

Petitioner's Supporting Appendix
OF RULE 243(C) SCACR EXPLANATION
BRIEF

The State OF South Carolina

IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY COURT OF COMMON PLEAS

KENNETH G. GOODE; Circuit Court Judge

LOWER COURT CASE NO. 2013-CP-11-0192

APPELLATE CASE NO. 2016-001368

STEVEN W. LAHEY, JR. PETITIONER,
SCDC NO 321946,

V.

STATE OF SOUTH CAROLINA, Respondent,

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Appellate Case No. 2016-001368

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STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

)
) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
)

2007-CP-11-495

Steven W. Littlejohn, 321946,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

FILED
2008 APR 21 A 10:51
CLERK OF COURT
CHEROKEE COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed August 17, 2007. The Respondent made return to the application on December 18, 2007. An evidentiary hearing was convened at the Spartanburg County Courthouse on April 8, 2008. The Applicant was present at the hearing and was represented by John R. Ferguson, Esquire. Michelle J. Parsons, of the South Carolina Attorney General's Office, represented the Respondent.

The Applicant and his trial attorney, Roger Poole, testified at the hearing. Assistant Solicitors Alex Stalvey and Michael Morin of the 7th Circuit Solicitor's Office also testified at the hearing. This Court also had before it the records of the Cherokee County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the State's return, and the Applicant's guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court.

The Applicant was indicted at the May 2006 term of the Cherokee County Grand Jury for two counts of Possession with Intent to Distribute Cocaine near School and/or Playground (2006-GS-11-413; -414), one count of Possession with Intent to Distribute Crack Cocaine (2006-GS-11-415) and one count of Trafficking in Cocaine, 28-100 g, third offense (2006-GS-11-416). On May 21, 2007, the Applicant pled guilty to two counts of PWID cocaine near School and/or Playground, PWID Cocaine, and Trafficking in Cocaine, second offense. He was sentenced by the Honorable J. Derham Cole, to confinement for a period of ten (10) years on each count of the PWID Cocaine near School or Playground, fifteen (15) on PWID Cocaine, and fifteen (15) years for trafficking in Cocaine. The sentences were to run concurrently. Applicant did not appeal his conviction or sentence.

ASSERTED GROUNDS FOR RELIEF

In the post-conviction relief application, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel;

In his Amended Application, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failure to discharge professional responsibilities,
 - b. Failure to challenge Applicant's arrest and seizure,
 - c. Failure to act as diligent, conscientious advocate,
 - d. Failure to give complete loyalty,
 - e. Failure to keep Applicant's best interest in mind,

- f. Failure to serve cause in good faith,
- g. Failure to investigate,
- h. Failure to do necessary legal research,
- i. Failure to advise Applicant of rights,
- j. Failure to explain the issues of the case to the Applicant,
- k. Failure to consult with Applicant or keep Applicant informed.
- l. Failure to discuss elements of crime,
- m. Failure to inform Applicant of or pursue available defenses,
- n. Failure to explain alternative options,
- o. Failure to oppose prosecutor's case with any adversarial litigation,
- p. Failure to call alibi witness, and
- q. Failure to appeal when Applicant desired such.

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 and arguments at the post-conviction relief hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon his or her credibility. This court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

At his post-conviction relief hearing, the Applicant alleged that his trial counsel failed to inform him that the solicitor's plea offer would not remain open indefinitely. The Applicant testified that this trial attorney failed to secure his original plea offer that

included a recommended sentence of seven to thirty years. The Applicant alleged that he did not have sufficient time to consider the plea when he did not realize that the plea had changed to fifteen years until he went to plead. The Applicant claimed to be inexperienced in the ways of the law. As a result, the Applicant asserted that he depended on the offer of seven to thirty years in making his guilty plea.

During cross-examination, the Applicant admitted his guilt to the charges for which the trial court sentenced him. In addition, though the Applicant testified on direct examination that he had no experience with the law, Applicant admitted that he had two prior drug convictions before the guilty plea at hand.

