

Gregory Pencille  
990 Wisacky Hwy.  
Bishopville SC 29010

\_\_\_\_\_  
November 29, 2016

**RECEIVED**

DEC -2 2016

S.C. SUPREME COURT

Clerk, SC Supreme Court  
PO Box 11330  
Columbia, SC 29122

RE: 2016-000412

Dear Hon. Daniel Sherouse:

Please find enclosed to file with the SC Supreme Court the following:

- (1) MOTION FOR LEAVE TO FILE RULE 60, with CERTIFICATE OF SERVICE
- (2) MOTION FOR STAY PENDING DISPOSITION FROM RELIEF FROM ORDER with CERTIFICATE OF SERVICE
- (3) RELIEF FROM ORDER

Very truly Yours,



Gregory Pencille

enclosures  
cc: scca  
file  
SCCID

**RECEIVED**

DEC -2 2016

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

-----  
Certiorari to Horry County

Honorable Thomas A. Russo, Circuit Court Judge

GREGORY PENCILLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

-----  
APPELLATE CASE NO 2016-000412

-----  
MOTION FOR LEAVE TO FILE RULE 60

-----  
Gregory Pencille  
990 Wisacky Highway  
Bishopville, SC 29010

PETITIONER

This motion comes pursuant to Rule 60, SCRCPC, requesting Leave, from the above titled court, to correct mistakes in the lower courts ORDER OF DISMISSAL transcript, from which Certiorari is sought.

**DECLARATION**

**NOW COMES** Gregory Pencille, who being duly sworn, deposes and states:


"A petition for Writ of Certiorari is based on the written record of the proceeding from the lower court. If the written record does not accurately reflect all relevant spoken language submitted by parties involved in such proceeding, the ability to effect meaningful Certiorari can not be attained because assignment of error is deprived, impairing Certiorari, which inflicts unconstitutional prejudice.

I have identified relevant errors found throughout the lower courts ORDER OF DISMISSAL transcript which adversely affect grounds for Certiorari. I feel that there are novel questions of law and substantial constitutional issues directly involved with my case and an accurate transcript is needed to appeal those issues.

THEREFORE, I request this honorable court to Grant Leave to file my motion RELIEF FROM ORDER and that upon final ruling of this matter, the Court grant me, after service of notice of such final ruling, a reasonable amount of additional time to prepare and provide Certiorari, in the interest of justice."

I declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and understanding.

November, 29<sup>th</sup>, 2016  
Date

  
\_\_\_\_\_  
Gregory Pencille  
990 Wisacky Highway  
Bishopville, SC 29010

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Horry County

Hon. Thomas A. Russo, Circuit Court Judge

GREGORY PENCILLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

-----  
APPELLATE CASE NO 2016-000412

-----  
CERTIFICATE OF SERVICE

-----  
The undersigned hereby certifies that a true copy of the following

MOTION FOR LEAVE TO FILE RULE 60  
in the above titled case has been served upon Caitlin Hastings, Esquire, at  
the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia SC 29201  
on November 29<sup>th</sup>, 2016 .



-----  
Gregory Pencille  
990 Wisacky Highway  
Bishopville, SC 29010

PETITIONER

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

-----  
Certiorari to Horry County

Honorable Thomas A. Russo, Circuit Court Judge

GREGORY PENCILLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

-----  
APPELLATE CASE NO 2016-000412  
-----

MOTION FOR STAY PENDING DISPOSITION FROM RELIEF FROM ORDER

-----  
Gregory Pencille  
990 Wisacky Highway  
Bishopville, SC 29010

PETITIONER

This motion comes pursuant to Rule 62(b), SCACR, requesting a Stay of Proceedings to Enforce Judgment pending the disposition of a motion from RELIEF FROM ORDER made pursuant to Rule 60 SCRCP.

DECLARATION

NOW COMES Gregory Pencille, who being duly sworn, deposes and states:

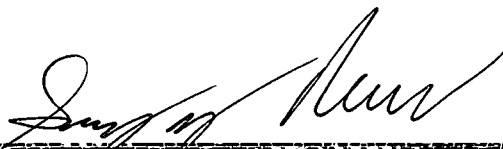
"A petition for Writ of Certiorari is based on the written record of the proceeding from the lower court. If the written record does not accurately reflect all relevant spoken language submitted by parties involved in such proceeding, the ability to effect meaningful Certiorari can not be attained because assignment of error is deprived, impairing Certiorari, which inflicts unconstitutional prejudice.

