"very, very, very young people"* at the time of these crimes as a consideration in sentencing. Plea Tr. p. 48, l. 20- p. 49, l. 20.

Before pronouncing sentence on the Applicant and his co-defendants the presiding judge went on to specifically state,

> I want to hear the package, but I won't make any promises on what I'll do, but none of these guys should expect that they will walk out of here with 30 years, but to the extent that it is anything less than that, well, ***I take into consideration that Mr. Monroe and Mr. Larkin were first on board with cooperating and that, you know, had some, you know, factor in making the state's investigation easier, which then they were able to present Mulligan with this is it, pal. We're going to go to trial and we're going to convict you and we're going to ask for a lot more time than you get if you went to plead guilty.*** So you know, maybe they deserve a little bit of credit for this.

Plea Tr. p. 50, l. 15- p. 51, l. 2. (Emphasis added).

After an attempt by Defense Counsel to explain the reason why the Applicant was not responsible for the delay of his plea, Plea Tr. p. 51. ll. 3-13, the Court went on to state,

> You were waiting on DNA. I understand that. But there was a sequence of events in which people cooperated and investigations get easier. I got that. ***The thing that I do – that is troublesome to me, and again it comes back to this criminal sexual conduct, there is a big differentiator between the three perpetrators here, and everything points to Mulligan being involved as an active participant in that awful event*** and these other two basically were, you know, not involved in a physical sense, but still involved in the eyes of the law under the hand of one, hand of all theory.

Plea Tr. p. 51, ll. 14-25. (Emphasis added). ...

> But that is for another day. The bottom line is there is not question in my mind he deserves every day of the 30 years I'm giving him. I'll give Mr. Monroe and Mr. Larkin a little bit of a break, and I will give them 25 years on their charges. They will all run concurrent and you'll get credit for any time you've already served. Good luck to you.

Plea Tr. p. 52, l. 23- p. 53, l. 4.

The Applicant received twenty (20) years for attempted armed robbery, ten (10 years for assault and battery of a high and aggravated nature. He received a sentence of thirty (30) years on each of his other charges. All his sentences were ordered to be served concurrently. Plea Tr. p. 53, ll. 12-15. The Applicant's co-defendants however, each received aggregate terms of twenty-five (25) years.

Emails between Defense Counsel and the Solicitor's Office confirmed that the Applicant always intended to plead on his charges rather than go to trial. PCR Tr. p. 62, ll. 1-20, and email to Solicitor Scarlett Wilson dated November 29, 2010. Despite this position, Defense Counsel acknowledged in his PCR testimony that he never considered informing the Court of this fact when the sentencing judge noted that the Applicant's co-defendants had cooperated early on and the State had been able to use their cooperation to threaten the Applicant and get him to plead guilty rather than go to trial by jury. PCR Tr. p. 62, ll. 6-14. When asked to explain why he didn't respond to the remarks of the presiding judge concerning the Criminal Sexual Conduct charge ***"I don't have an answer to that."*** PCR tr. p. 64, l. 15- p. 66, l. 11. Thus, Defense Counsel offered no explanation for failing to clarify for the Court that there was no evidence, except the self-serving statements of the co-defendants, that supported the Court's finding that "***there is a big differentiator between the three perpetrators here, and everything points to Mulligan being involved as an active participant in that awful event***" Defense Counsel acknowledged that when the DNA test results finally came back, they were inconclusive. PCR. Tr. p. 21, l. 1-7. The victim was not able to identify which of the defendants sexually assaulted her. PCR Tr. p. 21, ll. 19-24.

In his PCR testimony, Defense Counsel testified that there were a number of other potential witnesses to the circumstances surrounding the sexual assault and yet, the co-defendant's self

reasonable professional assistance of counsel during the sentencing portion of his guilty plea proceeding. For all the following reasons, this Court finds that the Applicant is entitled to the vacation of all his sentences entered on February 3, 2011 and the remand of his case for a new sentencing proceeding.

It is clear to this Court that the Applicant received a harsher sentence than that imposed upon his co-defendants based upon several factors which could, and should, have been clarified for the Court before the final decision as to the appropriate sentences to impose for each of these three young men was made. It is apparent that the sentencing court gave the Applicant's co-defendants a break in sentencing based upon conclusions which were not supported by the facts in this case. As the PCR testimony of Defense Counsel verifies, any delay in the Applicant's cooperation with law enforcement and his decision to enter pleas of guilty was directly attributable to delays in the discovery process. Defense Counsel did not object on the record to the delay in the Applicant's plea being taken into account in sentencing on the ground that the Applicant, as a matter of due process, had the right to review all the discovery in his case before being forced to make a decision concerning a plea. While the presiding judge initially appeared to acknowledge that the Applicant was waiting on the DNA test results, he went on to point to the fact that the State was able to use the cooperation of the codefendants to pressure the Applicant into entering his pleas rather than got to trial by jury. Defense Counsel failed to correct this misimpression by the Court by informing the Court, as the exhibits in this case document, that the Applicant always intended to plead to his charges and had never intended to go to trial. Defense Counsel indicated that he wanted the DNA results before he asked the Applicant to agree to a plea bargain with the Solicitor and additionally, that he felt the Applicant would be likely to get a better sentence if the DNA results proved he wasn't the principal in the Criminal Sexual Conduct involved in this case. This Court is persuaded

that the outcome of the Applicant's sentencing may have been different had the presiding judge been made aware that the codefendant's cooperation had not influenced him to waive his right to trial by jury. Defense Counsel was ineffective for failing to point out the Court's important misunderstanding on this point. Likewise, this Court finds that Defense Counsel was deficient for failing to object to the Court holding the Applicant's exercise of his right to see all the discovery materials in this case before accepting a plea agreement against him in determining the appropriate sentences on his charges.

