

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

---

Case No. 2011-CP-32-2798

---

Ronald J. Sheppard, #320057

Petitioner,

v.

State of South Carolina,

Respondent.

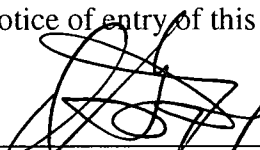
---

NOTICE OF APPEAL

---

Ronald J. Sheppard, #320057, appeals the order of the Honorable Edgar W. Dickson dated April 14, 2014. Petitioner received written notice of entry of this Order on April 25, 2014.

May 15, 2014



---

O. Grady Query  
Michael W. Sautter  
Michele Patrao Forsythe  
Query Sautter Forsythe, LLC  
147 Wappoo Creek Drive, Suite 202  
Charleston, South Carolina 29412  
(843) 795.9500

Attorneys for Petitioner

Other Counsel of Record:  
Ashley A. McMahan  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734.3693

Attorney for Respondent

**RECEIVED**

MAY 22 2014

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

---

Case No. 2011-CP-32-2798

---

Ronald J. Sheppard, #320057

Petitioner,

v.

State of South Carolina,

Respondent.

---

PROOF OF SERVICE

---

I certify that I have served the Notice of Appeal and copies of the Requests for Transcripts on the Lexington County Court of Common Pleas, Clerk of Court, by depositing a copy of it in the United States Mail, postage prepaid, on May 16, 2014, at the address of the 205 East Main Street, Lexington, SC 29072.

May 16, 2014



Ashley N. Kay, J.D.  
Law Clerk to O. Grady Query  
Query Sautter Forsythe, LLC  
147 Wappoo Creek Drive, Suite 202  
Charleston, SC 29412  
(843) 795-9500  
Attorneys for Appellant



STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

THE COURT OF COMMON PLEAS  
FOR THE 11<sup>th</sup> JUDICIAL CIRCUIT

Ronald J. Sheppard, #320057,

2014 APR 14 P 1:22  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

Case No: 2011-CP-32-2768

**COPY**

v.  
State of South Carolina,  
Respondent.

**ORDER DENYING APPLICANT'S  
MOTION TO RECONSIDER &  
ALTER OR AMEND ORDER**

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCF filed on or about July 3, 2013, in which he asks the Court reconsider and/or to alter or amend its Order dismissing his Application for post-conviction relief (PCR) filed on June 27, 2013. The Respondent replied on or about February 6, 2014<sup>1</sup>.

After due deliberation, review of memoranda, case, exhibits and arguments of counsel, the Applicant's Motion to Alter or Amend the Judgment is DENIED.

Applicant argues that the Court erred when it found that Mr. Sheppard was not prejudiced by his counsel's failure to preserve the issue whether there existed taint in the jury pool sufficient to deny Mr. Sheppard a fair and impartial jury. The Court stands by its original ruling. The Court disagrees that it ignored Mr. Sheppard's right to an impartial jury, or that the Court is substituting its judgment for that of an impartial jury. Rather, the Court stands by its ruling that the evidence against Mr. Sheppard was overwhelming, and that his counsel's errors did not rise to the level that

<sup>1</sup> SCRCF 59 sets forth the time period for filing a motion as "not later than 10 days after the receipt of written notice of the entry of judgment or an order disposing of the action." However, SCRCF 59 does not set forth a time period for which an opposing party must file a return or a reply to a motion to alter or amend.


they undermined confidence in the outcome of the trial. See Strickland v. Washington, 466 U.S.668 (1984).

Therefore, this Court finds that the Order of Dismissal dated June 17, 2013, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. §17-27-80 (1976), and Rule 52(a) SCRPC. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

**IT IS THEREFORE ORDERED** that the Motion to Reconsider and Alter or Amend Order denied.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**AND IT IS SO ORDERED!**

  
\_\_\_\_\_  
Edgar W. Dickson  
Presiding Circuit Court Judge

**FILED**  
2014 APR 14 P 1:22  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

April 9, 2014  
Orangeburg, South Carolina

COPY

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

FILED

THE COURT OF COMMON PLEAS  
FOR THE 11<sup>th</sup> JUDICIAL CIRCUIT  
Case No: 2011-CP-32-2798

Ronald J. Sheppard, #320057,

2013 JUL -9 A 3:42

Applicant,

BETH A. O'NEILL  
CLERK OF COURT  
LEXINGTON, SC

**APPLICANT'S MOTION TO  
RECONSIDER AND ALTER  
OR AMEND ORDER**

v.

State of South Carolina,

Respondent.

NOW COMES APPLICANT BY AND THROUGH HIS UNDERSIGNED COUNSEL and Moves pursuant to Rule 59(e), SCRPC, and the authority cited herein, for this Court to Reconsider and Alter or Amend the Order of Dismissal filed July 27, 2013, (hereinafter Order, attached as **Exhibit 1**) and received by counsel for applicant on July 2, 2013.

This underlying action was brought by applicant Ronald J. Sheppard, as an application for Post Conviction Relief (hereinafter PCR action). Mr. Sheppard was found guilty on February 6, 2007, by a jury of one count of Securities Fraud, one count of Obtaining Property by False Pretenses, and one count of Conspiracy. On February 7, 2007, Sheppard was sentenced by the trial judge to a combined consecutive sentences totaling twenty (20) years. Ronald Sheppard has now spent the last five and a half years in the South Carolina Department of Corrections.

