

Gregory Pencille
990 Wisacky Hwy.
Bishopville, SC 29010

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DEC 12 2016

S.C. SUPREME COURT

December 6, 2016

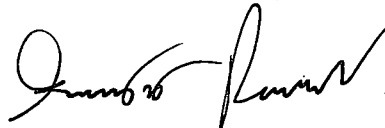
SCCID, Katherine Hudgins
PO Box 11589
Columbia, SC 29211

RE: 2016-000412

Dear Ms. Hudgins:

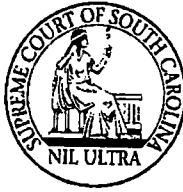
Regarding the attached SC Supreme Court letter dated December 2, 2016 responding to my pro se motions seeking a stay and leave to seek relief under Rule 60 SCRPC. I need you to file these motions, which I have attached copies, with thier respective courts immediately upon receipt.

Very Truly Yours,



Gregory Pencille

enclosures
cc: file
scca
Sup. Ct. Clerk



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

December 02, 2016

Mr. Gregory Pencille, 00312332
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

Re: Gregory Pencille v. State
Appellate Case No. 2016-000412

Dear Mr. Pencille:

This responds to your recent *pro se* motions seeking a stay and leave to seek relief under Rule 60 of the South Carolina Rules of Civil Procedure. Since you are represented by counsel in this matter, no action will be taken on this *pro se* motions. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989). If it is appropriate to seek any relief from this Court, that motion will have to be made by your counsel.

I remind you that any *pro se* response to the *Johnson* petition filed by your counsel must be filed with this Court by December 28, 2016.

Very truly yours,

CLERK

cc: Caitlin Bazan Hastings, Esquire (with copy of motions)
Kathrine Haggard Hudgins, Esquire (with copy of motions)

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DEC 12 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, SCRPC, 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 29th, 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 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 29th, 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 SCRPC.

DECLARATION

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

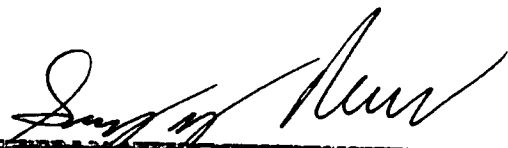
"A petition for Writ of Certiorari is based on the written record of the proceeding from the lower court. If the written record does not accurately reflect all relevant spoken language submitted by parties involved in such proceeding, the ability to effect meaningful Certiorari can not be attained because 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 RELIEF FROM ORDER."

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

November 29th, 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,

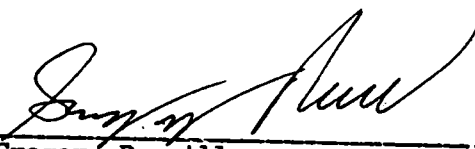
RESPONDENT

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 29th 2016 .



Gregory Pencille
990 Wisacky Highway
Bishopville, SC 29010

PETITIONER

Gregory Pencille
990 Wisacky Highway
Bishopville SC 29010

November 29, 2016

Hon. T.A. Russo
180 N. Irby Street, -MSC-O
Florence, SC 29501

RE: 2013-CP-26-7463

Dear Judge Russo:

Pursuant to Rule 60, SCRPC, I am to provide you a copy of the attached motion within ten (10) days of filing such motion. Please find enclosed my RELIEF FROM ORDER.

Very truly yours,



Gregory Pencille

enclosures
cc: file
scca

IN THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
Fifteenth Judicial Circuit

Gregory Pencille #312332,

Applicant,

v.

State of South Carolina,

Respondent.

RELIEF FROM ORDER

2013-CP-26-7463

This motion comes before this honorable court pursuant to SCRPC 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 ..."

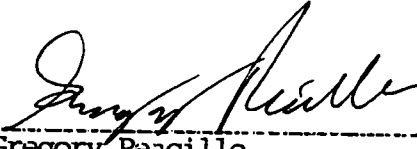
The above errors need to be corrected, failure to correct the above mentioned errors will constitute fraud and will require the reversal of the order pursuant to SCRCP Rule 60(b)(3).