In his PCR testimony, Defense Counsel testified that he urged the Applicant to appeal his sentencing because "***he thought the sentencing reasoning, which Judge Young put in the record, was wrong, and it was wrong for a legal reason...***" PCR Tr. p. 14, l. 25 – p. 15, l. 4. He went on to state that his associate had visited with the Applicant at the jail after sentencing and that the Applicant had conveyed his decision not to appeal or to ask the Court to reconsider his sentences. PCR Tr. p. 66, l. 14 – p. 67, l. 9. When asked what issues were preserved for appellate review during the plea proceeding, Defense Counsel indicated that he did not know at the time the Applicant made the decision because he had not read a transcript of the plea proceeding. Depo Tr. p. 20, l. 1 – p. 21, l. 12. The record of the Applicant's pleas and sentencing reflects that there were no issues preserved for appellate review during that proceeding. Issues that are not raised, argued and ruled upon on the record are not available for review on direct appeal. Clearly, despite Defense Counsel's best intentions, his failure to object to the erroneous factors taken into account in the Applicant's sentencing left the Applicant without any preserved claims for a direct appeal.

It is equally apparent that the presiding judge believed that ***"everything points to Mulligan being involved as an active participant"*** in the criminal sexual battery that was reported by the victim in this case. As noted above, the evidence simply did not support that belief. Aside from

the self-serving statements of the co-defendants, there was no evidence that the Applicant committed what the sentencing judge referred to as ***"that awful event."*** Defense Counsel has admitted that he isn't even certain whether, at the time of the sentencing, the presiding judge had been informed that the results of the DNA test were inconclusive. This Court is constrained to find that Defense Counsel was ineffective for failing to point out to the sentencing judge that there was in fact no evidence supporting the conclusion that the Applicant was the ***"active participant"*** in the sexual battery other than the self-serving statements of the co-defendants in this case. Once again, this Court finds that there exists a reasonable probability that the outcome of the Applicant's sentencing would have been different had the Court been reminded of the limited nature of the State's evidence against the Applicant on the Criminal Sexual Conduct charge. Absent all of these considerations, this Court concludes that the sentencing court may well have found no basis for distinguishing between the appropriate penalties to be imposed against the Applicant and those given to his co-defendants.

This Court finds that the Applicant's alleged waiver of his right to file a Motion to Reconsider Sentence in no way constitutes a procedural bar to the relief sought and granted in this case. Defense Counsel did not personally visit with the Applicant at the time of his alleged waiver. When the presiding judge made comments during sentencing which revealed that erroneous information was being taken into account by the Court in deciding the penalty to be imposed against the Applicant, Defense Counsel did nothing to correct the Court's obvious misunderstanding of the facts in the Applicant's case. Defense Counsel has admitted that at the time he didn't know what issues were available for a possible appeal or a Motion to Reconsider Sentence. There is no indication that Defense Counsel himself ever discussed the comments made by the sentencing judge with his client after this sentencing or that he ever explained to him how he, as the Applicant's

lawyer. might seek to correct the Court's misunderstanding of the facts and evidence in his case through a Motion to Reconsider Sentences. On the facts of this case, this Court is not prepared to find that the Applicant waived his right to effective assistance of counsel during his sentencing proceeding by not instructing Defense Counsel to pursue a Motion to Reconsider.

CONCLUSION

For all the reasons set forth above, this Court finds that the Applicant has met his burden of proof with regard to his claim that he received ineffective assistance of counsel during his sentencing. This Court finds that there is a reasonable probability that the outcome of the Applicant's sentencing would have been different but for the errors and omissions of Defense Counsel addressed herein. Accordingly, all the sentences entered against the Applicant on February 3, 2011, are hereby vacated and the Applicant's judgments are remanded to the Dorchester County Court of General Sessions for re-sentencing. Inasmuch as the Applicant's pleas to both the Dorchester and Charleston County charges addressed herein were entered in Dorchester County, this matter is remanded for a new sentencing hearing all these charges in Dorchester County.

IT IS SO ORDERED.

Carmen T. Mullen
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

This 1 day of Aug, 2013

ALAN WILSON
ATTORNEY GENERAL

September 27, 2013

The Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED
SEP 27 2013
S.C. Supreme Court

Re: Bryan L. Mullligan v. State of South Carolina
2011-CP-18-1416

Dear Mr. Shearouse:

Enclosed are the following:

1. Notice of Appeal
2. Proof of Service of the notice of appeal on the Respondent
3. A copy of the order which is to be challenged on appeal.

Sincerely,

Megan E. Harrigan

Megan E. Harrigan
Assistant Attorney General

MEH/ko
Enclosures

cc: Tara D. Shurling, Esquire
The Honorable Cheryl L. Graham, Clerk of Court of Dorchester County
The Honorable David M. Pascoe, Jr., First Circuit Solicitor
SCCID, Division of Appellate Defense
David M. Tatarsky, Esquire
Trisha Allen, Victims Services