During the PCR hearing, trial counsel testified regarding the plea offer. Trial counsel explained that he had secured a plea offer with a recommended sentence of seven to thirty years, but the Applicant delayed acceptance. Trial counsel testified that he urged the Applicant to accept the plea, but the Applicant did not feel ready. By the time the Applicant went to court to plea, the plea offer had changed to a negotiated sentence of fifteen years. Trial counsel attempted to get the original offer, but the solicitor, in his discretion, would only honor the second plea agreement.

Trial counsel also testified that the Applicant pled voluntarily. Trial counsel had made the Applicant aware that should a jury find him guilty, the Applicant would receive a minimum sentence of twenty-five years. Additionally, trial counsel noted that while out on bond for the charges at hand, the Applicant revoked his bond and the solicitor indicted the Applicant on new drug charges. However, when the Applicant agreed to the fifteen year negotiated sentence, the solicitor did not pursue these charges. Thus, in making his decision to plea, the Applicant avoided a possible minimum sentence of

twenty-five years and further prosecution from the State on the new charges acquired while the Applicant was out on bond.

This Court finds that the plea was knowing and voluntary. The Applicant had an opportunity to address the court with regard to whether or not he was satisfied with his attorney, whether he agreed with the facts, and whether the plea was voluntary. The trial court also reminded the Applicant of his right to trial by jury. The Applicant addressed the court during his guilty plea and did not deny the charges, but explained them. Moreover, trial counsel completed a satisfactory investigation and kept the Applicant abreast of the discovery in a timely manner. As a result, there is nothing in the record to indicate that trial was ineffective or that the plea was involuntary.

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

1#6
Courts use a two-pronged test to evaluate 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, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668). 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). With respect to guilty plea counsel, the 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 (1985).

In the present case, this Court finds that trial counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges, the maximum penalties, Applicant's version of the facts, and possible defenses or lack thereof. Counsel investigated this matter and shared the results of her investigation with the Applicant.

This Court finds counsel entered into plea negotiations with the Solicitor's Office and was successful in getting a negotiated plea for fifteen years. Counsel fully discussed the terms and consequences of the plea with the Applicant and explained to the Applicant the right to proceed with a jury trial and rights pertaining thereto and the possible consequences depending on the option the Applicant elected to pursue. The Applicant was thoroughly questioned by the plea judge and admitted that he was satisfied with trial

counsel's representation and he answered all the questions of his own accord and satisfaction.

During the guilty plea, the Applicant expressed complete satisfaction with counsel's representation. Further, the Applicant indicated that his plea was voluntary and that he "understood fully" what he was doing. At his PCR hearing, the Applicant confirmed that he made these statements at trial.

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CONCLUSION

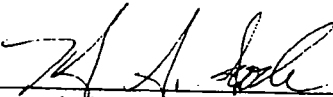
Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

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 Aug, 2008.



Kenneth G. Goode
Presiding Judge
At Large Seat No. 8

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Steven W. Littlejohn, 321946,
Applicant,

v.

State of South Carolina,
Respondent.

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
) 2007-CP-11-495

ORDER

BRANDY W. MCBEE

2008 DEC -2 A 11: 07

CLERK OF COURT
SPARTANBURG COUNTY, S.C.

This matter comes before the Court by way of the Applicant's motion to alter or amend pursuant to Rule 59, SCRCF. This matter originally came before the Court by way an Application for post-conviction relief (PCR) filed August 17, 2007. A hearing was held at the Spartanburg County Courthouse on April 8, 2008. The Applicant was present and represented by John Ferguson, Esquire. The Respondent was represented by Michelle J. Parsons, Esquire. By Order dated August 21, 2008 this Court dismissed the Application.

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of the Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. The previous order fully comports with the requirements of Rule 52(a), SCRCF.