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 29th 2016
Date
Lee County, SC



Gregory Pencille
990 Wisacky Highway
Bishopville, SC 29010

EXHIBIT 2
A (PAGES)

17

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

STATE OF SOUTH CAROLINA

COUNTY OF STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2604686

A/W#: J740369

Date of Offense: 6/3/2004

I.C. Code §: 16-03-0652

CR Code #: 0160

AKA: Gregory Thomas Pencil

Sex: W

Address: Law Correctional Institute

City, State, Zip:

DL#: 999999999999 SID#:

CDL Yes No CMV Yes No RA No

In disposition of the said indictment comes now Gregory Thomas Pencil who was
FO: Criminal Sexual Conduct - 1st Degree

SENTENCE SHEET

CONVICTED OF or PLEADS

In violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) 17-25-43

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Prosecution to Grand Jury, Negotiated Sentence, Recommendation by the State (defendant's initials) 3X
The plea is: Without Negotiations or Recommendation, Defendant Waives Prosecution to Grand Jury, Negotiated Sentence, Recommendation by the State 4

By: [Signature] Clerk of Court [Signature] Defendant [Signature] Attorney for Defendant [Signature] SC Bar

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable, the balance is suspended probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: for sentence currently serving
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections since Oct 2008

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess or receive a firearm or ammunition.

RESTITUTION: Delivered Del. Waiver/Marking Ordered SPECIAL CONDITIONS: PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

System Terms: Obtain GED

Set by SCDFPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning

Fine: Substance Abuse Counseling

 Random Drug/Alcohol testing

 Fine may be pd. in equal, consecutive weekly/monthly
payments of \$ beginning

 \$ paid to Public Defender Fund

 Other:

Condition Discharge § 44-53-450(C) requires \$350 to be paid to the Clerk prior to case disposition

Appointed PD or appointed other counsel. § 47.12 requires \$500 to be paid to Clerk during probation.

Judge of Court/Deputy Clerk: Melanie Higgins Hard Presiding Judge: [Signature]
Judge Code: 2152
Date: 8/9/10



14-1-306 (Assessments 107.5 %)		\$
14-1-311(A)(1) (Carr. Surcharges)	\$100	\$ 100.00
14-1-311(A)(2) (DUI Surcharges)	\$100	\$
56-5-2993 (DCL Assessment)	\$12	\$
56-1-286 (DUI Breath Test)	\$25	\$
revise 47.9 (Public Def/Prob)	\$300	\$
14-1-312 (Law Enforce. Funding)	\$25	\$ 25.00
14-1-313 (Drug Court Surcharges)	\$150	\$
50-51-114 (DUI Breath Test Fee)	\$50	\$
56-5-2942(7) (Vehicle Assessment)	\$400	\$
revise 50.5 (SCCIA Surcharges)	\$5	\$ 5.00
44-53-450(C) (Conditional Discharge)	\$350	\$
% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 132.90

Judge of Court/Deputy Clerk

Presiding Judge
Judge Code: 2152

Date: 8/9/10

IN THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Gregory Pencille #312332,

Applicant,

v.
State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

2013-CP-26-7463

I certify that I have served RELIEF FROM ORDER by depositing the same
in the prison mail system, addressed to the following addresses, postage
prepaid on November 29th, 2016.

SC Supreme Court
PO Box 11330
Columbia, SC 29211

Caitlin Hastings
1000 Assembly Street, Room 519
Columbia, SC 29201

Hon. Judge T.A. Russo
180 N. Irby Street, -MSC-0
Florence, SC 29501



Gregory Pencille
990 Wisacky Highway
Bishopville, SC 29010

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DEC 12 2016

S.C. SUPREME COURT

Gregory Pencille #312332 F5-116
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010



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

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL[®]



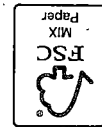
7015 3010 0000 7805 6991



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