

RE: 2012-CP\_23-3341 - Appellate case NO: 2014-000240

Dear Clerk:

Please find enclosed a Motion to vacate judgment in the above case I am filing with the court. Could you please Stamp file and send me a certified true copy back in return. Thanks.

Wilfredo Salas

Wilfredo Salas, #347611

This 20<sup>th</sup> Day of July, 2015

RECEIVED

JUL 23 2015

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Greenville County

Court of Common Pleas

Edward W. Miller Presiding Judge

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S.C. SUPREME COURT

Appellate Case No.: 2014-000240

Wilfredo Salas

Petitioner,

v.

State of South Carolina,

Respondent.

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Motion to Vacate Judgment pursuant  
to SCRPC Rule 60(b), (4), (5)

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Other Counsel of Record  
Attorney General Office  
Allen Wilson  
P.O. Box 11549  
Columbia, South Carolina 29211

Wilfredo Salas  
Kershaw C.I.  
4848 Goldmine Hwy  
Kershaw, S.C. 29067

STATEMENT OF THE CASE

The Petitioner was arrested for criminal sexual conduct with a minor. The Greenville County Grand Jury indicted him on Sep. 21<sup>th</sup>, 2010. The petitioner plead guilty based upon the State agreeing to reduce the charge to Lewd Act on a minor. On August 8, 2011 the Honorable Latitia H. Verdin sentenced the petitioner to the maximum of fifteen years imprisonment. See Enl

On August 17, 2011 Counsel filed a timely "post-trial" motion for "[R]econsideration of sentence". See Attachment (A) (Motion for reconsideration of sentence). As of this date there has not been an Order issued on the post-trial motion. See Attachment (B) (Letter from Clerk of Court)

On May 17, 2012 the Petitioner filed a post-conviction relief application asserting counsel were ineffective in his representation of him for several reasons. The Respondent made a return on August 31, 2012. An evidentiary hearing into the matter was convened on October 23, 2013 at the Greenville County County Courthouse. The Honorable Edward W. Miller issued an order denying relief. Order filed January 8, 2014. Post-Conviction counsel filed a Notice of Appeal. Wilfredo v. State, Appellate Case No.: 2014-000240 This Court dismissed the appeal by way of an Order filed December 10, 2014.

The petitioner filed a second post-conviction relief application dated January 16, 2015. Wilfredo Sales V. State, Case No.: 2015-cp-23-00985. This application is currently pending.

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Enl The Petitioner was represented by Scott D. Robinson, Esquire during the guilty plea.

## ARGUMENT

Petitioner asserts this Court judgment filed December 10, 2014 in this case is void ab initio as a matter of law because it is no longer equitable that the judgment should have prospective application because this court did not have the authority and was without subject matter jurisdiction to issue an Order in the instant case because applicant's plea counsel filed a timely "post-trial" motion for "[R]econsideration of sentence" on his behalf pursuant to Rule 29(a), Scrimp which is currently pending at this time. See Attachment (b), supra. See Fn1

In any event petitioner's post-conviction relief application should not have been accepted for filing in the first place pursuant to Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989) and should not have been ruled upon by the PCR Court because his guilty plea counsel still remain counsel of record for him on his his "post-trial" motion for "Reconsideration of sentence". Had PCR Counsel, the Attorney General and guilty plea counsel informed the PCR court of the pending motion, its more then likely the PCR court would have dismissed the application without prejudice pursuant to Foster and this court would not have been in a position to vacate its judgment.

Its clear pursuant to Rule 71.1 (b) the PCR court and this court was without subject matter jurisdiction to issue an Order because petitioner's post-conviction were filed and ruled upon during the time in which an appeal

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Fn1 Pursuant to S.C.R.Civ.P Rule 71.1(B) "time and form of application" An application for post-conviction relief "[c]annot" be made while an appeal from conviction or sentence is pending or during the time in which an appeal may be perfected".

from conviction or sentence is pending or during the time in which an appeal may be perfected. See Wilder v. State, 696 S.E.2d 587 (2010) (A timely motion to Reconsider sentence toll time to file an appeal. Rule 203(b),(2)). The

PCR Court Order and this court Order could effect petitioner's rights to adjudicate his ineffective assistance of counsel claims once an order is filed and could impact petitioner's statutory rights to seek post-conviction after his direct appeal in the instant case pursuant to S.C. Code Ann § 17-27-45(a) which states in relevant part:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

Therefore, this court should exercise its original jurisdiction and vacate the PCR court judgment and this court's judgment pursuant to Rule 71.1(b)- Al-Shabazz, 527 S.E.2d 747 (S.C.2000) and Foster.

