STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
)
2014 MAY -2 A 11: 11 **Case No: 2012-CP-32-3136**
)
Michael Elders,) BETH A. CARRIGG
S.C.D.C. No. 345023,) CLERK OF COURT
) LEXINGTON, SC
Applicant,) **ORDER OF DISMISSAL**
)
v.)
)
State of South Carolina,)
)
Respondent.)

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR) filed August 2, 2012. Respondent made its Return. An evidentiary hearing into the matter was convened on at the Lexington County Courthouse on August 14, 2013. Applicant was present at the hearing and was represented by Tristan Shaffer, Esq. Respondent was represented by Walt Whitmire, Esq., of the South Carolina Attorney General's Office. Counsel testified at the hearing.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the trial transcript, and Applicant's appellate records.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the October 2009 term of the Court of General Sessions for Lexington County for criminal sexual conduct with a minor, first-degree (2009-GS-32-2677). Applicant was then indicted at the February 2011 term for lewd act upon a minor (2011-GS-32-0364). He was represented by William

Rast, Esq. On March 2, 2011, Applicant proceeded to trial where he was found guilty as charged. He was sentenced by the Honorable William P. Keesley, to a thirty (30) year term of imprisonment for criminal sexual conduct with a minor, first-degree and to a fifteen (15) year term of imprisonment lewd act upon a minor. The sentences were to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf. Applicant was represented by Elizabeth Franklin-Best, Esq., of the Office of Appellate Defense. The appeal was subsequently withdrawn.

At the PCR hearing, Applicant proceeded with his action on following claims:

1. Ineffective assistance of counsel:
   a. failure to investigate Applicant's case in consulting an independent medical expert on sexual trauma;
   b. failure to object to Miller-Dupree being qualified as an expert in child abuse assessment and forensic interviewing;
   c. failure to object to Miller-Dupree's alleged bolstering of the victim's credibility;
   d. failure to object to Agent Caldwell being qualified as an expert in child abuse assessment;
   e. failure to object to allegedly improper hearsay from the Robin Baker, the SANE nurse;
   f. failure to object to the solicitor pitting defense witness Gene Elders;
   g. failure to object to improper comments made the solicitor in her opening and closing statements;
   h. failure in waiving his opening statement.

SUMMARY OF TESTIMONY

Counsel testified he was retained soon after Applicant's arrest. He had known Applicant and his family for some time and had successfully represented Applicant in prior cases where Applicant was either acquitted or had his charges dismissed on those prior cases. He noted that three of these six cases were brought by Applicant's wife. Counsel had also represented other

members of Applicant's family. Counsel stated that Applicant's case was going to proceed to trial from the beginning where the State made no viable plea offer and Applicant protested his innocence. He independently investigated the State's evidence and formulated a defense theory of the case. Counsel did not employ a private investigator and found one unnecessary where he was intimately familiar with all of the relevant family members. Counsel met with Applicant numerous times and apprised him of victim's statement and the forensic interview. He advised Applicant that tape of the victim's forensic interview constituted admissible evidence. Counsel testified that Applicant's brother and father were the only possible beneficial character witnesses to consider calling at trial. Counsel interviewed the victim's doctor and called him at trial to testify to the victim's good health and lack of symptoms commonly present abused children. Based upon counsel's pre-trial consultations with Applicant, counsel was under the impression that Applicant would testify. Counsel advised Applicant to testify during these consultations. Counsel was surprised with Applicant decided not to testify during the course of trial. Applicant's decision surprised and dismayed counsel who reasoned Applicant was a critical witness for the defense's theory of the case.

He stated that accusations against Applicant originated when Johnny Hutto witnessed the victim sitting in Applicant's lap while Applicant was operating his truck. He noted that Shelly Elders, the victim's mother, and her family disdained Applicant well before Hutto's encounter or the victim's disclosures. Thus, counsel developed a narrative to show the event that Hutto witnessed between Applicant and the victim was ambiguous and innocent. It was the defense's theory that the allegations of sexual misconduct took a life of their own once conjecture circled Shelly Elders' family. Counsel elicited testimony that Hutto never saw sexual contact between Applicant and the victim. Counsel intended on calling Hutto during his case-in-chief to illustrate

the defenses' theory on how allegations of Applicant's sexual misconduct with the victim manifested. Although counsel did not anticipate eliciting testimony from Hutto that Applicant had made friendly gestures, interpreted by the witness as inappropriate, to high school girls in the neighborhood, he reasoned the testimony did not warrant an objection. (Trial Tr. p.295). Counsel stated he reasoned "honking the horn does not lead to molesting one's own daughter." Counsel did not object to improper hearsay and speculative testimony from family witnesses because it played into the presentation of defendant's case. It was an important part of the counsel's presentation his case to portray the adverse family witnesses as an irrational mob predisposed to falsely accuse Applicant of inappropriate behavior. Counsel noted that this was critical to attack the credibility of these witnesses. Unsubstantiated rumors of prior abuse was utilized to benefit Applicant's case where no third party witnessed Applicant molest the victim. (Trial Tr. p.213; p.233). He stated, "sometimes people will believe where there's smoke there's fire."