This Motion is made on the grounds that the Trial Court Order in this PCR action, failed to consider the deprivation of applicant's fundamental constitutional right to a trial by a fair and impartial jury. In particular, after finding in the Order that trial counsel was defective, the Order erred by requiring applicant to show that he was prejudiced by a weighing of evidence after he was convicted by a tainted jury.

Applicant requests that the Trial Court reconsider and amend the Order as follows:

1. Finding that applicant's trial counsel was defective in failing to move or to take any

- action to determine and cure the improper jury contact.
2. Finding that applicant's trial counsel was defective in failing to preserve issues surrounding the improper jury contact for appeal.
  3. Finding that applicant was denied his constitutional right to trial by a fair and impartial jury. And
  4. Finding and Concluding that applicant's denial of the right to trial by a fair and impartial jury mandates this PCR Court to grant applicant a new trial.

### **THE FACTS**

Sheppard's trial jury was tainted when a spectator made an inappropriate comment to a juror on an elevator within the Courthouse after the trial was recessed on a Thursday, not to resume until the following Monday at 9:30 a.m.

When the trial resumed on Monday morning, the Trial Court addressed the jury as follows:

For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report.

(Trial Transcript p. 1237).

The trial judge therefore made a specific finding that there was an inappropriate comment to a juror. The trial judge also explicitly found that corrective measures were necessary. There is no further mention of any corrective action on the trial record to determine or correct the extent of the taint of the jury, that resulted from the inappropriate remark. There was no evidence in the hearing on the PCR application as to corrective jury measures taken off the record.

### **THE LAW**

The right to trial by an impartial jury unaffected by extraneous information is perhaps the most important and essential tenet of criminal jurisprudence. It is of constitutional significance

guaranteed by the Sixth and Fourteenth Amendments of the Constitution of the United States of America and by Article I, Section Fourteen of the South Carolina Constitution.

Trial counsel's failure to take any steps on the record after the inappropriate comment to a juror did nothing to restore the assurance of impartiality on the part of the jury. See *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989). With no contemporaneous objection, motion for curative instruction or motion for mistrial, Sheppard's trial counsel prevented the trial court from ascertaining the extent of the infection, and from taking appropriate measures to assure a fair trial. See *State v. Salters*, 273 S.C. 501, 257 S.E.2d 502 (1979).

In *Salters*, the South Carolina Supreme Court found the trial judge's failure to ascertain whether the extraneous information was prejudicial to be improper. Essentially, in *Salters*, as in this case, applicant argues that the trial judge's failure to take precautionary measures against the juror taint undermined the fairness and impartiality of the trial and that he was prejudiced and convicted by a tainted jury.

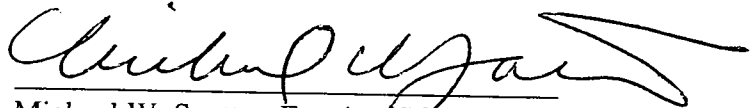
The Order found that trial counsel's performance was deficient, but then required applicant to show prejudice as a result of the trial deficiencies only by weighing evidence of guilt, which was labeled as "overwhelming" without specifically identifying any evidence against Sheppard, and without consideration that the deficiencies complained of deprived Sheppard of his constitutional right to a trial before a fair and impartial jury. The Order ignores the essential constitutional right of the applicant to have any and all evidence considered by a fair and impartial jury. The Order would substitute this Court as the judge of the facts, instead of having the facts considered by an untainted jury.

CONCLUSION

Applicant urges the Court to find and conclude in an Amended Order the effect of the trial deficiencies on applicant's Constitutional right to a trial by a fair and impartial jury, and to grant him a new trial on his Application for Post Conviction Relief.

Respectfully Submitted,

QUERY SAUTTER FORSYTHE, LLC



Michael W. Sautter, Esquire (SC Bar No.: 4944)

O. Grady Query, Esquire (SC Bar No.: 4610)

147 Wappoo Creek Drive, Suite 202

Charleston, SC 29412

Telephone: (843) 795-9500

Facsimile: (843) 762-1500

Attorneys for Applicant

July 3, 2013

Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned hereby certify that I served a copy of the foregoing document upon Ashley A. McMahan, Assistant Attorney General, by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows: Ashley A. McMahan, SC Attorney General's Office, PO Box 11549, Columbia, SC 29211-1549

Dated this the ~~21<sup>st</sup>~~ day of ~~June~~, 2013

3<sup>rd</sup> July



CERTIFICATE OF SERVICE

I, the undersigned hereby certify that I served a copy of the foregoing document upon the Honorable Edgar W. Dickson by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows:

The Honorable Edgar W. Dickson  
First Judicial Circuit  
Post Office Box 1949  
Orangeburg, South Carolina 29116-1949

Dated: July 3, 2013

A handwritten signature in black ink, appearing to read "T. Wain", is written above a horizontal line.

ORIGINAL

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

THE COURT OF COMMON PLEAS  
FOR THE 11th JUDICIAL CIRCUIT  
Case No: 2011-CP-32-2798

Ronald J. Sheppard, #320057,  
Applicant,

LEXINGTON COUNTY  
LEXINGTON, SC

v.

ORDER OF DISMISSAL

State of South Carolina,  
Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 22, 2011 and amended on November 7, 2012. The Respondent made its Return and Partial Motion to Dismiss on or about March 12, 2012.

