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Irma R. Brooks
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RECEIVED

JUN 23 2017

S.C. SUPREME COURT

June 20, 2017

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: K. C. Langford v State of South Carolina
Case No. 2014-CP-19-0002

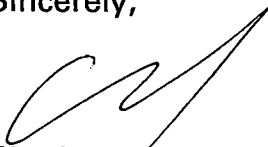
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/jlb

Enclosed as stated

Cc: Johanna C. Valenzuela, Office of Attorney's General
South Carolina Office of Appellate Defense
K. C. Langford, 294500

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JUN 23 2017

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas
Honorable Eugene C. Griffith, Jr., Circuit Court Judge

S.C. SUPREME COURT

Case No: 2014-CP-19-0002

K .C. Langford..... Appellant
S.C.D.C. No.: 294500

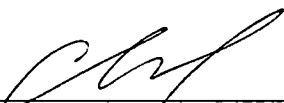
v.

The State..... Respondent

NOTICE OF APPEAL

K. C. Langford appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable Eugene C. Griffith, Jr. on June 15, 2017 which I, Charles T. Brooks, III, received on June 20, 2017.

June 20, 2017


Charles T. Brooks, III
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Attorney for Appellant

Other Counsel on Record:
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JUN 23 2017

S.C. SUPREME COURT

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas
Honorable Eugene C. Griffith, Jr., Circuit Court Judge

2014-CP-19-0002

K. C. Langford.....Appellant
S.C.D.C. No.: 294500

v.

The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 20th day of June, 2017, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on April 22, 2014, addressed to the following as indicated below:

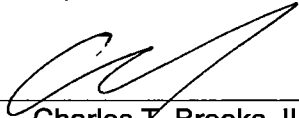
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Johanna C. Valenzuela, Esq.
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K C. Langford
Lieber Correctional Institution
Post Office Box 205
Ridgeville, S. C. 29472

Dated: June 20, 2017


Charles T. Brooks, III
Attorney for the Appellant
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(803) 418-5708

STATE OF SOUTH CAROLINA
 COUNTY OF EDGEFIELD
 IN THE COURT OF COMMON PLEAS
 K.C. Langford, #294500

JUDGMENT IN A CIVIL CASE
 CASE NO. 2014-CP-19-0002
 State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Eugene C. Griffith, Jr.	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

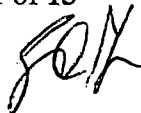
STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS FOR
)	
COUNTY OF EDGEFIELD)	THE ELEVENTH JUDICIAL CIRCUIT
)	
K.C. Langford, #294500,)	
)	C.A. No.: 2014-CP-19-0002
Applicant,)	
)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 8, 2014 and amended on January 30, 2017. Respondent made its return on May 4, 2015. An evidentiary hearing was held on February 1, 2017, at the Lexington County Courthouse. Applicant was present and represented by Charles Brooks, III, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant; Veronica Phillips, alleged alibi witness; Vanessa Phillips, alleged alibi witness; Mark Calhoun, Esquire, Applicant's trial counsel; and Ervin Maye, prosecutor, testified at the hearing. The Court had before it the trial transcript; the Edgefield County Clerk of Court records; the South Carolina Department of Corrections records; Applicant's appellate records; the PCR application; and the Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. Applicant was indicted at the December 2008 term of the Edgefield County Grand Jury for criminal conspiracy (2008-GS-19-



0673). Applicant was indicted at the May 2010 term of the Edgefield County Grand Jury for burglary, first degree (2010-GS-19-0272); armed robbery (2010-GS-19-0273); and kidnapping (2010-GS-19-0278). At trial, Applicant was represented by Mark R. Calhoun, Esquire. On September 7, 2010, Applicant proceeded to trial before a jury and was convicted of all charges as indicted. The Honorable William P. Keesley sentenced Applicant to a term of twenty (20) years imprisonment for kidnapping, twenty (20) years for armed robbery, twenty (20) years for burglary, and five (5) years for criminal conspiracy. Judge Keesley ordered the sentences be served concurrently.

A timely notice of appeal was filed and perfected on Applicant's behalf by Elizabeth Franklin-Best, Esquire. The Supreme Court of South Carolina certified Applicant's appeal and affirmed his sentences and convictions in a published opinion filed November 21, 2012. State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2010). The United States entered an order denying Applicant's petition for writ of certiorari dated October 7, 2013.

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 presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their 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).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRCP 71.1(e)). Where the application alleges ineffective assistance of counsel as a

ground for relief, 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. at 442, 334 S.E.2d at 814.

First, the applicant must show that counsel’s performance “fell below an objective standard of reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, Counsel's deficient performance must have prejudiced 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; see Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) (“[T]he defendant must show that counsel’s representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel’s performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution.”); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (“PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant’s case.”).