IT IS THEREFORE ORDERED:

1. That the Applicant's motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 19 day of 11, 2008.

Kenneth G. Goode
KENNETH G. GOODE
Presiding Judge
Seventh Judicial Circuit

Chester, South Carolina

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STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO CHEROKEE COUNTY
Court of Common Pleas

The Honorable Kenneth G. Goode, Circuit Court Judge
2007-CP-11-495

Steven Wayne Littlejohn, 321946..... Petitioner,

v.

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

MOTION TO CORRECT THE RECORD AND FILE A SUPPLEMENTAL APPENDIX

Pursuant to Rule 224 of the South Carolina Appellate Court Rules, counsel for Respondent moves for this Court to allow the Respondent to correct the record and file a supplemental Appendix in this case. It has come to the Respondent's attention that the guilty plea transcript found in the appellate record contains a material typographical error.

The Petitioner claims he was not informed of a five-year plea deal prior to his pleading. This claim is based on the appearance of the word "five" on page 3 of his guilty plea transcript. (App. p. 109). The court reporter has sworn by an attached affidavit that the word "five" should actually be the word "fifteen." Page 109 of the Appendix reflects page 3 of the guilty plea transcript. Lines 15-17 currently read, "The state and his attorney, Mr. Roger Poole, have negotiated a sentence of five years to run concurrent on all of these charges." These lines should be corrected to read, "The state and his attorney, Mr. Roger Poole, have negotiated a sentence of fifteen years to run concurrent on all of these charges."

The Petitioner did not raise his allegation of a five-year plea offer in his post-conviction relief

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application. He briefly raised it at his post-conviction relief hearing, noting that he had not heard anything about a five-year offer until he read his guilty plea transcript. Though the Petitioner mentioned it in his testimony, the record indicates it was not the focus of the PCR hearing. It was not until his Petition for Writ of Certiorari that the Petitioner made substantial argument on the appearance of the word "five" in his guilty plea transcript.

The Petitioner enumerated 31 allegations in his post-conviction relief application, but none of them related to the typographical error discussed herein. The Respondent did not investigate the appearance of the word "five" in the transcript prior to the post-conviction relief hearing because the Petitioner failed to notify the Respondent he intended to raise this issue. At the time of the PCR hearing, the Respondent believed the brief mention of a five-year negotiation was a misstatement by the solicitor. It was clear in following paragraphs that all parties appearing in the record understood the plea negotiation to be for fifteen years rather than five years.

The claim regarding the five years was merely mentioned by the Petitioner and was not the focus of his PCR claim. Further, the PCR Court did not make a finding on this issue and the Petitioner failed to request a finding on this issue through a 59 (e) motion. Rather, the Petitioner raised the issue for the first time in a significant way during his Petition for Writ of Certiorari.

In preparing the State's response to the petition, the Respondent realized the guilty plea transcript possibly contained a significant typographical error. After speaking with the court reporter, Linda Moffitt, it became clear that where the record reflects the solicitor mentioning a five-year negotiation, the solicitor actually stated it was a fifteen-year negotiation. Linda Moffitt was able to conclusively determine a typographical error had been made and the record is erroneous.

The Respondent requests this Court hold time in abeyance to allow for the correction of the error in the record. The Respondent moves to correct the record and supplement the appendix.

An accurate transcript is required for a full and fair review of the lower court's findings. Inasmuch as

the above records are relevant and pertinent material under Rule 227(e), SCACR that should be included in the Appendix, counsel moves this Court to allow the Respondent to include a corrected guilty plea transcript in a Supplemental Appendix.

WHEREFORE, as the Appendix is incorrect, counsel for Respondent requests this Court: (1) grant the motion to allow the Respondent to correct and supplement the Appendix and (2) hold time limits for the filing of the Return to Petition for Writ of Certiorari in abeyance until the motion is ruled upon.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MICHELLE PARSONS KELLEY
Assistant Attorney General
Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: Michelle Parsons Kelley
ATTORNEYS FOR RESPONDENT

September 9, 2009.

