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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

May 14, 2025

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, SC 29304-3483

Re: Darius T. Cathcart, #303063 v. State of South Carolina
Case No: 2018-CP-42-02286

Dear Ms. Cox:

Enclosed, please find **Respondent's Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(e), SCRC**P, in the above-captioned case for filing in your office.

Please forward proof of service on the parties below and a certified copy back to our office for our file.

Sincerely,

D. Russell Barlow, II
Senior Assistant Deputy Attorney General

DRB/jh

cc: The Hon. Heath P. Taylor
Susannah C. Ross, Esquire

Enclosures

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AMY W. COX

would not take any further action until guidance from the Court was provided. (See Attachment 1). On April 23, 2025, Respondent was informed that the Court had issued a signed Amended Order Denying Motion to Reconsider, which stated that the Respondent had not filed the Rule 59(e), SCRPC, motion within the ten-day time period required by the Rule, thereby rendering it untimely. Respondent received notification of the filing of the Amended Order Denying Motion to Reconsider on Friday, May 9, 2025.

In light of the atypical circumstances and the improper application of the provisions outlined in Rule 59(e), SCRPC, the present Motion to Reconsider, Alter, or Amend is submitted in accordance with Rule 59(e), SCRPC.³

ARGUMENTS IN SUPPORT OF RECONSIDERATION

Respondent moves this Court to reverse its decision and to adequately consider Respondent's properly and timely served original Rule 59(e), SCRPC, motion.

This Court erred in dismissing Respondent's Rule 59(e), SCRPC, motion, finding it was untimely because it was not filed within ten days as required by Rule 59, SCRPC. In support, this Court cites to Hassell v. City of Columbia, 430 S.C. 620, 627, 846 S.E.2d 373, 377 (Ct. App. 2020), wherein this Court cites in its order that "Rule 59 does not apply because the motion was filed after the ten-day limitation of Rule 59." (Amended Order Denying Motion to Reconsider p. 1).

However, the South Carolina Supreme Court has decided the very issue Respondent raised in its correspondence with the Court that the requirement for a timely Rule 59(e), SCRPC, motion is service of that motion within ten days and not filing within ten days. See Diamond Jewelers,

³ In light of the exceptional circumstances and the improper application of the provisions outlined in Rule 59(e), SCRPC, Respondent is concurrently submitting a Notice of Appeal along with this Motion to Reconsider, Alter, or Amend, in accordance with Rule 59(e), SCRPC, and pursuant to Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986).

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Inc. v. Naegele Outdoor Advertising Co., 290 S.C. 260, 349 S.E.2d 888 (1985) ("Rules 52(b) and 59(b) and (e), SCRPC, require these post-trial motions to be served not later than ten days after entry of judgment [W]e hold that under the Rules of Civil Procedure a party has ten days from receipt of the clerk of court's notice of judgment to serve these post-trial motions.") (emphasis added); see also Curtis v. Blake, 381 S.C. 189, 191-92, 672 S.E.2d 576, 577-78 (2009) (holding "a motion for a new trial is timely so long as it is served within the time period allotted by the trial judge" and indicating other motions under Rule 59 requiring service within a proscribed period are timely if placed in the mail within that time); Reese v. State, 441 S.C. 392, 395 n. 1, 894 S.E.2d 295, 296 (Ct. App. 2023), reh'g denied (Nov. 21, 2023) (finding the PCR court erred in finding the Rule 59(e), SCRPC, motion was untimely because it was not *filed* within ten days of Reese receiving notice of the PCR court's denial of her petition and noting the Court's holding in Curtis) (emphasis added); Norris v. Earley, No. 8:21-CV-3353-MGL-WSB, 2025 WL 714153, at 11 (D.S.C. Jan. 30, 2025), report and recommendation adopted, No. CV 8:21-3353-MGL, 2025 WL 798883 (D.S.C. Mar. 13, 2025) ("A Rule 59(e) motion is timely if the motion 'was placed in the mail to opposing counsel' within the ten day period.") (citing Curtis, supra).⁴

In this case, Respondent served its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRPC, by email and USPS mail on this Court and opposing counsel within the time proscribed by our South Carolina Supreme Court and Rule 59(e), SCRPC. Accordingly, Respondent respectfully requests this Court to reconsider and vacate its previous Amended Order Denying Motion to Reconsider and rule on the merits of Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRPC, that was timely served on January 27, 2025.

⁴ In contrast, the federal version of Rule 59(e) requires explicit filing rather than service.

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CONCLUSION

For the foregoing reasons, the State asks this Court to reconsider its prior ruling and vacate its Amended Order Denying Motion to Reconsider and to rule on the merits of Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRPC, that was timely served on January 27, 2025.

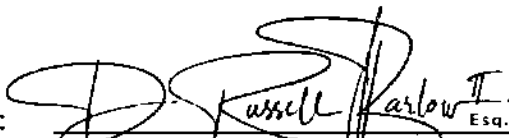
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

By:  Esq.
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT

Darius T. Cathcart, #303063,

) CASE NO. 2018-CP-42-02286

Applicant,

v.

**CERTIFICATE OF SERVICE
BY MAIL**

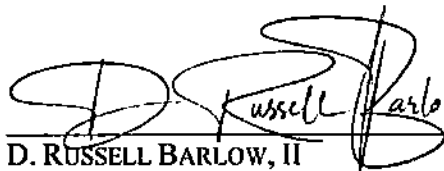
State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina, and this is a proper circumstance of service by mail.
3. I have this day served a copy of **Respondent's Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(e), SCRCP**, in the above-captioned matter on the following person by depositing the same in the United States mail, postage prepaid:

**Susannah C. Ross, Esq.
Ross & Enderlin, PA
330 East Coffee Street
Greenville, SC 29601**

DATED this 14th day of May 2025.



 D. RUSSELL BARLOW, II
 SENIOR ASSISTANT DEPUTY ATTORNEY GENERAL
 Attorney for Respondent

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