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This Court will now address each allegation of ineffective assistance of counsel:

**Allegation #1: Failure to investigate two potential alibi witnesses:
Veronica and Vanessa Phillips**

Applicant testified his counsel should have investigated his alibi witnesses in support of his case. Veronica Phillips, whose brother testified against Applicant and his co-defendant and who was dating Applicant and has a child in common with him, testified at the PCR hearing, along with her mother, Vanessa Phillips.

Veronica Phillips testified Applicant was with her in their apartment, which was about half a mile from the victim's home. She said Applicant was watching the son, who was twenty months old at the time, playing outside. Veronica confirmed she was claiming Applicant was watching toddler son play outside at approximately 10:30 at night. Veronica claimed she was asleep around 11 PM and her mother woke her up when it was time to go to work. Veronica claims she did not tell trial counsel this information because she was focused on her brother at the time. Veronica confirmed she was still in contact with Applicant while he was in prison.

Vanessa Phillips, mother of Veronica Phillips and grandmother to Applicant's son, testified she also observed Applicant at the time he was allegedly committing the crime. She claims she never told anyone because no one ever asked.

Prosecutor Ervin Maye also testified at the PCR hearing. At the time of the trial, Assistant Solicitor Maye believed Veronica Phillips was possibly a co-conspirator in obstructing justice. Assistant Solicitor Maye recalled Ms. Phillips visiting her brother in jail and him going back and forth on whether he was going to testify against his co-defendants. Asst. Solicitor Maye testified he felt he would have been able to successfully cross-examine Ms. Phillips had she testified at the trial.


Trial counsel testified Applicant did not mention alibi witnesses for months leading up to the trial. Suddenly, about two weeks away from trial, Applicant offered alibi witnesses for the first time. Trial counsel believed this alibi claim to be false and believed testimony to support it would be perjured testimony. Trial counsel explained why that was not a good idea to Applicant, and Applicant did not raise the issue again.

This Court finds an alibi charge was not supported by credible evidence. Alibi means elsewhere. State v. Robbins, 275 S.C. 373, 271 S.E.2d 319 (1980). Normally, it is based upon proof advanced by the defendant, attempting to show the impossibility of being involved in a crime due to absence from the scene. Id. Having observed the testimony offered by Applicant, Veronica Phillips, Vanessa Phillips, Assistant Solicitor Maye, and Applicant's trial counsel, this Court finds the testimony of Applicant's trial counsel credible on this issue. Additionally, Vanessa Phillips testified she was either away from Applicant or asleep during the time of the crime and that she lived very close to the victim's home. Veronica Phillips provided very little detail on the time during which she saw Applicant the night of the crime. Neither of these women informed anyone of this life-changing alibi. Under these circumstances, this Court finds their alibi testimony is not credible.

Accordingly, this Court concludes Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly, finds this allegation is denied.

Allegation #2: Jury Panel of Only 32

Applicant also testified that trial counsel should have challenged the jury panel only having thirty-two people. Testimony at the PCR Hearing, however, was that parties were pleased



with the jury that was selected, they used all the strikes, and challenged the jury where necessary with a *Batson* motion. Applicant provided no evidence to support his argument that the size of the jury panel was prejudicial to him or that it was erroneous of his counsel not to object.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly, finds this allegation is denied.

**Allegation #3:
Court-Certified Interpreter**

Applicant argues his trial counsel should have objected to the court interpreter not being certified. The record in this case shows his attorney did in fact object, and the Court outlined the specific reasons why it was finding the interpreter qualified. (Record on Appeal p. 64, l. 18 - p. 70, l. 11.)

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly, finds this allegation is denied.

**Allegation #4:
Failure to Call Joseph Patrick Stevens**

Applicant argues his trial counsel failed to call Joseph Patrick Stevens as a witness. Applicant did not produce testimony from Mr. Stevens at the PCR hearing. Furthermore, trial counsel testified Mr. Stevens was never one of his anticipated witnesses and was instead co-defendant's witness.

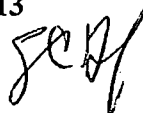
Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the PCR hearing. Underwood v. State, 309 S.C. 560, 425

S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly, finds this allegation is denied.

**Allegation #5:
Failure to object to hearsay for witness Roosevelt**

Applicant next argues his counsel should have objected on the basis of hearsay to witness Detective Roosevelt's testimony. The record shows the State did not call Detective Roosevelt; instead, Applicant's co-defendant was the one to call Detective Roosevelt to the stand. (Record on Appeal, p. 297.) Applicant's co-defendant used Detective Roosevelt's testimony to present the jury information about how the investigation ended up focusing on Applicant and his co-defendant. Applicant's co-defendant used Detective Roosevelt's testimony to show an alleged informant who had a pending legal problem called Detective Roosevelt and offered information on Applicant and his co-defendants. (Record on Appeal, pp. 297- 307.) "[A]n out of court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken." State v. Brown, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994).



Thus, Applicant has failed to establish any prejudice in Detective Roosevelt's testimony.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly, finds this allegation is denied.

