

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*
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April 18, 2016

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

The Honorable James C. Campbell
Clerk, Sumter County
215 N. Harvin Street
Sumter, SC 29150

RECEIVED

APR 20 2016

S.C. SUPREME COURT

RE: Gregory Wright, #166553, v. State of South Carolina
2015-CP-43-1370

Dear Mr. Shearouse and Mr. Campbell:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Wright in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Wright in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Daniel Gourley, AAG
Loriene French, OAD
Gregory Wright, #166553

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

APR 20 2016

The Honorable Brooks P. Goldsmith, Circuit Court Judge **SIC: SUPREME COURT**

Case No. 2015-CP-43-1370

Gregory Wright, #166553,Petitioner,

v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable Brooks P. Goldsmith's Order dated March 30, 2016, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on April 12, 2016. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer
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April 18, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

RECEIVED

The Honorable Brooks P. Goldsmith, Circuit Court Judge

APR 20 2016

Case No. 2015-CP-43-1370

S.C. SUPREME COURT


Gregory Wright, #166553,Petitioner,

v.

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

PROOF OF SERVICE

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Daniel Gourley, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 18th day of April, 2016.



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STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

RECORDED

2016 APR -7 PM 3:07

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Gregory Wright, #166553, JAMES C. CAMPBELL
Applicant,)
CLERK OF COURT
SUMTER COUNTY, S.C.)

Case No. 2015-CP-14-275

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 8, 2015. Respondent made its return on July 9, 2015. An evidentiary hearing in to the matter was convened on March 17, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In July 2008, the Sumter County Grand Jury indicted Applicant for Possession of Firearm During Commission of a Violent Crime (2008-GS-43-927), Applicant for Owning Animals for the Purpose of Fighting (2008-GS-43-929), Animal Fighting (2008-GS-43-930), Ill treatment of Animals (2008-GS-43-931), Trafficking in Cocaine (2008-GS-43-932), Possession with Intent to Distribute Marijuana (2008-GS-43-933), Trafficking in Crack Cocaine (2008-GS-43-934). Cameron B. Littlejohn, Jr., Esquire, represented Applicant. On January 12-14, 2009, Applicant proceeded to a jury trial before the Honorable Michael G. Nettles and. The jury found

Applicant guilty as indicted for Possession of Firearm during Commission of a Violent Crime (2008-GS-43-927), Applicant for Owing Animals for the Purpose of Fighting (2008-GS-43-929), Animal Fighting (2008-GS-43-930), Ill treatment of Animals (2008-GS-43-931) and Trafficking in Crack Cocaine (2008-GS-43-934). The jury found Applicant guilty of the lesser included offenses of Trafficking in Cocaine (2008-GS-43-932), Possession with Intent to Distribute Marijuana (2008-GS-43-933). Judge Nettles sentenced Applicant for each charge as follows:

- Possession of Firearm During Commission of a Violent Crime – 5 year term of imprisonment
 - Applicant for Owing Animals for the Purpose of Fighting – 5 year term of imprisonment
 - Animal Fighting – 5 year term of imprisonment
 - Ill treatment of Animals – 5 year term of imprisonment
 - Trafficking in Cocaine – 25 year term of imprisonment
 - Possession of Marijuana – 30 day imprisonment
 - Trafficking in Crack Cocaine – 25 year term of imprisonment
- All sentences were to run concurrently.

Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense. The South Carolina Court of Appeals affirmed all convictions in an unpublished opinion filed July 17, 2013. State v. Wright, Op. No. 2013-UP-326. In an Order dated August 22, 2013, the South Carolina Court of Appeals denied the Petition for Rehearing. Appellate Counsel then submitted a Petition for Writ of Certiorari to the South Carolina Supreme Court. The South Carolina Supreme Court dismissed the appeal as improvidently granted in a memorandum opinion filed March 18, 2015. State v. Wright, Op. No. 2015-MO-011 (S.C. Ct. App. filed March 18, 2015). The remittitur was returned to the circuit court on March 19, 2015.



