

RECEIVED

MAR -9 2016

SC SUPREME COURT

IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM LEXINGTON COUNTY

COURT OF COMMON PLEAS

J. MARK HAYES, CIRCUIT COURT JUDGE

2012-CP-32-4389

Alexander Lynch,.....Petitioner.

vs

The State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Alexander Lynch appeals the Honorable W. Jeffrey Young's June 6, 2013 Order of Dismissal under Docket Number 2011-CP-32-0473 pursuant to Austin v. State. Undersigned counsel received notice of entry of Judge Hayes' order on February 29, 2016. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Anna R. Good
Law Office of Anna Good, LLC
PO Box 7284
Columbia, South Carolina 29202
Telephone: (803) 661-6758
Fax: (803) 403-8752

Attorney for the Petitioner.

March 9, 2016.

OTHER COUNSEL OF RECORD:
Patrick Schmeckpepper, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549

RECEIVED
MAR - 9 2016
SC SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

J. MARK HAYES, CIRCUIT COURT JUDGE
2012-CP-32-4389

Alexander Lynch,.....Petitioner.

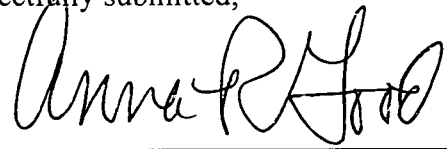
vs

The State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Anna Good, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Patrick Schmeckpepper, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 9th day of March 2016.

Respectfully submitted,



Anna R. Good, Esquire
Law Office of Anna Good, LLC
PO Box 7284
Columbia, South Carolina 29202

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

RECEIVED

Alexander Lynch, # 341145,

2016 FEB 16

P 12:05

2012-CP-32-4389

MAR - 9 2016

SC SUPREME COURT

Applicant,

BETHEL G. BRIGG
CLERK OF COURT
LEXINGTON, SC

ORDER GRANTING AN APPEAL
PURSUANT TO AUSTIN V. STATE¹

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed October 31, 2012. The Respondent made its Return on July 8, 2015, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing on the matter was convened on January 14, 2016, at the Lexington County Courthouse. Applicant was present at the hearing and represented by Anna Good, Esquire. Patrick Schmeckpeper, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted during the June 2010 term of the Lexington County Grand Jury for murder/homicide by child abuse (2010-GS-32-0516). Elizabeth C. Fullwood, Esquire, represented the Applicant. On June 7, 2010, Applicant appeared before the Honorable R. Knox McMahon and pled guilty. Judge McMahon sentenced Applicant to life imprisonment.

A timely notice of appeal was filed on Applicant's behalf. In an order dated August 13, 2010, the South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Rule

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

203(d)(1)(B)(iv), SCACR, for failure to make a showing that his argument was raised to or ruled upon by the circuit court judge. The Remittitur was returned on August 31, 2010.

Applicant subsequently filed for post-conviction relief on February 4, 2011 (2011-CP-32-0473). In his application, Applicant asserted claims of ineffective assistance of counsel. An evidentiary hearing was convened on August 14, 2012, at the Lexington County Courthouse before the Honorable W. Jeffrey Young. Applicant was present at the hearing and was represented by Daniel E. Kienker, Esquire. By written Order filed June 6, 2013, Judge Young denied and dismissed Applicant's post-conviction relief action. Applicant did not appeal.

ALLEGATIONS

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel
 - a. PCR Counsel was ineffective in failing to file an appeal following the denial of application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Prior to the start of the evidentiary hearing, the State indicated to this Court that they would be consenting to the grant of an Austin appeal. The State explained that they were consenting based off of their discussion with prior PCR Counsel, a review of a letter sent to Applicant from PCR Counsel, and discussion with Applicant's current PCR Counsel.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that the