An evidentiary hearing into the matter was convened on November 15, 2012, at the Lexington County Courthouse in Lexington, SC. The Applicant was present at the hearing and was represented by O. Grady Query, Esquire and Michael W. Sautter, Esquire. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was James M. Griffin, Esquire and Sheila Hoffman. This Court also had before it a copy of the records of the State Grand Jury Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return and Partial Motion to Dismiss, the Order Granting Partial Summary Judgment, the Appellate Court records, and the trial transcript.



PROCEDURAL HISTORY

FILED

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of State Grand Jury Clerk of Court. The Applicant was initially indicted by the State Grand Jury on November 16, 2005, followed by a superseding indictment filed on February 21, 2006 for: Count 1 - Securities Fraud (violation of S.C. Code §35-1-1210 and §35-1-1590); Count 2 - Crime Against a Federally Chartered or Insured Financial Institution violation of S.C. Code §34-3-110); Counts 3 & 4 - Forgery; Counts 5 & 6 - Making a False Statement or Misrepresentation; Counts 7 & 8 - Obtaining Signature or Property by False Pretenses (violation of S.C. Code §16-13-240); Count 9 - Breach of Trust; Count 10 - Perjury; and Count 11 - Conspiracy. (2005-GS-40-20).

James M. Griffin, Esquire represented the Applicant. On January 16, 2007, the Applicant proceeded to trial on counts one, seven, and eleven after the Court granted the Applicant's Motion to Dismiss on the other eight charges. Applicant was found guilty on all three of the remaining counts. The Honorable James W. Johnson, Jr., consecutively sentenced the Applicant to confinement for a period of ten (10) years on count one - Securities Fraud; five years on count seven - Obtaining Property Under False Pretenses; and five years on count eleven - Conspiracy.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented on appeal by O. Grady Query, Esquire and Michael W. Sautter, Esquire.

The Applicant raised the following issues on appeal:

FILED

1. Whether Applicant received a fair trial before an impartial jury when there was improper contact between a spectator and a juror which was not cured by the trial court;
2. Whether the State Grand Jury had subject matter jurisdiction over counts seven and eleven of the indictment and if not, should those sentences and convictions be vacated;
3. Whether South Carolina Code §14-7-1820 violates Applicant's constitutional rights against the passage of *ex post facto* laws; and
4. Whether the trial court abused its discretion by imposing a sentence on Applicant which was substantially disproportionate to the sentences of other co-conspirators?

The South Carolina Supreme Court affirmed Applicant's conviction and sentence. With respect to issue two the court held that Applicant was actually challenging the sufficiency of the indictment; that there was no question that the Circuit Court had subject matter jurisdiction over the crimes charged; that because Applicant failed to timely challenge the three counts in the indictment and instead went to trial on the charges, he could not now, having lost at trial, come back to challenge the sufficiency of the indictment; and that the State Grand Jury had jurisdiction over the charges of obtaining property by false pretenses and conspiracy, even though those specific crimes may not be enumerated elsewhere in section 14-7-1630, because they were committed in the same course of conduct as securities violations.

With respect to issues one, three and four the Court held that Applicant failed to preserve the issues for review. State v. Sheppard, Op. No. 26927 (S.C. Sup.



Ct. filed Feb. 7, 2011). The Remittitur was issued on February 23, 2011. FILED

In the present action, the Return and Partial Motion to Dismiss was filed by the Respondent on or about March 30, 2012 and a Motion for a More Definitive Answer made by Respondent on or about September 17, 2012. A hearing was held regarding these motions at the Lexington County Courthouse on ~~October~~ November 15, 2012. The Applicant was represented by O. Grady Query, Esquire and Michael W. Sautter, Esquire<sup>1</sup>. The Respondent was represented by Assistant Attorneys General Ashley A. McMahan and Karen C. Ratigan. The Respondent's motions were granted on October 19, 2012.

#### MOTION IN LIMINE

Applicant filed a Motion in Limine on or about November 5, 2012. The Respondent filed its reply on or about November 9, 2012. The Court is denying the Applicant's Motion in Limine based on the foregoing:

Applicant's pre-trial Motion is to exclude all testimony pertaining to events that took place off-the-record at Applicant's trial. Applicant merely cites Rules 402 and 403 of the South Carolina Rules of Evidence, arguing that any testimony thereto would be irrelevant and its probative value would be far outweighed by its danger of unfair prejudice. Contrary to Applicant's contention, the Court finds the testimony concerning off-the-record events at the trial highly relevant to the issue of whether Applicant's trial counsel was ineffective.

---

<sup>1</sup> At the hearing the Applicant waived any claim to ineffective assistance of appellate counsel since he is represented in his PCR by the same attorneys that represented him on appeal.

Whether counsel offered effective representation cannot be gleaned merely from a review of a trial record. Oftentimes, what trial counsel chooses not to introduce or argue at trial is as relevant to whether he provided effective representation as what was placed on the record. As such, the Court finds this testimony highly relevant. See SCRE 402. As to its prejudicial nature, the Court finds that the testimony is highly probative of trial counsel's effectiveness. This probative value is neither substantially outweighed nor nominally outweighed by any danger unfair prejudice. See SCRE 403. Accordingly, the Court is declining to exclude the testimony under these Rules.

As to the Applicant's contention that said testimony should be excluded as inadmissible hearsay, the Court finds that the testimony does not fall under the Rules of Evidence's definition of hearsay. The South Carolina Rules of Evidence define "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted" ~~(emphasis added)~~. SCRE 801(c).

The alleged-hearsay testimony offered in this case—concerning in-chambers conversations with the trial judge regarding an improper comment made to a member of the jury panel—has not been submitted for its truth, but rather for its effect on Applicant's trial counsel. See, e.g. State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007).