#6

The Supreme Court of South Carolina

Steven W. Littlejohn, Petitioner,

v.

State of South Carolina, Respondent.

ORDER

Petitioner has filed a petition for a writ of certiorari seeking review of the order of the circuit court denying his application for post-conviction relief. Prior to filing its return, the State seeks to correct a page of the guilty plea transcript and supplement the appendix with the corrected page. Petitioner has filed a return in opposition to the State's motion.

We hereby deny the petition for a writ of certiorari as to petitioner's *arguments* I, III, IV, V and VI. We reserve a ruling on petitioner's *argument* II until after the State has filed its return.

Because the portion of the transcript the State seeks to correct and include in the appendix is not relevant to the issue remaining before this Court, and the State seeks only to correct a scrivener's error in the transcript, we grant the motion to correct the record and file a supplemental appendix.


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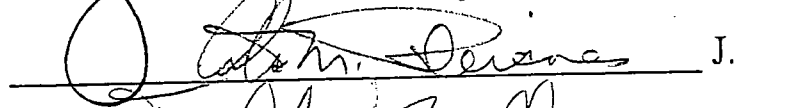
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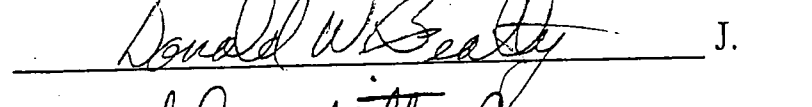
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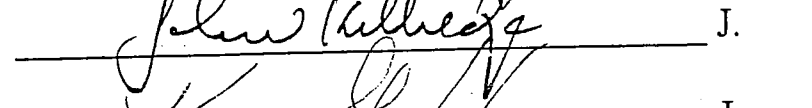
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IT IS SO ORDERED.

 C.J.

 J.

 J.

 J.

 J.

Columbia, South Carolina

January 21, 2010

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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

June 25, 2010

John R. Ferguson, Esquire
Cox & Ferguson
107 E Laurens St
Laurens, SC 29360-2903

Re: Littlejohn, Steven W. v. The State

Dear Mr. Ferguson:

The Court has issued the following Order on your Petition for a Writ of Certiorari in the above entitled matter:

“Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

June 25, 2010.”

The remittitur will be sent to the lower court as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Daniel E. Shearouse
CLERK ₆₅

DES/jj

cc: Assistant Attorney General Michelle J. Parsons Kelley

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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

July 22, 2010

John R. Ferguson, Esquire
Cox & Ferguson
107 E Laurens St
Laurens, SC 29360-2903

Re: Littlejohn, Steven W. v. The State

Dear Mr. Ferguson:

The Court has issued the following order on your Motion for Reconsideration:

“Motion for reconsideration is denied.

s/ Jean H. Toal C.J.
For the Court

July 22, 2010.”

The remittitur is today being forwarded to the lower court.

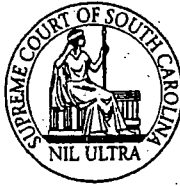
Very truly yours,

CLERK

DES/jj

cc: Assistant Attorney General Michelle J. Parsons Kelley ✓

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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

July 22, 2010

REMITTITUR

The Honorable Brandy W. McBee
125 E Floyd Baker Blvd
PO Drawer 2289
Gaffney, SC 29342-2289

Re: Littlejohn, Steven W. v. The State – 2007-CP-11-00495

Dear Ms. McBee:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,



CLERK

DES/jj

cc: John R. Ferguson, Esquire
Assistant Attorney General Michelle J. Parsons Kelley

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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

July 22, 2010

REMITTITUR


The Honorable Brandy W. McBee
125 E Floyd Baker Blvd
PO Drawer 2289
Gaffney, SC 29342-2289

