

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Terrell McCoy, #256070,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-1124

RECEIVED

MAR 31 2017

ORDER DENYING A SC SUPREME COURT MOTION TO ALTER OR AMEND

FEB 10 PM 12:46

Presiding Judge:
Respondent's Attorney:
Applicant's Attorney:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
J. Rutledge Johnson, Esq.
Rodney D. Davis, Esq.
December 14, 2015
Denise Lauder

THIS MATTER comes before the Court by way of an Application for post-conviction relief, filed April 4, 2013. The Court convened an evidentiary hearing into the matter on December 14, 2015 at the Charleston County Courthouse. Applicant was present at the hearing and was represented by Rodney D. Davis, Esquire. Respondent was represented by J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office. The Court denied relief by written Order, filed May 6, 2016.² On May 27, 2016, Applicant filed a "Motion Pursuant to Rule 59(a) & (e), SCRCP."³

Rule 59(e) of the South Carolina Rules of Civil Procedure states that "(a) motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of entry

¹ After the evidentiary hearing, J. Rutledge Johnson, Esquire was replaced as counsel for Respondent by Alicia Olive, Esquire.

² After the evidentiary hearing but before the filing of the Order of Dismissal, Melisa W. Gay, Esquire, was retained as counsel for Applicant. An Order of Substitution was filed with the Charleston County Clerk of Court on March 26, 2016.

³ Respondent represented to the Court that despite the certificate of service attached to the motion, it had no record of being served with the Motion, prior to January 25, 2017, when the Court provided Respondent with a copy. Therefore, Respondent did not submit a response to the motion until February 6, 2017.

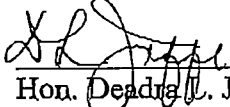
Handwritten initials/signature

of the order." Rule 59(e), SCRPC. The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to allow the parties liberal opportunity to move for the trial judge to reconsider matters properly encompassed in a decision on the merits, regardless of whether the issues and arguments have been previously presented. "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)). See Arnold v. State, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992).

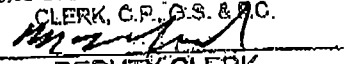
Based upon careful reconsideration of the record in this case, including submissions of the parties, this Court has discovered no findings of fact or conclusions of law that have been overlooked or misapprehended, and this Court is not persuaded to alter or amend its judgment. Applicant presented no novel facts, arguments, or theories in support of their Motion for Reconsideration. Moreover, Applicant has not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, Defendant's Motion to Reconsider is hereby DENIED.⁴

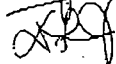
IT IS SO ORDERED.

February 10, 2017


 Hon. Deadr L. Jefferson
 Presiding Judge
 Ninth Judicial Circuit

⁴ This Motion is disposed of without the necessity of a hearing and decided on the record, written motion, and briefs. Rule 59(f), SCRPC; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994).

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., S.S. & J.C.
 By 
 DEPUTY CLERK

2013


Charleston, South Carolina
At Chambers

3 of 3

2/29

MELISA W. GAY, LLC
Attorneys and Counselors at Law
Post Office Box 2144
Mt. Pleasant, South Carolina 29465-2144
Telephone 843-856-0580
Fax 843-856-0590

FACSIMILE TRANSMITTAL SHEET

* Ashley *

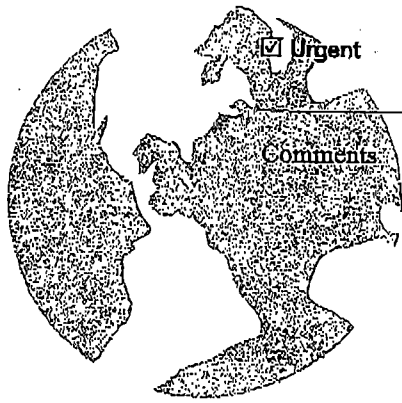
To: C Supreme Court Fax: 803 734 1499

From: Melisa W. Gay Date: 3/31/17

Re: Turrell McCoy Page: 4

Case: 2013-CP-10-1994 CC:

Urgent For Review Please Comment Please Reply Please Forward



Order Denying Applicants
Motion to Alter or Amend

RECEIVED

MAR 31 2017

S.C. SUPREME COURT