The truth of the matters asserted in the testimony is irrelevant. The purpose of the testimony is to examine how Applicant's trial counsel responded thereafter

and whether his response was that of a reasonably professional attorney. The Court hereby finds that all testimony of off-the-record and/or in-chambers conversations in this case are relevant and admissible and has taken them into consideration accordingly, along with the other evidence in the case. Therefore, the Motion in Limine is DENIED.

### ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. 1. Ineffective Assistance of Counsel

a) Failure to request a curative instruction or moving for a mistrial after the trial judge found that there had been an inappropriate contact with a juror and stated, "For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report."

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

#### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a

preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).


The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance, and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).



The heart of Applicant's PCR action deals with an improper comment made by a person associated with one of the victims in the case to one of the members of the jury. The comment was brought to the trial judge's attention, who apparently dealt with the matter in-chambers with the attorneys and off-the-record with the jury. On direct appeal, Applicant attempted to raise the issue of the trial court's failure to examine the juror-at-issue on the record to ensure Applicant was receiving a trial by a fair and impartial jury. However, the Supreme Court of South Carolina held that "Sheppard [had] not properly preserved this issue for appellate review. After the judge addressed the jury regarding the comment, Sheppard made no motion or objection...." State v. Sheppard, 391 S.C. 415, 420, 706 S.E.2d 16, 19 (2011). This failure to preserve the record is the crux of Applicant's ineffective assistance of counsel claim.

The Court finds that this failure to preserve the record fell below a reasonable professional standard under Strickland. However, the Applicant has failed to satisfy his burden of showing prejudice therefrom—that there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068 (1984). In Post-Conviction Relief proceedings dealing with a failure to object or preserve the record, this different outcome seems to require the Court to weigh the potential prejudice of the error with overall strength of the evidence offered against the Applicant at trial. See, e.g. Lowry v.

State, 376 S.C. 499, 508, 675 S.E.2d 760, 765 (2008) (applying a two-pronged test where trial counsel erroneously failed to object to a jury charge unconstitutionally creating a presumption of malice: "(1) the Court must ask what evidence the jury actually considered in reaching its verdict, and (2) the Court must weigh the probative force of the evidence as against the probative forces of the presumption standing alone" (citing Yates v. Evatt, 500 U.S. 391, 111 S.Ct. 1884 (1991))); See also, e.g. Green v. State, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002) ("Although Green's trial strategy could be more effective in a retrial following a 'trial run,' his arguments are theoretical assumptions at best. They are not sufficient to cast doubt on the jury's verdict, especially coupled with the relative strength of the case against him.") (~~emphasis added~~). 

While it is true that the comment at issue could have tainted the jury, the juror to whom the comment was made was not excused, and no curative instruction was given on the record, the Court finds that this potential effect on the Applicant's trial is vastly outweighed by the overwhelming evidence against him. The improper comment was made during the first week of a three-week trial. (R. 1237). Additionally, the Court stated on the record, "For the Juror who reported an inappropriate comment on the elevator Thursday, I appreciate that, I will deal with that and thank you for making that report." (Id.). Furthermore, while it is difficult to discern how and with what evidence a jury makes its conclusions, the jury in this case deliberated for a mere 1 hour and 50 minutes. (R. 2250-51). Given the length of the trial itself, in the Court's view, the jury must have been firmly convinced of the

Applicant's guilt. The Court does not feel this short deliberative time was due to the improper comment or trial counsel's failure to object thereto and ask for a curative instruction, but indicative of the overwhelming evidence against the Applicant. Additionally, the State introduced hundreds of pages of documents and several witnesses, many of them former investors of the Applicant, detailing the Applicant's securities fraud, obtaining property by false pretenses, and conspiracy to do so. (R. 2538-3149). The Court is not satisfied that the Applicant has sustained his burden of proof showing that any potential prejudice from the juror comment and trial counsel's failure to object thereto and request a curative instruction would undermine confidence in the outcome of his jury verdict when faced with the significant evidence presented against him at trial.

Alternatively, although it was not made explicitly clear at the hearing, if the Applicant's contention that a "different result" in his proceeding would have been a successful appeal of his case with a properly-preserved record, the Court finds he failed to satisfy this burden as well. Presumably, an appellate court's analysis of the alleged errors would have been the same to the Court's balancing test conducted above. The Court is not convinced that the Applicant would have had a successful appeal of his trial but for trial counsel's error. The Court is therefore denying the Applicant's PCR action.

#### *Summary*

This Court finds in regards to the allegation of ineffective assistance of counsel finds trial counsel's testimony is credible. This Court further finds trial

counsel adequately conferred with the Applicant, and conducted a proper investigation. However, this Court finds that trial counsel's <sup>was in-</sup> ineffective in his failure to properly preserve the issue regarding the juror for appeal. Accordingly, this Court finds the Applicant has proven the first prong of the <sup>CLERK OF COURT</sup> Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms.

Although trial counsel was ineffective in this regard, this Court finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. Applicant was not prejudiced by the deficient representation because there was overwhelming evidence of the Applicant's guilt. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); *See also* Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C., 1991). Therefore, this allegation is denied.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of

judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED!**



Edgar W. Dickson  
Presiding Circuit Court Judge

June 17, 2013  
Orangeburg, South Carolina



FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2011CP3202798

Ronald J Sheppard	State of South Carolina
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

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.**

Circuit Court Judge	2153	6/28/2013
	Judge Code	Date

**For Clerk of Court Office Use Only**

This judgment was entered on n/a, and a copy mailed first class or placed in the appropriate attorney's box on 28th day of June 2013, to attorneys of record or to parties (when appearing pro se) as follows:

O. Grady Query 147 Wappoo Creek Dr., Ste. 202  
Charleston, SC 29412

Ashley Anne McMahan PO Box 11549 Columbia, SC  
292111549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

Beth A. Carrigg - Clerk of Court

Court Reporter

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.