Re: Littlejohn, Steven W. v. The State – 2007-CP-11-00495

Dear Ms. McBee:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,



CLERK

DES/jj

cc: John R. Ferguson, Esquire
Assistant Attorney General Michelle J. Parsons Kelley

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STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Steven W. Littlejohn, #321946,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-11-0192

FINAL ORDER OF DISMISSAL

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2014 APR 12 AM 8 29
GRANDY W. MOBBE

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 22, 2013. Respondent made its Return and Motion to Dismiss on or about January 23, 2014, requesting that the Application be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed March 12, 2014, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated April 10, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a letter addressed to the Cherokee County Clerk of Court and dated February 12, 2014, Applicant requests an extension of the deadline to respond to the Respondent's Motion to Dismiss because of medical issues.

In a letter addressed to Respondent and dated April 4, 2014, the Applicant submitted a document captioned, "Motion for Enlargement of Time." The Motion was also provided to the Respondent from the Cherokee County Clerk of Court and was filed April 9, 2014. Applicant

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provides this Court with a timeline of this matter, including the various transfers and hospitalizations Applicant has experienced and asserts he could not have responded because of those issues. Applicant asserts that he received the signed Conditional Order of Dismissal on March 24, 2014.

In a document captioned, "Notice and Motion for a Stipulated Dismissal Without Prejudice and/or Held in Abeyance," and filed January 7, 2015, Applicant requests that the Court dismiss the application without prejudice or holds it in abeyance so that he can pursue filing an additional application based upon newly Discovered evidence. This Court notes that the Applicant filed another successive application on March 17, 2015, which will be addressed in a separate order.

This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 8 day of May 2015.

FILED IN OFFICE OF
CLERK OF COURT
SOUTH CAROLINA
MAY 11 2015
PM 8 29
BRANDY W. MOBEE

R. Keith Kelly
R. KEITH KELLY
Chief Judge for Administrative Purposes
Seventh Judicial Circuit

Lexington, South Carolina.

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
 Steven W. Littlejohn, #321946,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2013-CP-11-0192

ORDER

BRANDY W. MCBEE

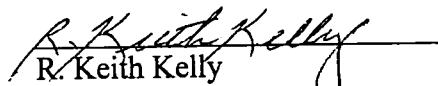
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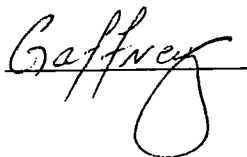
FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.

This matter comes before the Court by way of Applicant's *pro se* document titled "Motion to Reconsider." The Respondent made its Return to this Motion on June 19, 2015.

The Order of Dismissal in this matter was signed by me on May 8, 2015. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's response and objections, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order of Dismissal, which was signed and then filed May 12, 2015, shall stand as it was written.

AND IT IS SO ORDERED this 29 day of June, 2015.


 R. Keith Kelly
 Seventh Judicial Circuit

, South Carolina

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1 A. May 21st 2007.

2 Q. Thank you. When the the plea presentation began, I want
3 you to start reading for me what you said, this is on Page 3
4 of the transcript starting with Line 14 and going through Line
5 17.

6 A. "Your Honor, he is here to plead guilty to all four of,"
7 and it's misspelled, "chose charges. The State and his
8 attorney, Mr. Roger Poole, have negotiated a sentence of five
9 years to run concurrent on all of the char -- on all of these
10 charges. Thank you, Your Honor."

11 Q. What was that about?

12 A. I can't really remember. I mean, I -- and when I, when I
13 saw that earlier today, I -- it didn't seem right to me. Um,
14 I know that he had several charges, that he had, he had
15 several -- he was looking at several charges arisin' out of
16 separate incidents. Um, of course we were there to try him on
17 just one of those incidents, um, but I -- maybe those were
18 the, I can't, I can't really remember, but maybe those were
19 just some of the charges that he was gonna plead guilty to ---

20 Q. Well, ---

21 A. --- in addition to some others.

22 Q. --- let me get you to read the preceding paragraph which
23 starts at at Line 8 that talks about the charges that are
24 covered.

