

June 23, 2017

RECEIVED

The South Carolina Supreme Court
Daniel E. Shearouse, Clerk of Court
Post Office Box 11330
Columbia, S.C. 29211

JUN 27 2017

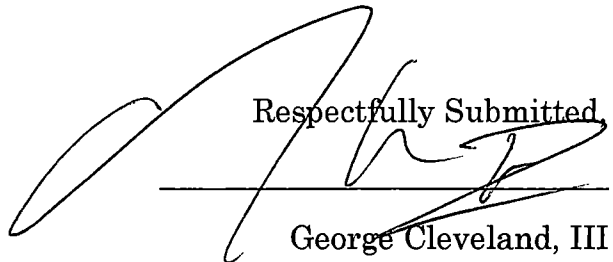
S.C. SUPREME COURT

Re: Notice of Appeal in George Cleveland, III v. State, P.C.R. Case, Lower Court Case No. 2014-CP-37-00718.

Dear Mr. Shearouse,

Attached to this letter is my Notice of Appeal (s) of two (2) Judgments in the Oconee County P.C.R. Court. Can you file, and **docket the Appeals separately as my Motion to Consolidate both Appeals will arrive at or close to the same time as both Notice of Appeals respectively?**

Respectfully Submitted,



George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleland7475@gmail.com

cc: file

Lindsey A. McCallister, Assistant Attorney General

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUN 27 2017

APPEAL FROM OCONEE COUNTY

S.C. SUPREME COURT

COURT OF COMMON PLEAS

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

LOWER COURT CASE No. 2014-CP-37-00718

GEORGE CLEVELAND, III, APPELLATE,

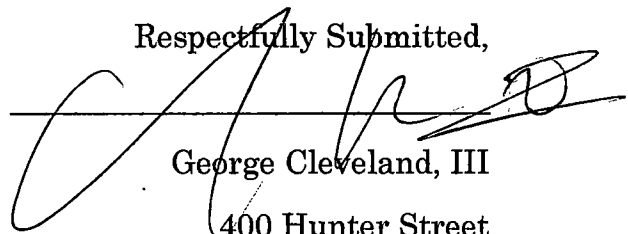
v.

STATE OF SOUTH CAROLINA,RESPONDENT.

NOTICE OF APPEAL

George Cleveland, III, proceeding prose, appeals the Judgment of the Honorable R. Scott Sprouse filed on April 28, 2017, see attached copy hereto. I received a copy of the Judgment by United States Mail on May 26, 2017.

Respectfully Submitted,



George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleveland7475@gmail.com

Dated: June 23, 2017

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN 27 2017

APPEAL FROM OCONEE COUNTY

COURT OF COMMON PLEAS

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GEORGE CLEVELAND, III, APPELLATE,

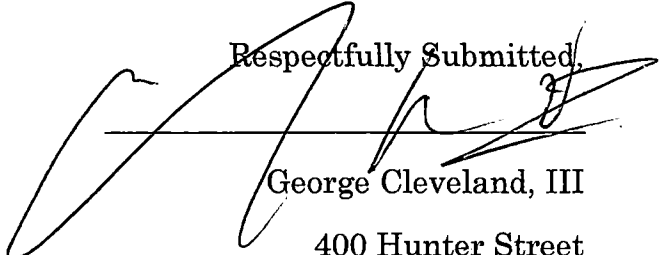
v.

STATE OF SOUTH CAROLINA,RESPONDENT.

NOTICE OF APPEAL

George Cleveland, III, proceeding prose, appeals the Judgment of the Honorable R. Scott Sprouse filed on May 30, 2017, see attached copy hereto. I received a copy of the Judgment by printing the order off the South Carolina Courts Website's E-filing system on June 22, 2017

Respectfully Submitted,



George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleland7475@gmail.com

Dated: June 23, 2017

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 2014CP3700718

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

George Cleveland, III, SCDC #357770 ^{2017 APR 28 P 2: 07}
PLAINTIFF(S) State of South Carolina
DEFENDANT(S)

Submitted by: Court	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
---------------------	--

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. See Page 2 for additional information.
- 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
- STAYED DUE TO BANKRUPTCY
- 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.