ORIGINAL

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

FILED THE COURT OF COMMON PLEAS  
FOR THE 11<sup>th</sup> JUDICIAL CIRCUIT  
Case No: 2011-CP-32-2798

Ronald J. Sheppard, #320057,  
Applicant,

FILED  
COURT OF COMMON PLEAS  
LEXINGTON, SC

v.

**ORDER OF DISMISSAL**

State of South Carolina,  
Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 22, 2011 and amended on November 7, 2012. The Respondent made its Return and Partial Motion to Dismiss on or about March 12, 2012.

An evidentiary hearing into the matter was convened on November 15, 2012, at the Lexington County Courthouse in Lexington, SC. The Applicant was present at the hearing and was represented by O. Grady Query, Esquire and Michael W. Sautter, Esquire. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was James M. Griffin, Esquire and Sheila Hoffman. This Court also had before it a copy of the records of the State Grand Jury Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return and Partial Motion to Dismiss, the Order Granting Partial Summary Judgment, the Appellate Court records, and the trial transcript.

PROCEDURAL HISTORY

FILED

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of State Grand Jury, Clerk of Court. The Applicant was initially indicted by the State Grand Jury on November 16, 2005, followed by a superseding indictment filed on February 21, 2006 for: Count 1 - Securities Fraud (violation of S.C. Code §35-1-1210 and §35-1-1590); Count 2 - Crime Against a Federally Chartered or Insured Financial Institution violation of S.C. Code §34-3-110); Counts 3 & 4 - Forgery; Counts 5 & 6 - Making a False Statement or Misrepresentation; Counts 7 & 8 - Obtaining Signature or Property by False Pretenses (violation of S.C. Code §16-13-240); Count 9 - Breach of Trust; Count 10 - Perjury; and Count 11 - Conspiracy. (2005-GS-40-20).

James M. Griffin, Esquire represented the Applicant. On January 16, 2007, the Applicant proceeded to trial on counts one, seven, and eleven after the Court granted the Applicant's Motion to Dismiss on the other eight charges. Applicant was found guilty on all three of the remaining counts. The Honorable James W. Johnson, Jr., consecutively sentenced the Applicant to confinement for a period of ten (10) years on count one - Securities Fraud; five years on count seven - Obtaining Property Under False Pretenses; and five years on count eleven - Conspiracy.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented on appeal by O. Grady Query, Esquire and Michael W. Sautter, Esquire.

The Applicant raised the following issues on appeal:

FILED

1. Whether Applicant received a fair trial before an impartial jury when there was improper contact between a spectator and a juror which was not cured by the trial court;
2. Whether the State Grand Jury had subject matter jurisdiction over counts seven and eleven of the indictment and if not, should those sentences and convictions be vacated;
3. Whether South Carolina Code §14-7-1820 violates Applicant's constitutional rights against the passage of *ex post facto* laws; and
4. Whether the trial court abused its discretion by imposing a sentence on Applicant which was substantially disproportionate to the sentences of other co-conspirators?

The South Carolina Supreme Court affirmed Applicant's conviction and sentence. With respect to issue two the court held that Applicant was actually challenging the sufficiency of the indictment; that there was no question that the Circuit Court had subject matter jurisdiction over the crimes charged; that because Applicant failed to timely challenge the three counts in the indictment and instead went to trial on the charges, he could not now, having lost at trial, come back to challenge the sufficiency of the indictment; and that the State Grand Jury had jurisdiction over the charges of obtaining property by false pretenses and conspiracy, even though those specific crimes may not be enumerated elsewhere in section 14-7-1630, because they were committed in the same course of conduct as securities violations.

With respect to issues one, three and four the Court held that Applicant failed to preserve the issues for review. State v. Sheppard, Op. No. 26927 (S.C. Sup. Ct. 1998).



Ct. filed Feb. 7, 2011). The Remittitur was issued on February 23, 2011.

In the present action, the Return and Partial Motion to Dismiss was filed by the Respondent on or about March 30, 2012 and a Motion for a More Definitive Answer made by Respondent on or about September 17, 2012. A hearing was held regarding these motions at the Lexington County Courthouse on ~~October~~ <sup>November</sup> 15, 2012. The Applicant was represented by O. Grady Query, Esquire and Michael W. Sautter, Esquire<sup>1</sup>. The Respondent was represented by Assistant Attorneys General Ashley A. McMahan and Karen C. Ratigan. The Respondent's motions were granted on October 19, 2012.

#### MOTION IN LIMINE

Applicant filed a Motion in Limine on or about November 5, 2012. The Respondent filed its reply on or about November 9, 2012. The Court is denying the Applicant's Motion in Limine based on the foregoing:

Applicant's pre-trial Motion is to exclude all testimony pertaining to events that took place off-the-record at Applicant's trial. Applicant merely cites Rules 402 and 403 of the South Carolina Rules of Evidence, arguing that any testimony thereto would be irrelevant and its probative value would be far outweighed by its danger of unfair prejudice. Contrary to Applicant's contention, the Court finds the testimony concerning off-the-record events at the trial highly relevant to the issue of whether Applicant's trial counsel was ineffective.