**Allegation #6:
Alvin Phillips**

Applicant argues trial counsel was ineffective for failing to pursue State's witness, Alvin Phillip's, claim that he had no plea deal with the prosecutor. Trial counsel testified at the PCR hearing that he had no reason to believe any different than what was testified to, which was that Alvin Phillips was likely going to get at least ten years and was not getting off "scot-free." Assistant Solicitor Ervin Maye testified he did not have an offer with Alvin Phillips. Asst. Solicitor Maye testified he did make Alvin Phillips plead to armed robbery, and he testified he never told Alvin Phillips what he would recommend.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that Applicant was prejudiced thereby and, accordingly, finds this allegation is denied.

**Allegation #7:
Kidnapping Indictment**

Applicant argues his counsel should have moved to dismiss the kidnapping indictment before trial. Trial counsel testified at the PCR hearing that the indictment was a notice document and that going in to the trial the State had evidence Applicant went in to the victim's home and some of the victims did not feel free to leave.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly, finds this

allegation is denied.

**Allegation #8:
Closing Argument Misstatement**

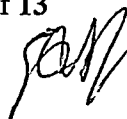
Applicant argues his counsel erred by saying Applicant had a pending Assault and Battery with Intent to Kill (ABWIK) charge pending against him. Trial counsel explained that at one stage in the process Applicant did have an ABWIK charge, but the State did not proceed forward with that indictment at trial. Trial counsel believed he mistakenly referenced that charge in his closing argument. Trial counsel noted the jury was charged with the correct indictments.

The Court finds Applicant has failed to show that he was prejudiced by his counsel's mistaken reference to an ABWIK charge one time in his closing argument and therefore denies this allegation.

**Allegation #9:
Failure to object to prosecutor commenting on Applicant's silence & bolstering
Stevens' testimony**

Applicant claims his trial counsel should have objected to the solicitor's alleged comment on his "silence" when the solicitor told the jury in closing argument that logic and common sense would decide this case. Trial counsel testified that he would have objected if he had heard a reason to do so and did object at least once. Trial counsel did not hear anything objectionable in these statements.

This Court finds Applicant has failed to present any evidence on how these comments reflected on his Fifth Amendment right; Applicant has therefore failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly,



this Court denies this allegation.

**Allegation #10:
Failure to object to co-defendant's counsel quoting Bible scripture in closing**

Applicant argues his trial counsel should have objected to his co-defendant's counsel quoting Bible verses in his closing argument. Trial counsel did not find anything objectionable in those statements and thought they may even be effective.

"[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Id. (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that Applicant was prejudiced thereby and, accordingly, finds this allegation is denied.

Allegation #11:

Failure to close without presenting evidence, to include Applicant's testimony

Applicant also argues trial counsel was ineffective for failing to present a case, to include Applicant's testimony. Applicant agreed he was advised of his right to testify and recollected the advisement discussion with the trial court. Applicant did not want to testify. Applicant did not proffer the "left out" evidence or testimony to the PCR court, failing to establish any prejudice.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that Applicant was prejudiced thereby and, accordingly, finds this allegation is denied.

Allegation #12:

Too much focus on victim in closing argument

Applicant also argues trial counsel was ineffective for focusing too much on the victim in closing. However, Applicant offered no evidence of how this was ineffective or what prejudice was caused by this alleged emphasis on the victim in closing.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that Applicant was prejudiced thereby and, accordingly, finds this allegation is denied.

Allegation #13:

Failure to object to premature deliberations

Applicant also argues trial counsel was ineffective for failing to object to premature deliberations by the jury. However, Applicant failed to present any evidence to support his assertion that the jury was prematurely deliberating. Trial counsel testified at the PCR hearing that there was no indication there were premature deliberations by the jury.



This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that Applicant was prejudiced thereby and, accordingly, finds this allegation is denied.

**Allegation #14:
Failure to file reply brief for appeal**

Applicant also argues appellate counsel was ineffective for failing to file a reply brief. Applicant offered only speculation and no evidence of how a reply brief would have changed the outcome of the appellate decision in his case.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that Applicant was prejudiced thereby and, accordingly, finds this allegation is denied.

CONCLUSION


Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial. Trial counsel was not deficient in any manner, and Applicant was not prejudiced by his representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 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 be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the Respondent.

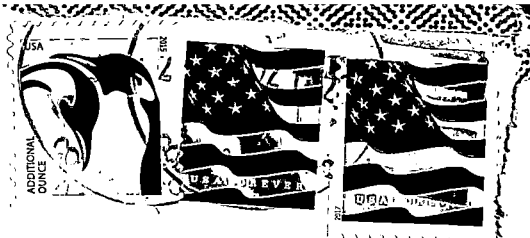
AND IT IS SO ORDERED this 15th day of June, 2017.


EUGENE C. GRIFFITH, JR.
Presiding Judge
Eleventh Judicial Circuit

Norway, South Carolina.



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