Counsel also testified that part of the defense theory of the case was to impeach the victim's credibility by showing that she was employed as a conduit for her mother who had a motive to send Applicant to prison. The victim's mother had a history of abusing narcotics. It was counsel's recollection that the victim would look in the direction of her mother when she could not remember details at trial. He noted that it was the defense's theory that the victim's mother was the underlying catalyst that led to Applicant's arrest.

Applicant alleged counsel was ineffective for waiving his opening statement. Counsel testified that it is his general practice in criminal trials where the jury has yet to hear testimony and view evidence. It was his opinion that juries ignore opening statements from attorneys. Counsel reasoned that he does not want to be ignored in his first substantive interaction with the jury. Applicant alleged counsel was ineffective for not sufficiently objecting to the expert

qualifications or testimonies from the State's two forensic interviewers, Miller-Dupree and Agent Caldwell. (Trial Tr. p.194) Counsel noted that he interviewed Miller-Dupree, who conducted the taped interview with the victim, prior to trial. Counsel could not recall if he made a motion to redact portions of the taped interview. Counsel objected to the State calling Agent Caldwell, a second interviewer, as an expert in forensic interviewing where she never met with the victim. (Trial Tr. pp.322-23). He reasoned the State called Agent Caldwell to explain the phenomena of delayed disclosure in child abuse cases. It was counsel's strategy to impeach the victim on the delayed disclosures. Counsel noted he elicited inconsistent testimony from Agent Caldwell and Miller-Dupree on the purpose and role of forensic examination. Applicant alleged counsel was ineffective for failing to object to Miller-Dupree's assessment of the interview as "not problematic" and her testimony that it was recommended that the victim receive evidence based therapy. (Trial Tr. p.203; p.208). Counsel reasoned the objection was not warranted in light of his opinion that neither testimonies from Miller-Dupree or Agent Caldwell held credibility. Last, Applicant alleged counsel was ineffective for failing to properly object to Robin Baker, the SANE nurse who treated the victim, to hearsay testimony regarding her pre-screening interview with the victim. Applicant alleged the objection was not properly preserved for appellate review because counsel failed to contemporaneously reference Rule 803, SCRE, or Rule 404(b), SCRE. (Trial Tr. pp.266-67).

Applicant alleged counsel was ineffective for not objecting to the solicitor's pitting of Gene Ray Elders Jr., Applicant's brother's, testimony against prior testimony from State witnesses. (Trial Tr. p.361, lines 15-21). Counsel agreed that the manner the solicitor's question was posed was objectionable but that he did not object because the question was relevant to the

case. Furthermore, the question caught him off guard. Applicant also alleged counsel's performance in cross-examining the victim was inadequate. (Trial Tr. p.182).

Applicant alleged counsel was ineffective for not objecting to three "Golden Rule" violations during the solicitor's opening and closing argument. (Trial Tr. p.263, lines 14-19; p.163, lines 16-20, p.392, lines 14—p.393, line 1). Counsel testified that he is generally deterred from objecting during a solicitor's argument at the risk of isolating through an interruption. He testified that he evaluates whether or not to object in opening statements or closing arguments on a case-by-case basis. Counsel noted that a solicitor's closing argument is inherently and permissibly prejudicial to an accused. He was hesitant to assert even in hindsight that the above referenced comments constituted impropriety. Counsel was not familiar with recent case law on the matter. Applicant also alleged counsel was ineffective for not objecting to similar comments made by the solicitor that were unduly prejudicial. (Trial Tr. p.386, lines 3-11). Counsel noted the comments here illustrated his success in exploiting the inconsistent responses from Dupree-Miller and Agent Caldwell on the fundamental role of the forensic interviewer. Counsel ~~stated~~ reiterated the same trial strategy for his decision not to object.