---

<sup>1</sup> At the hearing the Applicant waived any claim to ineffective assistance of appellate counsel since he is represented in his PCR by the same attorneys that represented him on appeal.

FILED  
103 MAY 17 2007  
CLERK OF COURT  
SOUTH CAROLINA

Whether counsel offered effective representation cannot be gleaned merely from a review of a trial record. Oftentimes, what trial counsel chooses not to introduce or argue at trial is as relevant to whether he provided effective representation as what was placed on the record. As such, the Court finds this testimony highly relevant. See SCRE 402. As to its prejudicial nature, the Court finds that the testimony is highly probative of trial counsel's effectiveness. This probative value is neither substantially outweighed nor nominally outweighed by any danger unfair prejudice. See SCRE 403. Accordingly, the Court is declining to exclude the testimony under these Rules.

As to the Applicant's contention that said testimony should be excluded as inadmissible hearsay, the Court finds that the testimony does not fall under the Rules of Evidence's definition of hearsay. The South Carolina Rules of Evidence define "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted" ~~(emphasis added)~~. SCRE 801(c).

The alleged-hearsay testimony offered in this case—concerning in-chambers conversations with the trial judge regarding an improper comment made to a member of the jury panel—has not been submitted for its truth, but rather for its effect on Applicant's trial counsel. See, e.g. State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007).

The truth of the matters asserted in the testimony is irrelevant. The purpose of the testimony is to examine how Applicant's trial counsel responded thereafter

and whether his response was that of a reasonably professional attorney. The Court hereby finds that all testimony of off-the-record and/or in-chambers conversations in this case are relevant and admissible and has taken them into consideration accordingly, along with the other evidence in the case. Therefore, the Motion in Limine is DENIED.

### ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. 1. Ineffective Assistance of Counsel

a) Failure to request a curative instruction or moving for a mistrial after the trial judge found that there had been an inappropriate contact with a juror and stated, "For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report."

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

#### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a

preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).


The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance, and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).



The heart of Applicant's PCR action deals with an improper comment made by a person associated with one of the victims in the case to one of the members of the jury. The comment was brought to the trial judge's attention, who apparently dealt with the matter in-chambers with the attorneys and off-the-record with the jury. On direct appeal, Applicant attempted to raise the issue of the trial court's failure to examine the juror-at-issue on the record to ensure Applicant was receiving a trial by a fair and impartial jury. However, the Supreme Court of South Carolina held that "Sheppard [had] not properly preserved this issue for appellate review. After the judge addressed the jury regarding the comment, Sheppard made no motion or objection...." State v. Sheppard, 391 S.C. 415, 420, 706 S.E.2d 16, 19 (2011). This failure to preserve the record is the crux of Applicant's ineffective assistance of counsel claim.

The Court finds that this failure to preserve the record fell below a reasonable professional standard under Strickland. However, the Applicant has failed to satisfy his burden of showing prejudice therefrom—that there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068 (1984). In Post-Conviction Relief proceedings dealing with a failure to object or preserve the record, this different outcome seems to require the Court to weigh the potential prejudice of the error with overall strength of the evidence offered against the Applicant at trial. See, e.g. Lowry v.

State, 376 S.C. 499, 508, 675 S.E.2d 760, 765 (2008) (applying a two-pronged test where trial counsel erroneously failed to object to a jury charge unconstitutionally creating a presumption of malice: “(1) the Court must ask what evidence the jury actually considered in reaching its verdict, and (2) the Court must weigh the probative force of the evidence as against the probative forces of the presumption standing alone” (citing Yates v. Evatt, 500 U.S. 391, 111 S.Ct. 1884 (1991))); See also, e.g. Green v. State, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002) (“Although Green’s trial strategy could be more effective in a retrial following a ‘trial run,’ his arguments are theoretical assumptions at best. They are not sufficient to cast doubt on the jury’s verdict, especially coupled with the relative strength of the case against him.”) (~~emphasis added~~). 

While it is true that the comment at issue could have tainted the jury, the juror to whom the comment was made was not excused, and no curative instruction was given on the record, the Court finds that this potential effect on the Applicant’s trial is vastly outweighed by the overwhelming evidence against him. The improper comment was made during the first week of a three-week trial. (R. 1237). Additionally, the Court stated on the record, “For the Juror who reported an inappropriate comment on the elevator Thursday, I appreciate that, I will deal with that and thank you for making that report.” (Id.). Furthermore, while it is difficult to discern how and with what evidence a jury makes its conclusions, the jury in this case deliberated for a mere 1 hour and 50 minutes. (R. 2250-51). Given the length of the trial itself, in the Court’s view, the jury must have been firmly convinced of the

Applicant's guilt. The Court does not feel this short deliberative time was due to the improper comment or trial counsel's failure to object thereto and ask for a curative instruction, but indicative of the overwhelming evidence against the Applicant. Additionally, the State introduced hundreds of pages of documents and several witnesses, many of them former investors of the Applicant, detailing the Applicant's securities fraud, obtaining property by false pretenses, and conspiracy to do so. (R. 2538-3149). The Court is not satisfied that the Applicant has sustained his burden of proof showing that any potential prejudice from the juror comment and trial counsel's failure to object thereto and request a curative instruction would undermine confidence in the outcome of his jury verdict when faced with the significant evidence presented against him at trial.