#### CONCLUSION

It is respectfully asked that this court vacate the PCR Court judgment and this court judgment so petitioner can first perfect an appeal and then post-conviction relief as a matter of law, where the court's was without subject matter jurisdiction.

This 20<sup>th</sup> Day of July, 2015

Wilfredo Salas, #347611

Wilfredo Salas

(Attachment "A")

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
State of South Carolina, )  
 )  
 )  
vs. )  
 )  
Wilfredo Salas, )  
 )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE GENERAL SESSIONS

C.A. NO.: I-479542

FILED-CLERK OF COURT  
PAUL E. ROSENBERG  
CLERK OF CO. SC

2011 AUG 17 PM 4: 22

**MOTION FOR RECONSIDERATION OF SENTENCE**

The defendant, by and through undersigned attorney, moves the Court to reconsider his sentence in the above-mentioned matter. On August 8, 2011, the defendant pled guilty to the crime of Lewd Act on a Minor and received the maximum sentence of fifteen (15) years. The defendant believes that the sentence is harsh and unfair considering the following:

1. Contrary to what the State seemed to allege at the hearing, there was no record of any penetration either penile or digital;
2. Contrary to what the State seemed to allege at the hearing, there was no record of "vaginitis;"
3. Contrary to what the State seemed to allege at the hearing, there was no record of the child being affected negatively by any action allegedly taken by the defendant. In fact, the documents filled out by the maternal grandmother indicated no depression, acting out or talk of sex by the minor child;
4. The interests of justice and fairness would be served if the court were to reconsider her sentence and convene a hearing on the matter;

5. The criminal record of the defendant is minor; and
6. The defendant is the father of two minor children with the mother of the child that made the allegation against him.

Respectfully submitted,



Scott D. Robinson (SC Bar ID # 65351)  
9 East Avenue  
Greenville, SC 29601  
ATTORNEY FOR DEFENDANT

Dated: 8/17/11

( Attachment "B" )



Office of the Clerk of Court  
Greenville, South Carolina  
**Paul B. Wickensimer**  
Clerk of Court

Circuit Court Division  
Greenville County Courthouse  
305 East North Street  
Greenville, South Carolina 29601  
(864) 467-8551 FAX (864) 467-8540

January 5, 2015

Wilfredo Salas #347611  
Kershaw C.I.  
4848 Goldmine Hwy  
Kershaw, SC 29067

Re: I479542

Dear Mr. Salas:

Your letter postmarked 12-31-2014 was received 1/2/2015. As of today's date, no order in relation to the Motion for Reconsideration of Sentence filed 8/17/2011 has been filed with the Clerk of Court for the above referenced charge.

Sincerely,  
Clerk of Court  
Greenville County General Sessions

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

Greenville County  
Court of Common Pleas  
Edward W. Miller Presiding Judge

S.C. SUPREME COURT

Appellate Case No.: 2014-00240

Wilfredo Salas. . . . . Petitioner,  
v.  
State of South Carolina. . . . . Respondent.

Certificate of Service

I, Wilfredo Salas the petitioner in the above captioned matter hereby certify that a true copy of petitioner Motion to vacate judgment Pursuant to SCRPC Rule 60(b)(4,5) was served upon Mr. Daniel E. SHEAROUSE, Clerk of Court and Allen Wilson, Attorney General office by mailing a copy properly addressed, via first class U.S. mail, with sufficient postage affixed there to this 20 day of July, 2015 to:

Post office Box 11330  
Columbia, South Carolina  
29211

Post office Box 11549  
Columbia, South Carolina  
29211

Sworn to and Subscribed  
before me this — day of  
July, 2015

Respectfully Submitted,

Wilfredo Salas

July 20, 2015

Dilfredo Salas #347611  
Pershaw Corr. Inst. (P.B. 51)  
848 Goldmine HWY  
Pershaw, S.C. 29067

The Supreme Court of South Carolina,  
Daniel E. Shearouse, Clerk of Court.  
Post office Box <sup>(11330)</sup> 11330  
Columbia, South Carolina 29211

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