ALLEGATIONS

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Counsel Failed To Make Timely Objections...Counsel did not make objections to the evidence at trial"
 - b. "Counsel Failed to Sever Charges...Counsel failed to object to the charges being tried together"
 - c. "Conviction Obtained in Violation of Constitutional Rights"

Applicant filed an amended application on January 28, 2016, alleging ineffective assistance of counsel for stipulating to the letter introduced at trial. During the evidentiary hearing, Applicant requested to amend his application to include an allegation of ineffective assistance of counsel for failing to move to dismiss his charges during the preliminary hearing. The State had no objection to the amendment.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Cameron Littlejohn, Esquire. (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified that he understood that he is seeking a new trial on all charges. Applicant stated that he was convicted of various drug charges and dog fighting. Applicant stated Trial Counsel was retained. Applicant stated that he met with Trial Counsel seven or eight times prior to trial. Applicant stated that they reviewed the evidence against him.

Applicant claimed the drug charges should have been dismissed because his tenant, Frank Lee Wilson, pled guilty to possessing all the drugs. Applicant stated Mr. Wilson signed an affidavit taking responsibility for all the drugs. Applicant explained that Mr. Wilson lived in a shed on his property. Applicant claimed that the drugs were either found on Mr. Wilson's person or in his shed. Applicant recalled that Mr. Wilson testified during Applicant's trial and claimed responsibility for all the drugs. Applicant stated that he discussed this information with Trial Counsel prior to trial. Applicant stated that it was his understanding the he would not have to proceed to trial on the drug charges due to Mr. Wilson's guilty plea.

Applicant claimed Trial Counsel was ineffective for failing to move to sever the charges. Applicant claimed the dog fighting charges were prejudicial because he was proceeding to trial around the same time Michael Vick was being charged with dog fighting. Applicant stated that dog fighting was a hot button societal issue at the time of his trial. Applicant claimed Trial Counsel should have filed a motion to sever the charges as a result of the dog fighting charges. Applicant stated that they did not have any discussion about a motion to sever the charges.

Applicant claimed that Trial Counsel should have objected to the introduction of the various pictures of the drugs. Applicant claimed that the police took pictures of the drugs inside of Applicant's trailer. Applicant stated that Trial Counsel should have objected because there were never any drugs found inside his trailer. However, Applicant acknowledged that Trial Counsel cross-examined the investigating officers and was able to elicit testimony that no drugs were found inside the trailer. Applicant further stated that Trial Counsel should have objected to the chemical analysis of the drugs because the weight did not meet the threshold weight for which he was originally indicted. However, Applicant acknowledged that Trial Counsel was

successful in his direct verdict motion and the judge charged the lesser included offense due to the weight of the drugs.

Applicant claimed Trial Counsel should have objected to the introduction of a letter written by him to various co-defendants. Applicant stated that the State used to letter to bolster their argument that Applicant was the ring leader of the group. Applicant claimed Trial Counsel was ineffective for stipulating to the authenticity of the letter. Applicant noted that the trial court allowed the contents of the letter into evidence due to Trial Counsel's stipulation. Applicant stated that he did write the letter and was not disputing whether it was his handwriting. Applicant further stated that he told Trial Counsel that he wrote the letter.

Applicant stated Trial Counsel was ineffective for failing to use various documents and business records provided to Trial Counsel the day of the trial. Applicant explained that he owned a demolition and construction business and hired day workers. Applicant stated that he dealt with cash and paid his employees in cash. Applicant further explained that he and his family was getting ready to go on vacation and they had an excess amount of cash inside the house. Applicant stated Trial Counsel should have used the various documents and business documents to corroborate his wife's testimony about their business. However, Applicant acknowledged that his wife testified to their business operations and as to why they had an excessive amount of cash inside their home.

Applicant stated Trial Counsel was ineffective for failing to be present during his preliminary hearing. Applicant stated Trial Counsel could have made a motion to dismiss the charges due to the lack of evidence that Applicant ever possessed any of the drugs. Applicant reiterated that Mr. Wilson pled guilty and claimed ownership of all the drugs. Applicant stated that he did not testify at trial because of his prior record.

Following Applicant's testimony, Trial Counsel was called to testify. Trial Counsel testified that he was retained and met with Applicant at least seven or eight times. Trial Counsel stated that he met with Applicant and his wife at their residence. Trial Counsel stated that he took photographs of the Applicant's residence. Trial Counsel could not specifically recall whether Applicant had a preliminary hearing. Trial Counsel stated that he typically uses preliminary hearing as a tool to retrieve discovery. Trial Counsel stated that he had received all discovery early on in the case. Trial Counsel stated that even if he had attended the preliminary hearing, the State could simply indict the Applicant.

