

Reply to: Columbia  
Atesh@RichardsonPlowden.com  
Direct Dial: (803) 576-3726

November 6, 2014

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

Re: Phillip A. Brown, SCDC #118100  
Civil Action No.: 2011-CP-40-07160

Dear Mr. Shearouse:

Enclosed please find a copy of the order denying Applicant's Rule 59(e) Motion to Alter or Amend along with the certificate of service showing that I have copied the South Carolina Attorney General's office with the Notice of Appeal.

With kindest regards, I am

Very Truly Yours,



Adam S. Tesh

Enclosures

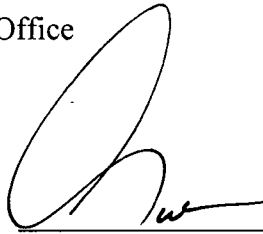
cc: Megan E. Harrigan, Esq. (w/encl.)

**RECEIVED**  
NOV 10 2014  
S.C. SUPREME COURT

**CERTIFICATE OF MAILING**

I, Adam S. Tesh a attorney with Richardson Plowden & Robinson, P.A., do hereby certify that I served the Appellant's Notice of appeal from the denial of his rule 59(e) motion to alter or amend the dismissal of his Post Conviction Relief Petition by U.S. Mail, addressed as follows on 11/6/2014:

Megan Harrigan  
South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211



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11/7, 2014

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4007160

Phillip #118100 Brown

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

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.
- 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 PUBLIC 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
		\$
		\$
		\$

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 \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 24 October 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Phillip #118100 Brown

Adam S. Tesh

Megan E. Harrigan

Phillip #118100 Brown

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

**RECEIVED**

Clerk of Court

*Jeanette W. Yarbrough*

NOV 10 2014

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Phillip A. Brown, SCDC #118100, )  
Applicant, )

Case No. 2011-CP-40-07160

**ORDER DENYING APPLICANT'S "RULE  
59(E) MOTION TO ALTER OR AMEND"**

v. )

State of South Carolina, )  
Respondent. )

2011 SEP 24 AM 9:51  
JENNIFER B. HARRIS  
CLERK OF COURT

This matter comes before this Court by way of Applicant's "Rule 59(E) Motion to Alter or Amend," asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

I.

The records before this Court show that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland<sup>1</sup> County Clerk of Court. Applicant was indicted by the Kershaw County Grand Jury for Murder, Burglary in the First Degree, and Armed Robbery (1982-GS-28-00153). The State notified Applicant and his attorneys of its intention to seek the death penalty. On June 23, 1983, Applicant appeared before the Honorable Walter T. Cox, where he pled guilty as indicted. Judge Cox sentenced Applicant to life imprisonment for murder, to a consecutive life sentence for burglary, and to a concurrent twenty-five year sentence for Armed Robbery. No direct appeal was taken.<sup>2</sup>

On July 13, 1993, Applicant filed a Petition for Habeas Corpus and a subsequent Petition for Writ

<sup>1</sup> Applicant was indicted by the Kershaw County Grand Jury for Kershaw County offenses. However, on June 13, 1983, the Honorable Dan F. Laney, acting in his capacity as Chief Administrative Judge for the Fifth Judicial Circuit, signed an Order transferring venue to Richland County upon Applicant's motion and a subsequent hearing.

<sup>2</sup> Thereafter, Mr. Brown escaped from incarceration and committed several additional offenses for which he received a consecutive twenty-two year sentence. See Applicant's SCDC records; Phillip A. Brown v. SCDC, 322 S.C. 189, 191, 47-S.E.2d 848, 849 (1996).

of Mandamus on May 17, 1993. A hearing was held on July 12, 1994, where the court granted the Respondent's Motion to dismiss the action. The South Carolina Supreme Court affirmed the court's dismissal of his habeas action in a publish opinion issued May 13, 1996. Phillip A. Brown v. SCDC, 322 S.C. 189, 191, 47- S.E.2d 848, 849 (1996).

Thereafter, Applicant filed an initial application for post-conviction relief on February 19, 2009. The State moved to summarily dismiss this action as untimely. On August 27, 2010, the Honorable Alison R. Lee, acting in her capacity as Chief Administrative Judge of the Fifth Judicial Circuit, signed a Conditional Order of Dismissal, provisionally dismissing the application but allowing Applicant twenty days to show why the dismissal should not become final. This Conditional Order of Dismissal was served on Applicant on September 14, 2010. After receiving no response from Applicant, a Final Order of Dismissal was entered on November 10, 2010.

In the interim, on April 14, 2010, Applicant, alongside counsel, appeared for a parole hearing. At the conclusion of the hearing, the parole board decided to conditionally award parole to Applicant upon the satisfaction of several conditions. Once notification of conditional parole was delivered to the victim's family, the Kershaw County Sheriff's Office, and the Fifth Circuit Solicitor's Office, the victim's family and the sheriff's office informed the parole board that they were never notified of the parole hearing in violation of as required under S.C. Code Ann. § 24-21-610. A subsequent parole hearing was held on September 8, 2010, at which time the parole board rescinded its conditional grant of parole and denied Applicant parole. Applicant appealed this decision to the South Carolina Administrative Law Court.

While the Administrative Law Court action was pending, Applicant filed this current application for post-conviction relief on October 26, 2011, alleging that his parole was unlawfully revoked without minimal due process. Respondent made its Return and Motion to Dismiss on November 1, 2011. On March 20, 2012, Judge Lee, acting in her capacity as chief administrative judge for the Fifth Judicial

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Circuit, signed a Conditional Order of Dismissal, provisionally denying the application but granting Applicant a hearing as to whether his parole had been unlawfully revoked. This hearing was held on March 4, 2013, before Judge Lee. Applicant was present and represented by counsel, Adam S. Tesh. Respondent was represented by Assistant Attorney General Robert D. Corney. After listening to argument from both parties, Judge Lee stayed the present action for the pendency of the Administrative Law Court action, of which this issue is also the sole issue to be determined.

On October 14, 2011, the Administrative Law Court dismissed Applicant's appeal, determining that his parole had been denied, not revoked. This Order was upheld by the South Carolina Court of Appeals in an unpublished opinion filed June 5, 2013. Subsequent petitions for rehearing and reinstatements were denied and a Remittitur was issued on January 13, 2014.<sup>3</sup>

A subsequent hearing on was held on July 17, 2014 before this Court. Applicant was present alongside counsel and Respondent was represented by Assistant Attorney General Megan E. Harrigan. At the start of the hearing, Respondent's renewed its Motion to Dismiss. After hearing argument from Respondent, Applicant conceded and stated that he understands that he is procedurally estopped from proceeding forward on this application in light of the rulings in his Administrative Law Court action finding that he was denied parole. This Court signed an Order of Dismissal on September 19, 2014, which was filed with the Richland County Clerk of Court on September 24, 2014. On October 9, 2014, Applicant filed a "Rule 59(E) Motion to Alter or Amend."

## II.

This Court's find that its Order of Dismissal 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.

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<sup>3</sup> A complete copy of all documents pertaining to the Administrative Law Court action was introduced as Respondent's Ex. No. 1 (without objection from Applicant) so as to provide this Court with a complete record of Applicant's numerous cases and filings.

State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds that there is no basis for altering or amending its prior ruling.<sup>4</sup> Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 20 day of October, 2014



L. CASEY MANNING  
Presiding Judge  
Fifth Judicial Circuit

Columbia, South Carolina

<sup>4</sup> The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.