I have identified relevant errors found throughout the lower courts ORDER OF DISMISSAL transcript which adversely affect grounds for Certiorari. I feel that there are novel questions of law and substantial constitutional issues directly involved with my case and an accurate transcript is needed to appeal these issues.

THEREFORE, I request this honorable court to hold the above titled proceeding in Abeyance pending disposition of my motion for RELEIF FROM ORDER."

I declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and understanding.

November 29<sup>th</sup>, 2016  
Date

  
\_\_\_\_\_  
Gregory Pencille  
990 Wisacky Highway  
Bishopville, SC 29010

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

-----  
Certiorari to Horry County

Hon. Thomas A. Russo, Circuit Court Judge

GREGORY PENCILLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

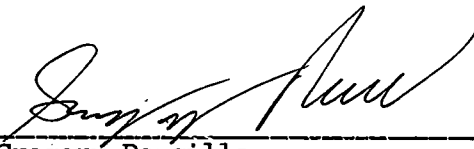
RESPONDENT

-----  
APPELLATE CASE NO 2016-000412

-----  
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the following

MOTION FOR STAY PENDING DISPOSITION FROM RELIEF FROM ORDER  
in the above titled case has been served upon Caitlin Hastings, Esquire, at  
the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia SC 29201  
on November 29<sup>th</sup> 2016 .

  
-----  
Gregory Pencille  
990 Wisacky Highway  
Bishopville, SC 29010

PETITIONER

IN THE STATE OF SOUTH CAROLINA  
COUNTY OF Horry

IN THE COURT OF COMMON PLEAS  
Fifteenth Judicial Circuit

Gregory Pencille #312332,

Applicant,

RELIEF FROM ORDER

v.

State of South Carolina,

Respondent.

2013-CP-26-7463

This motion comes before this honorable court pursuant to SCRCR Rule 60(a) and (b)(3). The Applicant, Gregory Pencille, Argues that the States ORDER OF DISMISSAL Contains clerical errors that falsify relevant facts, deeming the document untrue and inaccurate.

DECLARATION

NOW COMES Gregory Pencille, who being duly sworn, deposes and states:

"The States ORDER OF DISMISSAL, filed on January 25, 2016, contains relevant clerical errors.

ISSUE I.

ORDER OF DISMISSAL (tr. p.2 l.1-2) reads:

"... The honorable Larry B. Hyman, Jr., Sentenced applicant to twenty (20) years imprisonment ..."

Support of Fact / Correction

I was actually sentenced to Thirty (30) years imprisonment (See Exhibit A), not twenty (20) years as transcribed. Therefore, needs to be changed to read:

"... The honorable Larry B. Hyman, Jr., sentenced applicant to thirty (30) years imprisonment ..."

ISSUE II.

ORDER OF DISMISSAL (tr. p.4 l.1-2) reads:

"... counsel was deficient for failing to object to the solicitor's and the victims characterization of him as a serial rapist ..."

Support of Fact / Correction

The victim never characterized me in such a manner for the solicitor to allege or make that false statement. Therefore, it needs to be changed to read:

"... counsel was deficient for failing to object to the solicitors characterization of him as a serial rapist ..."

ISSUE III.

ORDER OF DISMISSAL (tr. p.5 l.2-4) reads:

"... applicant specifically told the plea Judge he did not wish to have a jury trial, and he wanted to give up that right and enter a plea of guilty ..."

Support of Fact / Correction

The word 'specifically' and the continuing sentence used as presented misleads the reader to think it was actually spoken. In actuality, the quoted sentence is derived from a combination of charges given by the Judge as to qualify a guilty plea. I did not specifically tell the plea Judge that I did not wish to have a jury trial, and I wanted to give up that right and enter a plea of guilty. I merely answered the mandatory charges given by the Judge as to which options to take.

ISSUE IV.