Trial Counsel stated that there was a lot of evidence not in Applicant's favor. Trial Counsel stated there was no overwhelming evidence; however it was going to be up to the jury to decide if Applicant constructively possessed the drugs found on his property. Trial Counsel stated that he did not see a reason to sever the charges. The Trial judge charged the jury that they were to find the Applicant guilty beyond a reasonable doubt for each individual charge. Trial Counsel further stated that all the charges stemmed from one search warrant.

Trial Counsel stated that he did not recall any plea offers. Trial Counsel noted that Applicant consistently maintained his innocence of the charges. Trial Counsel stated it was their trial strategy to argue that Mr. Wilson one the guilty party. Trial Counsel noted that Mr. Wilson pled guilty, admitted to possessing the drugs, and claimed ownership over the drugs. Trial Counsel further stated that he attempted to argue to the jury that the dogs found on Applicant's property were pets.

Trial Counsel stated that he stipulated to the authenticity of the letter because Applicant told him it was his letter. Trial Counsel stated that he saw no reason to require the State to bring in a hand writing expert to authenticate the letter. Trial Counsel noted that the State was

prepared to authenticate the letter had he not stipulated to it. Trial Counsel stated that he attempted to argue to the jury that the letter merely advised his co-defendants that the State was trying to pin the drugs on him. Trial Counsel stated that the letter fell in line with their strategy of placing the guilty on Mr. Wilson. Trial Counsel stated there was no real way to defend the letter.

Trial Counsel stated that he moved for a directed verdict motion at the close of the State's case on all the charges. Trial Counsel stated he was successful on some of his directed verdict motions and the trial judge dismissed the drug charges. However, Trial Counsel stated the trial judge charged the lesser included offense. Trial Counsel stated he had no basis to object to the lesser included offense being charged. Trial Counsel further testified that the business records provided by Applicant did not match up with the amount of cash that he had at his house. Trial Counsel stated it would have appeared to the jury that they were attempting to hide something.

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. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the 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). 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.

1. Ineffective assistance of counsel for failing to move for dismissal of charges during Applicant's preliminary hearing.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to move for dismissal of his charges during the preliminary hearing is meritless. Every criminal defendant is entitled to notice of his right to a preliminary hearing "to determine whether sufficient evidence exists to warrant [his] detention and trial." Rule 2(a), SCRCrimP. If a defendant makes a timely request for a hearing, one should be held within ten days. Rule 2(a)-(b), SCRCrimP. However, the hearing "shall not be held. . . if the defendant is indicted by a grand

jury . . . before the preliminary hearing is held." Rule 2(b), SCRCrimP; see also State v. Hawkins, 310 S.C. 50, 54-55, 425 S.E.2d 50, 53 (Ct. App. 1992) (holding trial court did not err in refusing to quash defendant's indictments because he did not receive a requested preliminary hearing because he was indicted before a preliminary hearing was held). Furthermore, a defendant has no constitutional right to a preliminary hearing. State v. Keenan, 278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982). Thus, although Applicant could have timely requested a preliminary hearing, his right to have the hearing ended with the grand jury's indictment.

This Court finds that Counsel's performance was reasonable according to professional standards. It is clear there was probable cause to support the charges. Furthermore, this Court finds that Applicant cannot establish any resulting prejudice, as a preliminary hearing would not have resulted in dismissal of the charges, and therefore, there is no likelihood that the result of the proceeding would have been different. This Court finds that this allegation must be denied and dismissed with prejudice.

2. Ineffective assistance of counsel for failing to object to the indictment because the weight of drugs did not match the indictment.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to the indictment because the State did not prove that he possessed twenty-eight to one-hundred grams of cocaine is without merit. This Court finds that Counsel's performance was reasonable according to professional standards. Notably, Trial Counsel moved for a directed verdict as to the indictment and was successful. (Tr. p. 288-289). The Trial Court dismissed the charge and charged the jury on the lesser included offense. This Court finds that this allegation must be denied and dismissed with prejudice.



3. Ineffective assistance of counsel for failing to move to sever the charges.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to move to sever the charges is meritless. This Court finds Trial Counsel's performance was well within reasonable professional norms. Trial Counsel noted that all charges stemmed from one event and one search warrant. This Court agrees with Trial Counsel's assertion and finds that there was no reasonable basis to make a motion to sever the charges.