25 A. "Your Honor, all of those indictments have been true

1 billed by the grand jury, they are for possession with intent
2 to distribute crack near a school or playground, possession
3 with intent to distribute cocaine near a school or playground,
4 possession with intent to distribute crack cocaine and
5 trafficking in cocaine.

6 Q. So those were the charges he was facing, is that
7 correct?

8 A. I I believe so if that's what the transcript said.

9 Q. All right. And you're telling the judge that there is a
10 five-year agreement.

11 A. I can't remember what -- I mean, I I don't think there
12 was a five-year agreement 'cuz I remember him gettin' 15. Um,
13 if there was a five-year agreement then, you know, he woulda
14 gotten five. I I ---

15 Q. How how long before the plea, the date of the plea had
16 you gotten the case?

17 A. I I believe it was several weeks. I mean it was, you
18 know, but, I mean, I just wanna be clear I was not negotiating
19 the case, I was preparing the case for trial. It was my
20 understanding he was lookin' at 25 to 30 years on the -- on on
21 his charges. Um, when we got there that that morning, you
22 know, I I understand there was some confusion about maybe an
23 offer still being there but as far as I was concerned, there
24 were no offers, that he wanted a trial on those charges.

25 Q. Given the fact that some other member of your office had

1 means he doesn't wanna plead, he wants a trial so I got the
2 case ready for trial and I was prepared to go forward and, uh,
3 you know, that of course didn't happen so ---

4 Q. Thank you. No further questions.

5 THE COURT: Any on cross?

6 MS. PARSONS: Yes.

7 CROSS-EXAMINATION BY MS. PARSONS:

8 Q. Did you actually negotiate this plea?

9 A. Uh, well no not really, I mean, I was I was present for,
10 um, you see, when we got to the, you know, when we -- when I
11 called the case for trial, we got there and there was some
12 confusion as to what was goin' on. They thought that there
13 was an offer still, you know, available to Mr. Littlejohn.
14 Um, I thought we were going forward on a case that carried 25
15 to 30 years. Um, Mike Morin, you know, came back and I I was
16 not, you know, Mike and, uh, and and Mr. Poole would have some
17 conversations before so I brought Mike Morin back in and, you
18 know, to talk to Mr. Poole and, you know, figure out if there
19 was any miscommunication between those two so and I was
20 present for those conversations, um, between those two. I
21 wouldn't say I really, you know, I can't remember if Mike,
22 asked Mike, you know, asked for any in -- input from me or not
23 I, you know, my my roll in this and during this period a time
24 was I was, I was tryin' -- I would try the cases, I wouldn't
25 negotiate 'em, I would let let Mike do all the negotiating,

1 uh, but, you know, he may, you know, he may have asked if that
2 was all right with me considering I had just prepared a trial,
3 you know, spent time preparin' a trail and now we're we're
4 going back and sayin' this is not gonna be a trial, this is
5 gonna be a plea, he may have asked me my, you know, what my
6 opinion of of it was but, um, you know, so my my input was
7 very little as far as what the negotiations were. Like I
8 said, I was the trial attorney on this and, you know, whatever
9 they decided to do, uh, I was fine with it but, you know, I I
10 really didn't take take part in the majority of the
11 negotiations.

12 Q. And you were confident, um, in the State's case that you
13 were prepared to bring?

14 A. Absolutely.

15 Q. Okay. Thank you. No more questions.

16 THE COURT: Anymore redirect?

17 MR. FERGUSON: No, Your Honor, and I would ask that ---

18 THE COURT: Thank you.

19 MR. FERGUSON: --- this witness be excused.

20 THE COURT: Any objection?

21 MS. PARSONS: No objection to that.

22 THE COURT: You're excused from your subpoena. Thank
23 you.

24 MR. STALVEY: Thank you, Judge.

25 (Whereupon, the witness left the stand.)