Alternatively, although it was not made explicitly clear at the hearing, if the Applicant's contention that a "different result" in his proceeding would have been a successful appeal of his case with a properly-preserved record, the Court finds he failed to satisfy this burden as well. Presumably, an appellate court's analysis of the alleged errors would have been the same to the Court's balancing test conducted above. The Court is not convinced that the Applicant would have had a successful appeal of his trial but for trial counsel's error. The Court is therefore denying the Applicant's PCR action.

#### *Summary*

This Court finds in regards to the allegation of ineffective assistance of counsel finds trial counsel's testimony is credible. This Court further finds trial



counsel adequately conferred with the Applicant, and conducted a proper investigation. However, this Court finds that trial counsel <sup>was in-</sup> ~~is~~ ineffective in his failure to properly preserve the issue regarding the juror for appeal. Accordingly, this Court finds the Applicant has proven the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms.

Although trial counsel was ineffective in this regard, this Court finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. Applicant was not prejudiced by the deficient representation because there was overwhelming evidence of the Applicant's guilt. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); *See also* Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C., 1991). Therefore, this allegation is denied.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of

judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED!**



Edgar W. Dickson  
Presiding Circuit Court Judge

June 17, 2013  
Orangeburg, South Carolina



**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.**

_____	2153	6/28/2013
<b>Circuit Court Judge</b>	<b>Judge Code</b>	<b>Date</b>

**For Clerk of Court Office Use Only**

This judgment was entered on n/a, and a copy mailed first class or placed in the appropriate attorney's box on 28th day of June 2013, to attorneys of record or to parties (when appearing pro se) as follows:

**O. Grady Query** 147 Wappoo Creek Dr., Ste. 202  
Charleston, SC 29412

**Ashley Anne McMahan** PO Box 11549 Columbia, SC  
292111549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

\_\_\_\_\_  
Beth A. Carrigg - Clerk of Court

Court Reporter

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.



# QUERY SAUTTER FORSYTHE, LLC

ATTORNEYS AND COUNSELORS AT LAW

The Wappoo Centre  
147 Wappoo Creek Drive  
Suite 202  
Charleston, South Carolina 29412

Telephone 843.795.9500

Facsimile 843.762.1500

[www.qlawsc.com](http://www.qlawsc.com)

O. Grady Query\*

\*Certified Circuit Court Arbitrator and Mediator

\*Certified National Trial Advocacy Civil Trial Specialist

Michèle Patrão Forsythe\*\*

\*\*Certified Family Court Mediator

Michael W. Sautter\*\*

\*\*Managing Partner

Elizabeth Brooks Hurt

May 15, 2014

Ms. Carol M. Thueme  
Post Office Box 1981  
Irmo, SC 29063

**RE: Ronald J. Sheppard v. State of SC**  
**Case No.: 2011-CP-32-2798**

Dear Ms. Thueme:


Our office represents the interests of Ronald J. Sheppard in connection with the above-referenced case. A hearing was held before the Honorable Edgar W. Dickson on November 15, 2012, in this matter.

It is our understanding that you were the court reporter at this proceeding. As such, I am writing to request a copy of the transcript of that proceeding.

Your attention to this request is greatly appreciated. Should you have any questions, please do not hesitate to contact me.

With best wishes, I remain

Sincerely,



Ashley N. Kay, J.D.

Law Clerk to

O. Grady Query

cc: Clerk, South Carolina Supreme Court  
Assistant Attorney General Ashley McMahan  
Clerk, Lexington County Court of Common Pleas  
SC Court Administration

# QUERY SAUTTER FORSYTHE, LLC

ATTORNEYS AND COUNSELORS AT LAW

The Wappoo Centre  
147 Wappoo Creek Drive  
Suite 202  
Charleston, South Carolina 29412

Telephone 843.795.9500

Facsimile 843.762.1500

[www.qlawsc.com](http://www.qlawsc.com)

O. Grady Query\*

\*Certified Circuit Court Arbitrator and Mediator

\*Certified National Trial Advocacy Civil Trial Specialist

Michèle Patrão Forsythe\*\*

\*\*Certified Family Court Mediator

Michael W. Sautter\*\*

\*\*Managing Partner

Elizabeth Brooks Hurt

May 15, 2014

Ms. L. Coconut Pantsari  
309 Willow Winds Drive  
Columbia, SC 29210

**RE: Ronald J. Sheppard v. State of SC**  
**Case No.: 2011-CP-32-2798**

Dear Ms. Pantsari:

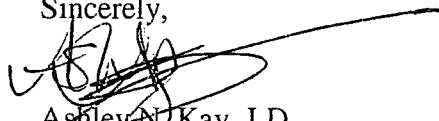
Our office represents the interests of Ronald J. Sheppard in connection with the above-referenced case. A hearing was held before the Honorable R. Knox McMahan on October 15, 2012, in this matter. It is possible that you were the court reporter at that hearing, however, there were multiple reporters scheduled on that date.

I am writing to request a copy of the transcript of that proceeding. In the event that you were not the reporter at this proceeding, please contact me to advise of the same.

Your attention to this request is greatly appreciated. Should you have any questions, please do not hesitate to contact me.

With best wishes, I remain

Sincerely,



Ashley N. Kay, J.D.