Additionally, this Court finds Applicant can show no prejudice as a result of Trial Counsel's alleged deficiency for failing to file a motion to sever the charges. Notably, the Trial Judge charged the jury that "each indictment charges a separate and distinct offense, and you must decide each indictment separately on the evidence and the law applicable to, uninfluenced by your decision to any other indictment." (Tr. p. 352 lines 12-18). It is clear that the trial judge instructed the jury to decide the Applicant's guilt beyond a reasonable doubt as to each individual charge. This Court finds that Counsel's performance was reasonable according to professional standards. As a result, Applicant can show no prejudice. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

4. Ineffective assistance of counsel for stipulating to the authenticity of the letter.

This Court finds Applicant's allegation that Trial Counsel was ineffective for stipulating to the authenticity of his letter is meritless. This Court finds Trial Counsel acted well within reasonable professional norms when stipulating to the letter. Notably, both Trial Counsel and Applicant stated that the letter was written by Applicant. Trial Counsel stated that there was no point in challenging the authenticity of the letter due to Applicant's admission that he wrote the letter. Furthermore, Trial Counsel stated that they attempted to mitigate the letter's content by



arguing to the jury that the letter was implying that the State was attempting to push the drugs on him when he they were not his drugs. This Court finds Trial Counsel's actions were not deficient when he stipulated to the drugs. Furthermore, Applicant can show no prejudice due to Trial Counsel's stipulation because Applicant freely admitted that he wrote the letter. As a result, this Court finds that this allegation should be denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

[Signature to follow]

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several overlapping loops and lines.

CONCLUSION

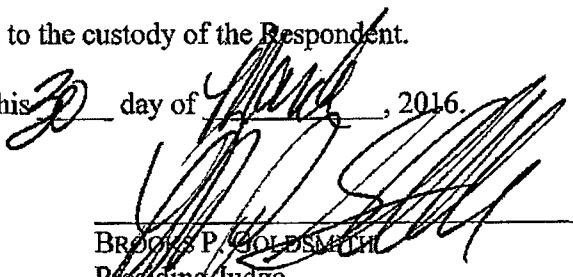
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 30 day of March, 2016.



BROOKS P. GOLDSMITH
Presiding Judge
Third Judicial Circuit

2
_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF

Gregory Wright # 16653

RECORDED IN THE COURT OF (Select one.)
2015 JUN 19 JUDICIAL CIRCUIT
 COMMON PLEAS FAMILY COURT

CASE NO.: 2015-CP-43-1370
JAMES B. ...
CLERK OF COURT
SUMNER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Dandra C. Dickerson
DEPUTY CLERK OF COURT
SUMNER COUNTY
SOUTH CAROLINA

Plaintiff(s),

-vs-

State of South Carolina

Defendant(s).

ORDER

AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
- SVP case
- Minor Name Change
- Adoption
- Custody and/or Visitation
- Other:
- Juvenile
- Abuse and Neglect

It appears that ^{Gregory}Wright who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other: Lance Borger
1331 Park St.
Columbia, SC 29201

- counsel
- lead counsel (if capital PCR case)
- guardian ad litem

Therefore, it is ordered that ^{Borger}, hereby is appointed as (Select one.) for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

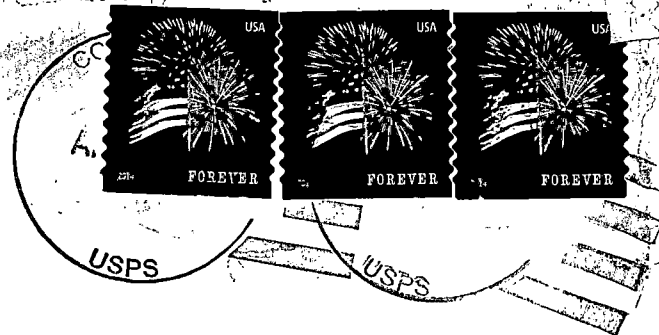
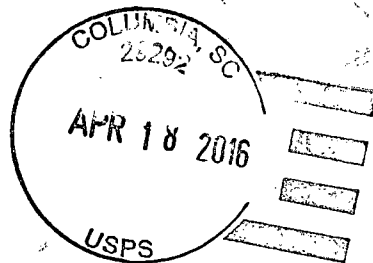
(If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 19 DAY OF June, 20 15.

THE BOOZER LAW FIRM, LLC

307 Gervais Street, Suite 203
Columbia, SC 29201



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211