FILED
CLERK OF SUPERIOR COURT
LEXINGTON, SC
MAY FEB 16 2 20
FILED

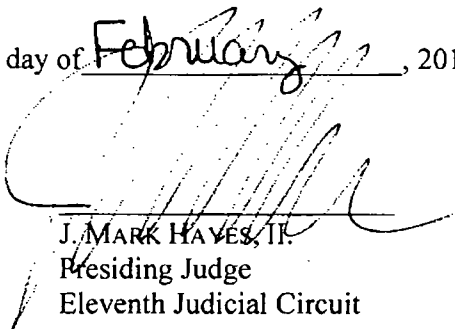
Applicant is entitled to appeal the denial of his first post-conviction relief application (2011-CP-32-0473) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first post-conviction relief action (2011-CP-32-0473) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

1. That the Applicant be granted an appeal of case 2011-CP-32-0473 pursuant to Austin v. State; and
2. That the Applicant remains in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 3rd day of February, 2016.


J. MARK HAYES, II.
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina.

FILED
2016 FEB 16 P 12:05
BETH A. CAMPBELL
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 2012CP3204389**

Alexander Edward Lynch #341145	State of South Carolina
-----------------------------------	-------------------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <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	Judge Code	Date 2/24/2016
---------------------	------------	---

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 **February 24, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Anna Rawl Good PO Box 7284 Columbia, SC 29202

Patrick Lowell Schmeckpeper PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

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.

Rec'd 2129116

2

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 Alexander Lynch,)
 S.C.D.C. No. 341145)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No. 2011-CP-32-0473

ORDER OF DISMISSAL

FILED
 2013 JUN 19 A 11:08
 BETTIE A. CHIRNOG
 CLERK OF COURT
 LEXINGTON, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 4, 2011. Respondent made its Return on or about August 8, 2011. An evidentiary hearing was convened on June 8, 2009, at the Lexington County Courthouse. Applicant was present at the hearing and was represented by Daniel E. Kienker, Esquire. Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Elizabeth C. Fullwood, Esquire. This Court had before it the records of the Lexington County Clerk of Court, the guilty plea transcript, the appellate records, and Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the June 2010 term of the Lexington County Grand Jury for Murder/Homicide by Child Abuse (2010-GS-32-00516). Elizabeth C. Fullwood, Esquire, represented the Applicant.



ORIGINAL

On June 7, 2010, Applicant pled guilty before the Honorable R. Knox McMahon and was sentenced to life imprisonment.

A timely notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals subsequently dismissed Applicant's appeal on August 13, 2010. Applicant's appeal was dismissed because Applicant argued he is innocent of the crime of which he was convicted; however, Applicant failed to show this argument was raised to or ruled upon by the circuit court judge. Remittitur was issued on August 31, 2010.

At the August 14, 2012 evidentiary hearing, Applicant moved forward on one allegation of ineffective assistance of counsel: (1) failure to investigate the admissibility of Applicant's incriminating statements made to law enforcement in advising him to plead guilty.

II. 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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Counsel

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), SCRPC). 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. Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, 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, supra). Second, counsel's deficient performance must have prejudiced 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). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to Investigate

At the PCR hearing, Applicant asserts that counsel failed to adequately investigate his case. Applicant stated that he met with plea counsel three times. Applicant stated that discovery was mailed to him. Applicant stated that plea counsel discussed discovery upon their second consultation. Applicant stated that he always wanted to proceed to trial. Applicant stated that



ORIGINAL

plea counsel discussed trial strategy upon the third consultation. Applicant stated that plea counsel advised Applicant to testify in his own defense at trial.

FILED
2013 JUN 19 A 11:04
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

A week after the last consultation, Applicant stated that he was brought to court where plea counsel advised him to enter a guilty plea. Applicant stated that plea counsel's advice was based on the strength of the State's case, particularly in regards to the inculpatory statements Applicant made to law enforcement after his arrest. Applicant stated that plea counsel never discussed the statements in question with him. Applicant further stated that plea counsel never explained to him that she could make a motion in-limine to suppress his statements.

Applicant stated that before he was interrogated, he waived his right to remain silent. Applicant stated that he understood the waiver and signed a Miranda statement to that effect. Yet, Applicant asserted that he revoked his waiver during the interrogation. Applicant stated that the police officers would not end the interrogation until he told them what they wanted to hear. Applicant stated that because Applicant was depressed and just wanted to end the interrogation and return to his cell, he complied.