ORDER OF DISMISSAL (tr. p.4 l.2) reads:

"... characterization of him as a serial rapist ..."

The solicitors inflammatory testimony should also include 'predator'

and other non-accused charges of cold case that allegedly match motive.

Support of Fact / Correction

Transcript record of guilty plea hearing (TR tr. p.17 l.22-23,19-21, p.18 l.4;p.17 l.13) (See Exhibit B). This combination of clerical mistakes constitutes a libel statement drafted by Norma Bigbee, legal assistant for respondent, intentionally lessening the inflammatory intent in the order; while maintaining the inflammatory intent in the transcript to lessen the harshness of the statement by the State.

ISSUE V.

ORDER OF DISMISSAL (tr. p.5 l.12-13) reads:

"... as this court can find no evidence applicant's plea was not entered freely, knowingly, and voluntarily, the allegation is without merit and must be denied ..."

This is proven false by the statements written earlier in the same document:

Support of Fact / Correction

ORDER OF DISMISSAL (tr. p.5 l.10-11) reads:

"... this Court is unable to discern when Applicant was being truthful and when he was not ..."

My plea can not be freely, knowingly, and voluntarily entered if I was lying. I lied because my trial lawyer coached me what to say. When this was brought before the PCR Judge that I was under duress, he stated that it could not be considered because I was not on the stand.

ISSUE VI.

ORDER OF DISMISSAL (tr. p.4 l.14-15) reads:

"... counsel testified he did not believe he had a reason to object to the statements, and he rarely, if ever, objects to statements made by a victim..."

Support of Fact / Correction

The statements were made by the solicitor, not the victim. Therefore, needs to be changed to replace the word 'victim' with 'solicitor'.

ARGUMENT

The State's ORDER OF DISMISSAL contains errors which falsify relevant facts, subsequently rendering the document inaccurate and untrue. The ORDER OF DISMISSAL, the way it is currently transcribed, is construed as a malicious intent to defraud.

MEMORANDUM

SCRCP Rule 60(a) reads:

"... Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time ... on the motion of any party and after such notice ... as the court orders ... [and] made within ... not more than one year after the [] proceeding was entered ..."

I have timely indicated errors within the ORDER OF DISMISSAL's written record pursuant to SCRCP Rule 60(a).

SCRCP Rule 60(b)(3) reads:

"... on motion and upon such terms that are just, the court may relieve a party ... from A[n] [] order, or proceeding for ... fraud, ... or other misconduct of an adverse party ..."


The above errors need to be corrected, failure to correct the above mentioned errors will constitute fraud and will require the reversal of the order pursuant to SCRCP Rule 60(b)(3).

CONCLUSION

THEREFORE, IT is requested this honorable court order the above mentioned clerical errors corrected, or reverse the above Applicants ORDER OF DISMISSAL IN the interest of Justice."

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and understanding.

November 29<sup>th</sup> 2016  
Date  
Lee County, SC

  
-----  
Gregory Pencille  
990 Wisacky Highway  
Bishopville, SC 29010



## GUILTY PLEA - AUGUST 9, 2010

17

1 THE COURT: OKAY, ALL RIGHT, I FIND THAT THERE  
2 IS A SUBSTANTIAL FACTUAL BASIS FOR THE PLEA. I FIND THAT  
3 IT'S MADE FREELY AND VOLUNTARILY, KNOWINGLY AND  
4 INTELLIGENTLY AFTER THE ADVICE FROM A VERY COMPETENT  
5 ATTORNEY WITH WHOM THE DEFENDANT SAYS HE IS SATISFIED AND I  
6 WILL ACCEPT HIS PLEA.