22

COX & FERGUSON

ATTORNEYS AT LAW

107 E. Laurens St.

P.O. Box 286

LAURENS, SOUTH CAROLINA 29360-0286

W. REID COX, JR.
JOHN R. FERGUSON

ALLEN M. WHAM

PHONE: (864) 984-2126

FAX: (864) 984-7372

E-MAIL: jferg@backroads.net

June 4, 2008

The Hon. Kenneth G. Goode
Court of Common Pleas
P.O. Box 1175
Winnsboro, SC 29180

Re: Littlejohn v. State, 2007-CP-11-495

Dear Judge Goode:

Ms. Parsons sent me a copy of her proposed order, and I have been able to review it. I sent her a letter containing my requested changes (copy enclosed), but she was unwilling to agree to any of the proposed changes other than correcting a typo. I want to alert you and Ms. Parsons to a time problem I have.

I will be leaving on vacation this Friday, the 6th, and I have protection from June 6-27. I am quite sure that I will want to file a motion to reconsider when I receive the order, and the rule requires that I do that within ten (10) days. I therefore ask that you not file your order until no earlier than June 27 to allow me the opportunity to review it and to call to your attention such matters as may be relevant.

Thank you for your cooperation.

Sincerely,

John R. Ferguson

JRF/wp

Encl.

CC: Michelle J. Parsons, Esq. ~~(803) 734-4113~~

Steven W. Littlejohn ✓

23

8645963592

7A

LINDA D. MOFFITT
Circuit Court Reporter
800 Belcher Road
Spartanburg, SC 29316

September 1, 2009

864-599-0657

Ms. Michelle J. Parsons Kelley, Esquire
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

Re: State vs. Steven Wayne Littlejohn 2006-GS-11-413-416

Dear Ms. Kelley:

Enclosed is an affidavit in the above matter reflecting corrections to the transcript provided October 23, 2007.

Please feel free to contact me if you have any further questions at the above number.

Sincerely yours,

Linda D. Moffitt
Linda D. Moffitt
Circuit Court Reporter

Enclosure

24

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS

The State,)
)
)
)
)
Steven Wayne Littlejohn,)
)
)
Defendant.)

AFFIDAVIT
2006-GS-11-413-416

I, Linda D. Moffitt, Court Reporter for the 7th Judicial Circuit, have this date reviewed the notes in the above matter. Page three, line 15, should be amended to reflect those instead of chose; page three, line 16, should be amended to reflect 15 years instead of five years.

Ashley Swofford
Notary Public for S. C.
Sworn to before me this
2ND day of September 2009.

Linda D. Moffitt
Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Steven Wayne Littlejohn,) 2006-GS-11-413-416
7 Defendant.) May 21, 2007
8) Gaffney, South Carolina
9

10 B E F O R E:
11 HONORABLE J. DERHAM COLE, JUDGE
12

13
14 A P P E A R A N C E S:
15 ALEX R. STALVEY, ESQUIRE
16 Attorney for the State
17 J. ROGER POOLE, ESQUIRE
18 Attorney for the Defendant
19

20
21
22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

COPY
26

1 MR. STALVEY: May it please the Court. May I
2 approach?

3 THE COURT: Yes, sir.

4 MR. STALVEY: If it please the Court.

5 Your Honor; this is the State vs. Steven Wayne
6 Littlejohn. Mr. Littlejohn is here on Indictments
7 06-GS-11-413, 414, 415 and 416.

8 Your Honor, all of those indictments have been true
9 billed by the grand jury. And they are for possession with
10 intent to distribute crack near a school or playground,
11 possession with intent to distribute cocaine near a school
12 or a playground, possession with intent to distribute crack
13 cocaine and trafficking in cocaine.