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra.* 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant claims that due to his attorney's sub-standard performance, he has been denied his constitutionally protected right to

counsel. In deciding a claim of ineffective assistance of counsel, the focus is on "the fundamental fairness of the proceeding whose result is being challenged." Strickland v. Washington, 466 U.S. 668 (1984). Applicant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. This Court finds that Applicant was not deprived of effective assistance of counsel. This Court finds that counsel did perform an adequate investigation into the facts of the case. Defense counsel's decisions not to object to testimony and arguments of the State were reasonable in the circumstances, and did not fall below professional norms of reasonableness. This Court finds that counsel's decisions to waive the opening argument and to illicit testimony about Applicant's wife's past suspicions of abuse were reasonable trial strategies. The Court finds that defendant was not prejudiced by counsel's arguments that it was the job of the forensic investigator to "tell the truth."

A.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to consult an independent expert in sexual trauma in preparation for trial. This Court finds counsel made a valid strategic decision to consult and present the victim's treating physician. Dr. Carroll testified the victim did not disclose abuse. (Trial Tr. p.345). He noted the victim was a normal and well cared for child. (Trial Tr. p.344). Dr. Carroll's testimony aligned with defense's theory of the case. Although Dr. Carroll did not perform examinations on the victim's genitals relevant to trauma associated with sexual abuse, this Court is not persuaded counsel's performance here constituted deficient performance. Counsel vigorously cross-examined the SANE nurse. (Trial Tr. pp.279-84). Furthermore, Applicant failed to present expert testimony

from a medical professional relevant to the allegation.[1] See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence."). Therefore, this allegation is denied and dismissed.

B.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to object to Miller-Dupree's qualification as an expert in forensic interviewing and child abuse assessment or objecting to the portions of her testimony at issue. "This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial." Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993). At the time of Applicant's trial, the controlling case law rendered any error qualifying Miller-Dupree as an expert harmless at best. See State v. Baker, 390 S.C. 56, 67, 700 S.E.2d 440, 445 (Ct. App. 2010). Furthermore, Miller-Dupree's testimony that the victim's disclosures were "not problematic" did not equate to prejudice at the time of trial. This Court also finds the clinical professional did not bolster the victim's testimony when she testified to her recommendation that the victim obtain therapy. Even if objectionable, her testimony would not have warranted a mistrial at the time of trial. See State v. Dawkins, 297 S.C. 386, 377 S.E.2d 298 (1989) (testimony of psychiatrist who treated child victim of sexual assault was improper where psychiatrist answered "yes" to solicitor's question of whether, based on his examination and observations of the victim, he was "of the impression that [the victim's] symptoms [were] genuine."). Last, Applicant failed to prove counsel was ineffective for not adequately specifying his objection to Baker testifying to pre-examination interview with the victim. "For an objection

[1] PCR counsel apprised the Court of his efforts to fully investigate and present this allegation at the PCR hearing.

to be preserved for appellate review, the objection must be made at the time the evidence is presented, State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996), and with sufficient specificity to inform the circuit court judge of the point being urged by the objector; Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011). The trial judge implicitly recognized the grounds for the objection when he overruled counsel's objection and noted the testimony was cumulative. (Trial Tr. pp.267-68). Furthermore, any preservation argument here is speculative where Applicant withdrew his intent to appeal his conviction. See Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) ("PCR is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal."). Therefore, these allegations are denied and dismissed.

B.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to object to speculative bad act testimony from Katlyn Bradley and Shelly Elders. The victim's cousin and mother both testified that their family had suspected Applicant had been abusing the victim for a period of time prior to the victim's disclosures. (Trial Tr. p.213; p.230). This Court certainly agrees that the testimony at issue was objectionable. However, counsel made a valid strategic decision to not object because the testimony played right into the defense's theory of the case that the "questionable" allegations were the direct product of a "witch hunt" caused by the maternal family of the victim and their long standing hatred of the Applicant. See Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) ("When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel."). It was critical to Applicant's case to develop a timeline of when these

family members were told of the abuse and how they perpetuated the allegations to others. Counsel presented this timeline in the context of Jonny Hutto's eyewitness account of the events that occurred on June 27, 2009. (Trial Tr. pp.291-92). See Sanchez v. State, 351 S.C. 270, 569 S.E.2d 363 (2002) (Burnett & Toal, JJ., dissenting) (noting that there are circumstances where it may be reasonable trial strategy for counsel to decline to object to inadmissible hearsay testimony in a case involving criminal sexual conduct.). Counsel testified he executed a sound trial strategy. This Court agrees. This Court further finds counsel's testimony that Applicant's case was most adversely effected by Applicant's charge of heart in the middle of the trial to not take the stand in his own defense to be compelling. Counsel discussed the matter and presented "the witch hunt" theory of defense in reliance that Applicant would take the stand. This Court finds counsel adequately consulted Applicant on the matter prior to trial.