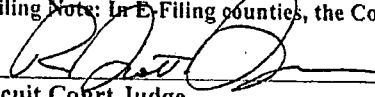
IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: The Applicant's Motion to Amend filed April 17, 2017 is DENIED. After careful consideration of the filings of counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Furthermore, the Court directs Mr. Cleveland's attention to the Formal Order that was signed April 14, 2017, to address his concerns that a formal order was not issued.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT 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.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2752

Judge Code

4-28-17

Date

For Clerk of Court Office Use Only

This judgment was entered on the 28th day of April, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 28th day of April, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

George Cleveland III Prose

Lindsay McCallister

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED
OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2017 APR 28 P 2:07

A TRUE COPY
APR 28 2017
CLERK OF COURT - OCONEE COUNTY

STATE OF SOUTH
CAROLINA
COUNTY OF OCONEE

FILED OCONEE COUNTY
BEVERLY H. WHITFIELD
CLERK OF COURT

2017 MAY 30 A

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

George Cleveland, III,
Applicant,

CASE NO.: 2014-CP-37-00718

vs.

State of South Carolina,
Defendant.

Order Denying Second
Motion to Alter/Amend

This matter is before the Court on the Applicant's second Motion to Alter/Amend filed May 15, 2017. This Motion seeks the reversal of the order dismissing his PCR Application, not a reversal of the order denying the Applicant's First Motion to Alter/Amend.

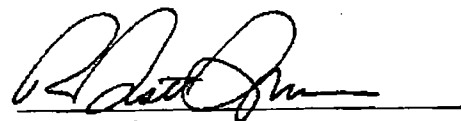
"A second motion for reconsideration is appropriate only if it challenges something that was altered from the original judgment as a result of the initial motion for reconsideration" Coward Hunt Const. Co., Inc., v. Ball Corp., 336 S.C. 1, 3, 518 S.E.2d 56, 58 (Ct.App 1999).

In this case, no alterations were made to the order of dismissal as a result of the initial motion for reconsideration. Furthermore, in the second Motion, no additional assertions of fact or arguments of law are presented; the second Motion is simply a compilation of the prior motion to alter/amend the dismissal of his PCR application.

Therefore, the second Motion to Alter/Amend is not a proper Rule 59, SCRPC, motion and is DENIED as successive and not properly filed.

IT IS SO ORDERED.

May , 2017



Walhalla, South Carolina

R. Scott Sprouse
Tenth Judicial Circuit

Copies to:
(P) Standard (D) McAllister
other _____
Mailed Boxed _____ handed _____

Copies to:
Atty
DSS
Mailed



APPELLANT'S RULE 211 SCACR MOTION TO CONSOLIDATE

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

APPEAL FROM OCONEE COUNTY

JUN 27 2017

COURT OF COMMON PLEAS

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

S.C. SUPREME COURT

LOWER COURT CASE No. 2014-CP-37-00718

GEORGE CLEVELAND, III, APPELLATE,

v.

STATE OF SOUTH CAROLINA,RESPONDENT.

APPELLANT'S CERTIFICATE OF SERVICE

I, George Cleveland, III, proceeding prose, certifies that on the date below, by United States Mail, proper postage prepaid, and properly addressed, my Notice of Appeal for the May 30, 2017 Judgement of the Oconee County Court of Common Pleas, to the State's Counsel of Record:

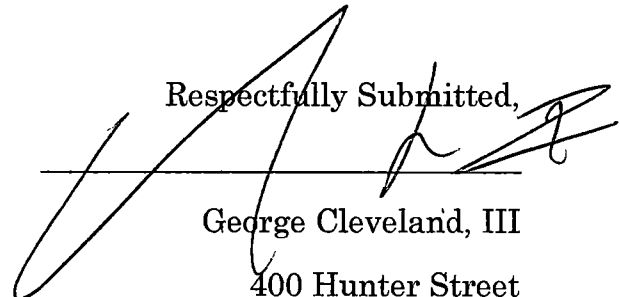
Office of the Attorney General

Lindsey A. McCallister, Assistant Attorney General

Post Office Box 11549

Columbia, S.C. 29211-1549

Respectfully Submitted,

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read 'George Cleveland, III'.

George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleveland7475@gmail.com

Dated: June 23, 2017

APPELLANT'S RULE 211 SCACR MOTION TO CONSOLIDATE

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY

COURT OF COMMON PLEAS

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

LOWER COURT CASE No. 2014-CP-37-00718

GEORGE CLEVELAND, III, APPELLATE,

v.

STATE OF SOUTH CAROLINA,RESPONDENT.