14 Your Honor, he is here to plead guilty to all four of
15 chose charges. The state and his attorney, Mr. Roger
16 Poole, have negotiated a sentence of five years to run
17 concurrent on all of these charges. Thank you, Your Honor.

18 Your Honor, also for the record, the state is agreeing
19 to let Mr. Littlejohn plead to the lesser included offense
20 of trafficking in cocaine second offense. He is indicted
21 for third or subsequent offense, 28 to a hundred grams,
22 which would carry 25 to 30 years. We're letting
23 Mr. Littlejohn plead to the second offense which carries
24 seven to 30 years.

25 THE COURT: You are Steven Wayne Littlejohn.

013CP-110192

Exhibit
1

LINDA D. MOFFITT
Circuit Court Reporter
800 Belcher Road
Spartanburg, SC 29316

864-599-0657

September 30, 2009

COPY

John R. Ferguson, Esquire
Cox and Ferguson
P. O. Box 286
Laurens, SC 29360

Re: Steven Wayne Littlejohn 2006-GS-11-413-416

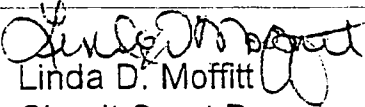
Dear Mr. Ferguson:

In reference to your letter of September 28, 2009, concerning the above matter, the Rules allow 30 days to challenge the accuracy of any transcript. This transcript was delivered in October of 2007. There was no question until September of 2009 when I was contacted by the attorney general's office, and a typographical error was corrected accordingly on page 3 to read 15 years instead of five years.

All other reference in the transcript was to 15 years as the understanding of all parties as to the negotiated sentence.

Thank you.

Sincerely yours,


Linda D. Moffitt
Circuit Court Reporter

cc: Office of the Attorney General
Office of Court Administration

#27

~~EXHIBIT~~

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS

The State,)
)
)
)
)
Steven Wayne Littlejohn,)
)
)
Defendant.)

AFFIDAVIT
2006-GS-11-413-416

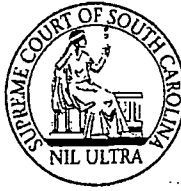
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Ashley Swaffal
Notary Public for S. C.
Sworn to before me this
2ND day of September 2009.

Linda D. Moffitt
Linda D. Moffitt
Circuit Court Reporter

27

1
a



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

July 05, 2016

Steven W. Littlejohn, #321946
Turbeville Correctional Inst.
P.O. Box 252
Turbeville SC 29162

RECEIVED

JUL 08 2016

MAILROOM
TURBEVILLE CI

Re: Steven W. Littlejohn v. State
Appellate Case No. 2016-001368

Dear Mr. Littlejohn:

Recently, the Office of the Attorney General inquired about the status of the appeal in this case. Since this office could find no record of a notice of appeal being filed with either this Court or the South Carolina Court of Appeals, the Office of the Attorney General has provided this Court with a copy of the notice of appeal dated July 9, 2015, along with your "brief" with attachments dated August 5, 2015. The Office of the Attorney General has also provided this Court with a copy of the Conditional Order of Dismissal dated March 12, 2014, the Final Order dated May 8, 2015, and the Order of June 29, 2015, denying the motion for reconsideration.

After receiving the notice of appeal from the Office of the Attorney General, this matter has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR).

The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

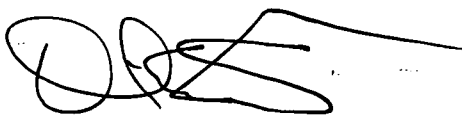
The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at

www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Since the order of the circuit court determined that this action is barred as being successive and as being untimely under the statute of limitations, Rule 243(c), SCACR, requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter.

Please provide the explanation required by Rule 243(c) within twenty (20) days of the date of this letter.

Very truly yours,



CLERK

RECEIVED

JUL 08 2016

MAILROOM
TURBEVILLE CI

cc: Alicia A. Olive, Esquire