Applicant requested this Court to vacate his guilty plea because of plea counsel's failure to investigate the admissibility of his post-arrest incriminating statements. However, upon cross-examination the Applicant did state that the plea court did advise him that he was waiving his right to contest incriminating statements made during plea colloquy.

At the PCR hearing, plea counsel testified that she discussed the incriminating statements Applicant made to the police on the first consultation. Plea counsel stated that she fully inquired to Applicant's version of the facts of the offense. Applicant gave a detailed accounting of his version of the offense to plea counsel. Plea counsel stated that Applicant told her that he gave two incriminating statements to law enforcement. One statement was given at the scene of the



ORIGINAL

offense and the other was made in custody.

Plea counsel testified that upon the second consultation, plea counsel reviewed discovery and discussed her investigation of the case with Applicant. Plea counsel reviewed the social history and the medical reports of the child-victim. Plea counsel further interviewed the pathologist and researched the shaken-baby syndrome defense. Plea counsel stated that Applicant did not provide her with any potential defenses or witnesses. Plea counsel stated that her defense at trial would have been that the infant's death was accidentally caused by Applicant. Plea counsel investigated the incriminating statements that Applicant made to law enforcement to determine admissibility. Plea counsel advised Applicant regarding the procedure at trial to attack the admissibility of his statements. However, plea counsel stated that Applicant never told her that the second incriminating statement that he gave was the product of coercion.

Plea counsel testified that she did not enter plea negotiations with the State. She only advised Applicant to plead guilty after he told her the he intentionally caused the infant-victim's death. Plea counsel stated Applicant had been receptive to entering a guilty plea. Plea counsel stated that it was Applicant's decision to plead guilty and that she was prepared to proceed to trial if he chose not to plead guilty.

This Court finds Applicant's allegation that plea counsel was ineffective for failing to investigate and advise Applicant regarding the admissibility of his incriminating statements is without merit. This Court finds plea counsel's testimony to be credible. This Court finds plea counsel diligently investigated Applicant's case and made reasonable inquiries into possible defenses. This Court finds plea counsel reasonably investigated Applicant's incriminating statements made pursuant to a valid Miranda waiver. Furthermore, Applicant entered his guilty plea and waived his right against self-incrimination without notifying the guilty plea court of the

ORIGINAL

alleged coercion he alleges now. (Tr. 5, Lines 7-13).

Furthermore, this Court finds Applicant's allegation is entirely based on speculation. This Court finds that Applicant failed to present any evidence that showed his second incriminating statement would have been inadmissible at trial. Applicant did not produce the statement nor did he present evidence to attack its admissibility. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

Therefore, Applicant fails to prove plea counsel was ineffective. An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Additionally, this Court finds Applicant failed to establish any resulting prejudice from counsel's alleged error. Applicant never alleged that his first incriminating statement was inadmissible. Thus, the alleged error at best would have proved harmless. Therefore this claim is denied and dismissed.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented. 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



ORIGINAL

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 (Cl. App. 1987). The 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.

FILED
JUN 11 11 00 AM
DEPT. OF PROBATION
CLERK OF COURT
SUMNER, SC

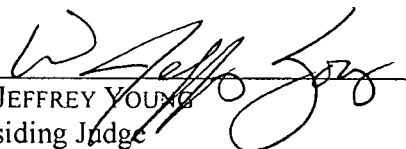
CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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.

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 this 6 day of June, 2013


W. JEFFREY YOUNG
Presiding Judge
Eleventh Judicial Circuit

Sumter, South Carolina.

WCD
11

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3200473

Alexander Edward Lynch #341145	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.**

2156
6/20/2013
Circuit Court Judge
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 the 20th day of June 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Daniel D. Kienker 1527 Blanding St. Columbia, SC 29201
 ATTORNEY(S) FOR THE PLAINTIFF(S)

John Walter Whitmire 1301 Heidt St. Columbia, SC 29204
 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.