

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4007909

Tremaine #337442 Wray

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), SCRCF;  Rule 41(a), SCRCF (Vol. Nonsuit);  Rule 43(k), SCRCP (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRCF;  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 31 March 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Tremaine #337442 Wray  
Lillian Marshall Coleman Newton

Rebecca Ann Roser

Megan Harrigan Jameson

Tremaine #337442 Wray

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

Clerk of Court \_\_\_\_\_

*Jeanette W. McBride*

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Tremaine Wray, #337442, )  
Applicant, )

Case No. 2012-CP-40-7909

v. )

**ORDER DENYING MOTION  
TO ALTER OR AMEND JUDGMENT  
PURSUANT TO RULE 59(e), SCRPC**

State of South Carolina, )  
Respondent. )

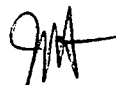
2015 MAR 27 AM 11:06  
JEANETTE W. MORRIS  
S.C. & G.S.  
RICHLAND COUNTY  
FILED

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

**PROCEDURAL HISTORY**

The records before this Court indicate that Applicant was indicted during the August 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-05914) for the shooting death of Dumuria "Hank" Johnson; co-defendant Taurus Watts was indicted similarly. Jack B. Swerling, Esquire, and Arie D. Bax, Esquire, represented Applicant. On October 5-15, 2009, Applicant proceeded to a jury trial before the Honorable J. Michelle Childs. The State was represented by Assistant Solicitors Vanessa C. Shipley and Joanna A. McDuffie of the Fifth Circuit Solicitor's Office. The jury convicted Applicant as indicted and Judge Childs sentenced him to forty years imprisonment.

A notice of appeal was filed and an appeal was perfected on Applicant's behalf by Appellate Defender Elizabeth A. Franklin-Best of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. Following briefing and argument, the South Carolina Court of

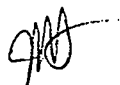


Appeals affirmed Applicant's conviction and sentenced by unpublished opinion. State v. Wray, 2012-UP-477 (S.C. Ct. App. filed August 8, 2012). The Remittitur was issued on August 27, 2012.

Applicant filed an application for post-conviction relief on November 29, 2012. Respondent made its Return on February 19, 2013, requesting an evidentiary hearing be held. Thereafter, Applicant, through his counsel, filed an amended application on July 7, 2014. In his amended application for post-conviction relief, Applicant alleged the following specific allegations:

1. Ineffective assistance of trial counsel for failure to call as gunshot residue expert to refute the State's expert;
2. Ineffective assistance of trial counsel for failure to call initial responding officer Weldon Gregory;
3. Ineffective assistance of trial counsel for failure to call eyewitness Timothy Weldon;
4. Ineffective assistance of trial counsel for failure to object to the State's vouching for the credibility of a witness during its closing argument;
5. Ineffective assistance of trial counsel for failing to interview or investigate the initial responding officer Weldon Gregory or his handwritten police report;
6. Brady violation against the State for its submission of the handwritten report of Officer Gregory with his name cut-off of the bottom;
7. Ineffective assistance of appellate counsel for failure to raise issues regarding gunshot residue in Applicant's appellate brief; and
8. Ineffective assistance of trial counsel for failure to impeach State's witness Ricky Jacobs with Officer Gregory's report.

An evidentiary hearing into the matter was convened November 3, 2014, at the Richland County Courthouse. At the hearing, Applicant proceeded forward on these grounds as listed in his amended application at the evidentiary hearing. Applicant was present at the hearing and was represented L. Marshall Coleman Newton, Esquire. Respondent was represented by Assistant Attorney Generals Megan E. Harrigan and J. Clayton Mitchell of the South Carolina Attorney General's Office.



At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from initial responding officer Weldon Gregory and Firearms Examiner Kelly Fite. Respondent presented testimony from trial counsels Jack B. Swerling and Arie D. Bax and appellate counsel Elizabeth A. Franklin-Best. Also before this Court were the following exhibits introduced by Respondent:

1. Respondent's Exhibit No. 1: Swerling's Handwritten notes labeled "Tim Weldon";
2. Respondent's Exhibit No. 2: MacDougall Investigative Notes/Memorandum Packet;
3. Respondent's Exhibit No. 3: Clark Memorandum of Interview Packet;
4. Respondent's Exhibit No. 4: SLED Gunshot Residue Corrected Report dated October 2, 2009
5. Respondent's Exhibit No. 5: Micro Analytical Packet, including "Questions Related to Gunshot Residue Analysis" and the Curriculum Vita of Jeffrey M. Hollifield;
6. Respondent's Exhibit No. 6: Investigator McRae's Notes; and
7. Respondent's Exhibit No. 7: Richland County Sheriff's Department Incident Report handwritten by Officer Weldon Gregory.

Following the hearing, this Court requested post-hearing memorandum from both parties solely addressing the allegation of ineffective assistance of appellate counsel. After reviewing these memorandums and all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court found that there were no constitutional deprivations or other grounds on which to grant relief and denied and dismissed this application with prejudice. This Court signed an Order of Dismissal on February 2, 2015, which was filed with the Richland Country Clerk of Court on February 12, 2015.

On February 24, 2015, Applicant served his "Motion to Alter of Amend Judgment Pursuant



to Rule 59(e), SCRCP” on Respondent and this Court. Respondent filed its Return on or about February 27, 2015, asking that this motion be summarily dismissed without argument, citing its lack of specificity, supporting authority.

### FINDINGS OF FACT AND CONCLUSION OF LAW

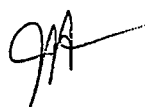
This Court finds that Applicant failed to state what the Court overlooked or misapprehended in its Order or how the Order should be altered or amended. Additionally, this Court notes that Applicant does not state any supporting case law or other authority to support his motion. Therefore, this Court agrees with Respondent’s interpretation that Applicant’s motion is a request for the Court to reconsider its ruling and grant him post-conviction relief. This Court finds that such a request is more properly addressed through the appellate process, not a motion to alter or amend pursuant to Rule 59(e), SCRCP. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e), SCRCP, motion is to preserve issues raised to but not ruled upon by the trial court). Therefore, this Court finds that this motion must be denied and dismissed.

Additionally, this Court’s 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) SCRCP. Having carefully reviewed the entire record in this matter, this Court finds that no basis for altering or amending is prior ruling.<sup>1</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

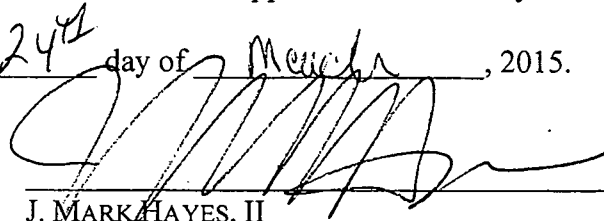
---

<sup>1</sup> The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-  
Page 4 of 5



Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 24<sup>th</sup> day of March, 2015.



J. MARK HAYES, II  
Presiding Judge  
Fifth Judicial Circuit

Columbia, South Carolina