Law Clerk to

O. Grady Query

cc: Clerk, South Carolina Supreme Court  
Assistant Attorney General Ashley McMahan  
Clerk, Lexington County Court of Common Pleas  
SC Court Administration

# QUERY SAUTTER FORSYTHE, LLC

ATTORNEYS AND COUNSELORS AT LAW

The Wappoo Centre  
147 Wappoo Creek Drive  
Suite 202  
Charleston, South Carolina 29412

Telephone 843.795.9500

Facsimile 843.762.1500

[www.qlawsc.com](http://www.qlawsc.com)

O. Grady Query\*

\*Certified Circuit Court Arbitrator and Mediator

\*Certified National Trial Advocacy Civil Trial Specialist

Michèle Patrão Forsythe\*\*

\*\*Certified Family Court Mediator

Michael W. Sautter\*\*

\*\*Managing Partner

Elizabeth Brooks Hurt

May 15, 2014

Ms. Maryann A. Nevers  
Post Office Box 90202  
Columbia, SC 29290

**RE: Ronald J. Sheppard v. State of SC**  
**Case No.: 2011-CP-32-2798**

Dear Ms. Nevers:

Our office represents the interests of Ronald J. Sheppard in connection with the above-referenced case. A hearing was held before the Honorable R. Knox McMahon on October 15, 2012, in this matter. It is possible that you were the court reporter at that hearing, however, there were multiple reporters scheduled on that date.

I am writing to request a copy of the transcript of that proceeding. In the event that you were not the reporter at this proceeding, please contact me to advise of the same.

Your attention to this request is greatly appreciated. Should you have any questions, please do not hesitate to contact me.

With best wishes, I remain

Sincerely,



Ashley N. Kay, J.D.

Law Clerk to

O. Grady Query

cc: Clerk, South Carolina Supreme Court  
Assistant Attorney General Ashley McMahan  
Clerk, Lexington County Court of Common Pleas  
SC Court Administration

# QUERY SAUTTER FORSYTHE, LLC

ATTORNEYS AND COUNSELORS AT LAW

The Wappoo Centre  
147 Wappoo Creek Drive  
Suite 202  
Charleston, South Carolina 29412

Telephone 843.795.9500

Facsimile 843.762.1500

[www.qlawsc.com](http://www.qlawsc.com)

O. Grady Query\*

\*Certified Circuit Court Arbitrator and Mediator

\*Certified National Trial Advocacy Civil Trial Specialist

Michèle Patrão Forsythe\*\*

\*\*Certified Family Court Mediator

Michael W. Sautter\*\*

\*\*Managing Partner

Elizabeth Brooks Hurt

May 16, 2014

The Honorable Beth Carrigg  
Lexington County Clerk of Court  
205 East Main Street  
Lexington, SC 29072

**RE: Ronald J. Sheppard, #320057 v. State of SC  
Case No.: 2011-CP-32-2798**

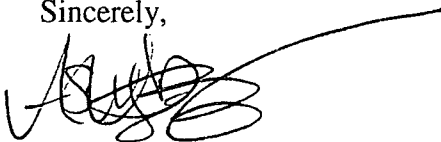
Dear Ms. Carrigg:

Enclosed please find a copy of our Notice of Appeal in the above-referenced case. I have also enclosed the Requests for Transcripts of Record. By copy of this letter, I am informing the Honorable Daniel E. Shearouse and counsel for the Respondent, Assistant Attorney General Ashley A. McMahan, of the same.

Your attention to this matter is greatly appreciated. Should you have any questions regarding the same, please do not hesitate to contact our office.

With best wishes, I remain

Sincerely,



Ashley N. Kay, J.D.  
Law Clerk to  
O. Grady Query

/ank

Enclosures as stated

cc: The Honorable Daniel E. Shearouse, without enclosures  
Assistant Attorney General Ashley A. McMahan, without enclosures

QUERY SAUTTER FORSYTHE, LLC

ATTORNEYS AND COUNSELORS AT LAW

The Wappoo Centre

147 Wappoo Creek Drive

Suite 202

Charleston, South Carolina 29412

Telephone 843.795.9500

Facsimile 843.762.1500

[www.qlawsc.com](http://www.qlawsc.com)

O. Grady Query\*

\*Certified Circuit Court Arbitrator and Mediator

\*Certified National Trial Advocacy Civil Trial Specialist

Michèle Patrão Forsythe\*\*

\*\*Certified Family Court Mediator

Michael W. Sautter\*\*

**RECEIVED**

Elizabeth Brooks Hurt

MAY 22 2014

May 16, 2014

Daniel E. Shearouse, Clerk of Court  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

**S.C. SUPREME COURT**

**RE: Ronald J. Sheppard, #320057 v. State of SC**  
**Case No.: 2011-CP-32-2798**

Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above-referenced case. I have also enclosed the following:

- (1) Proof of Service of notice of appeal and requests for transcripts on the Respondent;
- (2) Copies of the orders which are to be challenged on appeal;
- (3) Proof of Service of notice of appeal and requests for transcripts on the Lexington County Court of Common Pleas; and
- (4) Copies of the Requests for Transcripts.

By copy of this letter, I am serving counsel for the Respondent, Assistant Attorney General Ashley A. McMahan, with the same.

Your attention to this matter is greatly appreciated. Should you have any questions, please do not hesitate to contact our office.

Sincerely,



Ashley N. Kay, J.D.  
Law Clerk to  
O. Grady Query

/ank

Enclosures as stated

cc: Assistant Attorney General Ashley A. McMahan, with enclosures

QUERY SAUTTER FORSYTHE, LLC  
147 WAPPOO CREEK DRIVE  
SUITE 202  
CHARLESTON, SC 29412

Daniel E. Shearouse, Clerk of Court  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