Last, this Court finds Applicant failed to meet his burden to prove counsel was ineffective for eliciting objectionable testimony from Johnny Hutto by posing the question, "Have you seen [Applicant] around other children in the neighborhood and family?" (Trial Tr. p.295, lines 17-18). This Court agrees with counsel that "blowing the horn" at teenage girls bears negligible relationship to the child molestation of one's child. The witness's unresponsive testimony would not have merited a mistrial. Furthermore, counsel immediately elicited testimony from Hutto that he had never witnessed Applicant inappropriately touch family children or any other young girls after Hutto made the comment in question. (Trial Tr. pp.295-96). Counsel's performance here brought out Hutto's animosity and bias towards the Applicant without eliciting prejudicial testimony. Therefore, these allegations are denied and dismissed.

C.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for

failing to object to the solicitor's alleged pitting of a defense witness. The solicitor posed the following question to Gene Elders, Applicant's brother at issue:

> Solicitor: "So everyone that's come in here and said that, Johnny Hutto that was in the house, [the victim], that they slept in that bed, your're telling this jury that they didn't sleep in the bed?"
>
> Gene Elders: "No, Jonny and [Applicant], when everything started, everything started on the outside of the house. Johhny was drunk, you know, and then Johnny started on [Applicant].

(Trial Tr. p.361, lines 15-22).) "Improper pitting constitutes reversible error only if the accused was unfairly prejudiced." Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990). The witnesses answer negated any potential prejudice where he clarified that Hutto's encounter with Applicant occurred outside the residence. Although the solicitor posed an in artful compound question here, the question's substance concerned issues not in dispute that were not particularly prejudicial. Therefore, this allegation is denied and dismissed.

D.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to object to the solicitor's allegedly improper comments made during her opening and closing statements. This Court finds counsel's testimony here credible.

First this Court finds alleged instances of a "golden rule violation" did not warrant objections from counsel. "A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice." State v. Reese, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006). "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166

(2002). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. Counsel testified that the comments at issue did not warrant an objection. This Court agrees with counsel. This Court finds the solicitor' comment that sexual misconduct with one's own child constituted a betrayal of trust was not objectionable. (Trial Tr. p.162). Neither was counsel ineffective for failing to object to the solicitor's comments on the inherent turmoil a child victim undergoes in testifying against a parent. (Trial Tr. p.165; p.384 p.392; p.393).

This Court also finds Applicant failed to prove counsel was ineffective for failing to object to allegedly improper bolstering and vouching in the solicitor's closing argument. "A solicitor cannot vouch for the credibility of a witness by expressing or implying his personal opinion concerning a witness' truthfulness.... Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity." Gilchrist v. State, 350 S.C. 221, 227, 565 S.E.2d 281, 285 (2002). This Court finds counsel opened the door for the solicitor to comment on the interview assessments from Miller-Dupree. Counsel's exceptional performance in cross-examining the two forensic interviewers negated any prejudicial impact from the solicitor's comments that Miller-Dupree's finding that the victim's interview was "not problematic" inferred credibility where Miller-Dupree explicitly testified that she does not personally assess the truthfulness of a child victim's disclosure. (Trial Tr. p.386). Counsel elicited contradictory testimony from Miller-Dupree and Agent Caldwell regarding the purpose of the forensic interview and the role of the forensic interviewer. As a result, the testimonies were vague, confusing, and certainly did not read as convincing.

Counsel executed a reasonable trial strategy in limiting possible objections in the State's

opening or closing statements. Counsel noted that he only objects to an improper argument when it is unduly prejudicial. Counsel offered valid reasons that supported his minimalist approach in opening and closing portions of a trial. Lastly, Applicant's allegation that counsel was ineffective for failing to make an opening statement is without merit where there is no per se duty on a criminal defense attorney to make an opening statement just for the sake of it. The jury was properly noticed on procedures, the State's burden of proof, and the applicable law from the Trial Judge. Furthermore, counsel strategy here was consistent with his reasoning in refraining from making objections in argument unless absolutely warranted. Furthermore, Applicant failed to meet his burden to prove that any of the solicitor's comments at issue were unduly prejudicial and warranted a mistrial. Therefore, these allegations are denied and dismissed.

E.

Except as discussed above, this Court finds that Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his

Application for Post-Conviction Relief. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 28th day of April, 2014.

EDGAR W. DICKSON
Presiding Judge
Eleventh Judicial Circuit

Orangeburg, South Carolina

FILED
2014 MAY -2 A 11: 11
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP3203136

Michael Elders #345023	State Of South Carolina
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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.**

5/28/2014

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **29th of May 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Tristan Michael Shaffer
4701 Oleander Drive Myrtle Beach, SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

John Walter Whitmire
PO Box 11549 Columbia, SC 292111

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

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.