

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE SUPREME COURT

William Yarborough, # 334712
Applicant,

v.

STATE OF SOUTH CAROLINA
Respondent,

Case No. 2010-CP-45-0177

MOTION TO ALTER / AMEND AND
RECONSIDER JUDGMENT PURSUANT
TO RULE(S) 52(b) § 59(e) S.C.R.P.

NOW COMES, aboved captioned William Yarborough
Pro-se, moves this Honorable Court Pursuant to Rule 52(b)
& 59(e), to alter / amend and Reconsider the Judgment
issued.

In support of this motion, Applicant would show
unto this Court the following:

Counsel Charles T. Brooks, III, was ineffective for not
consulting with Applicant in placing a 59(e) motion to
preserve all his issues raise for appellate review, prior
to entered the NOTICE OF APPEAL February 3, 2014.

In the order Your Honor adopted Respondent's
order of Dismissal, in favor of prepared order granting
post-conviction, Applicant was diagnose and suffered from
post-traumatic stress disorder due to Applicant
complication in the marine corp. while incarcerated on
these charges Applicant was never mentally evaluated
for this illness. Prior to the guilty Plea, Counsel has
a professional duty to safeguard Applicant rights by
alerting the court under exceptional circumstances
to move for an independent evaluation prior to
the accepting of his guilty Plea.

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S.C. SUPREME COURT

During the evidentiary hearing December 16, 2013, Respondent purposely violated the PCR Order in carefully not comply with the Judge order to reveal the absent material(s). Counsel Charles T. Brooks, III, was ineffective for not raising this issue for points in the Applicant's Prepared Order Granting Post-Conviction. See Marlar v. South Carolina, 653 S.E.2d 266 (S.C. 2007)

Applicant must remind this Court that a Sixth Amendment right to a Jury trial is not a privilege, it's a constitutional right. The Constitution protect every criminal defendant "against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime which applicant charged." In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed 2d 368 (1970). The Constitution gives a defendant the right to demand that a Jury find him guilty of all the elements of the crime in the indictment.

In addition, Applicant testified at the evidentiary hearing, his attorney coerce him not to testified and because of the ill-advised, applicant was Denied Due Process and a Sixth Amendment right to be heard by a Jury. Rock v. Arkansas, 483 U.S. 44 (1987); State v. Thompson, 329 S.C. 72, 495 S.E.2d 437 (1998).

The error violated Applicant's right to effective assistance of counsel guaranteed under the Sixth and Fourteenth Amendments to the United States Constitution. See Strickland v. Washington, 466 U.S. 608 (1984)

CONCLUSION

Wherefore, based on the foregoing applicant respectfully asks this Honorable Court to alter/amend and reconsider judgment entered in the instant matter.

Respectfully Submitted
✓ Will Youkara
Pro-se Applicant

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COUNTY OF WILLIAMSBURG

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PROOF
OF
SERVICE

I, the undersigned do hereby certify that on this 10th day of February 2014, I served the foregoing MOTION TO ALTER/AMEND AND RECONSIDER JUDGMENT PURSUANT TO RULE(S) 52(b) AND 59(e), SCRCIVP, as well as PROOF OF SERVICE in this matter by depositing a true copy of it in the United States Mail Postages Prepaid, on February 10, 2014, addressed to the following indicated below:

South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

OFFICE OF ATTORNEY GENERAL
ATTN: Daniel Gourley, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
P.O. Box 11589
Columbia, SC 29211-1589

Charles T. Brooks, III
Post Office Box 3512
Sumter, SC 29151

Dated: February 10th 2014

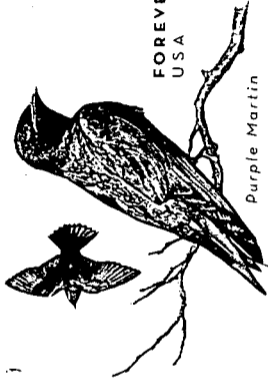
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William Yarbrough

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S.C. SUPREME COURT

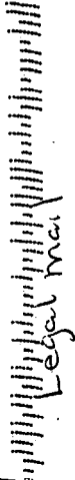
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