7 NOW ANYTHING FURTHER FROM THE STATE?

8 MS. LIVELY: YES, SIR, YOUR HONOR, BRIEFLY.

9 THE COURT: ALL RIGHT.

10 MS. LIVELY: WHENEVER THESE CASES WERE ASSIGNED  
11 TO ME WE WENT THROUGH, WE BEING MYSELF AS WELL AS MY VICTIM  
12 ADVOCATE AND LAW ENFORCEMENT, WENT THROUGH EXTENSIVE  
13 RESEARCH REGARDING THIS DEFENDANT'S M.O. AND HIS ACTUAL,  
14 THE CONCERNS THAT WE WOULD HAVE OURSELVES A SERIAL RAPIST  
15 ON OUR HANDS AND I UNDERSTAND THAT I AM, YOU KNOW, I'M  
16 OBVIOUSLY DISMISSING THE CHARGES IN EXCHANGE FOR HIM  
17 PLEADING GUILTY TO THIS CHARGE AND RECEIVING A 30-YEAR  
18 SENTENCE, WHICH I'M HOPING FOR AT THIS TIME BECAUSE BASED  
19 UPON ALL THE INFORMATION THAT WAS PROVIDED TO ME THROUGH  
20 LAW ENFORCEMENT AS WELL AS CONCERNS THAT THERE MAY HAVE  
21 BEEN OTHER CASES OUT THERE WHICH I'M NOT ASKING THE COURT  
22 TO CONSIDER, I'M EXPLAINING WHY I DID WHAT I DID, THAT HE  
23 TRULY IS A PREDATOR.

24 THE CASE FROM 2005 WHERE HE WAS CONVICTED OR  
25 WHERE HE PLED GUILTY TO THE KIDNAPPING, IT WAS A YOUNG

GUILTY PLEA - AUGUST 9, 2010

18

1 GIRL, I BELIEVE SHE WAS ONLY 12 AT THE TIME, AND THEN  
2 BECAUSE OF THAT WE WERE ABLE TO GET HIS DNA WHICH LED TO  
3 THESE OTHER TWO CASES, ONE FROM 2001 AND ONE FROM 2004.  
4 WHO KNOWS IF THERE ARE OTHERS OUT THERE BUT THE CONCERN FOR  
5 THE STATE WOULD BE PROTECTING THE COMMUNITY AND, YOU KNOW,  
6 WE COULD TAKE HIM TO TRIAL ON THIS, HAVE HIM GET LIFE  
7 WITHOUT PAROLE IN EXCHANGE FOR PUTTING THE VICTIMS THROUGH  
8 HAVING TO TESTIFY AND WE BELIEVE THAT THIS IS A GOOD  
9 RESOLUTION. HOWEVER WE DO HAVE CONCERNS ABOUT THIS PERSON  
10 EVER GETTING OUT OF PRISON BUT WE BELIEVE THIS IS A FAIR  
11 RESOLUTION AND WE'RE JUST ASKING THE COURT TO PLEASE  
12 CONSIDER THE GRAVITY OF THESE MATTERS, THAT THERE IS  
13 ANOTHER VICTIM. I'VE TALKED TO HER; SHE WAS READY TO COME  
14 DOWN HERE AND TESTIFY IF WE NEEDED TO. HE WOULD HAVE BEEN  
15 LOOKING AT LIFE WITHOUT PAROLE, THAT I BELIEVE THAT THIS  
16 WOULD BE THE BEST SENTENCE FOR THIS PARTICULAR TYPE OF  
17 CASE. I DON'T KNOW IF MS. UNGERMAN, IT ACTUALLY WAS MS.  
18 MILLER, SHE'S NOW MS. UNGERMAN, WISHES TO ADDRESS THE COURT  
19 AT THIS TIME, BUT I'VE SPOKEN WITH MS. UNGERMAN AND KNOW  
20 HOW DIFFICULT IT IS FOR HER TO BE HERE.

21 THE COURT: SHE IS PRESENT FOR THE RECORD?  
22 MS. LIVELY: SHE IS PRESENT FOR THE RECORD AND  
23 SHE IS, SHE DROVE DOWN YESTERDAY TO BE HERE FOR THE PLEA  
24 THIS MORNING, OR FOR NOW, BUT ALL ALONG DEALING WITH THIS  
25 AND SPEAKING ABOUT THAT TRAUMATIC EVENT IS JUST





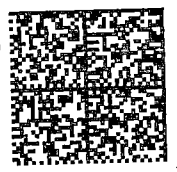
Gregory Pencille 312332 F5A0166  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, SC 29010



Clerk, SC Supreme Court  
PO Box 41330  
Columbia, SC 29122

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