RECEIVED

JUN 27 2017

S.C. SUPREME COURT

APPELLANT'S CERTIFICATE OF SERVICE

I, George Cleveland, III, proceeding prose, certifies that on the date below, by United States Mail, proper postage prepaid, and properly addressed, my Notice of Appeal for the April 28, 2017 Judgement of the Oconee County Court of Common Pleas, to the State's Counsel of Record:

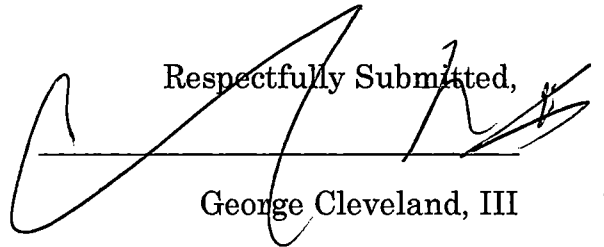
Office of the Attorney General

Lindsey A. McCallister, Assistant Attorney General

Post Office Box 11549

Columbia, S.C. 29211-1549

Respectfully Submitted,

A large, stylized handwritten signature in black ink, appearing to read 'George Cleveland, III', is written over a horizontal line.

George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleveland7475@gmail.com

Dated: June 23, 2017

STATE OF SOUTH CAROLINA)
 COUNTY OF OCONEE)
)
)
 George Cleveland, #299040,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2014-CP-37-0718

ORDER OF DISMISSAL

FILED OCONEE COUNTY, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2017 APR 14 P 4:20

Presiding Judge: R. Scott Sprouse
 Applicant's Attorney: *Pro Se*
 Respondent's Attorney: Lindsey A. McCallister, Esquire
 Trial Counsel: R. Daniel Day, Jr., Esquire
 Date of Hearing: March 1, 2017
 Court Reporter: Diane L. Marcengill

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 2, 2014. Respondent made its return on or about July 30, 2015. An evidentiary hearing on the matter was convened on March 1, 2017 at the Oconee County Courthouse. Applicant was present at the hearing and proceeded *pro se*. Lindsey A. McCallister, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf. Also testifying was Daniel Day, Esquire. The Court had before it the trial transcript, the Oconee County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's application, and Respondent's return.

At the call of the case, Applicant made a motion for a continuance alleging the appeal from his PCR in Greenville County had been fraudulently denied because it was decided without

DSS

Copies to:
 Atty (P) *checked* (D) *McCallister*
 DSS _____ other _____
 Mailed Boxed _____ handed *COMPUTER*

oral argument, and the Clerk of the Supreme Court and the Attorney General's Office were conspiring to forge signatures on the orders. Applicant's motion was denied as the conduct complained of allegedly occurred in a Greenville County action, not the Oconee County action presently before the Court, and this Court has no jurisdiction regarding appellate issues.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Oconee County. Applicant was indicted at the October 2012 term of the Court of General Sessions for Oconee County for two counts of possession of a stolen vehicle (2012-GS-37-0814; -0802) and one count of receiving or selling a vehicle with a falsified VIN number (2012-GS-37-0815). Applicant was represented by R. Daniel Day, Jr., Esquire. On October 13, 2014, Applicant pleaded guilty as indicted before the Honorable Roger L. Couch. Judge Couch sentenced Applicant to a term of five years' imprisonment suspended upon the service of seventy-five days with five years' probation for each count of possession of a stolen vehicle, and a term of five years' imprisonment suspended upon the service of seventy-five days with five years' probation for receiving or selling vehicle with a falsified VIN number. The sentences were to be served concurrently, but also consecutive to any sentence received from Applicant's then-pending charges in Greenville County.¹ Applicant did not appeal his pleas or sentences.

ALLEGATIONS

In his Application and amendments filed thereto, Applicant alleges that he is being held in custody unlawfully for the following reasons:

¹ On November 5, 2013, Applicant pleaded guilty to several Greenville County charges. Applicant challenged those guilty pleas in a separate, Greenville County PCR application which was subsequently dismissed with prejudice (2014-CP-23-1895). Applicant's Petition for Writ of Certiorari was denied on June 15, 2016, and the Remittitur issued on August 4, 2016.

1. Ineffective Assistance Counsel

At the hearing, Applicant stated his allegations are that the court had no jurisdiction to impose a conviction and sentence because the cars were stolen from another state, which should have triggered federal jurisdiction under the Dyer Act; the indictments were defective because they lacked specificity as to dates and locations of the alleged illegal conduct, because there was no proof witnesses were actually present to testify at the grand jury, and because the volume of cases indicted on the same day as Applicant's; and Counsel should have objected to the sufficiency of the indictments.

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 conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the 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 443, 334 S.E.2d at 814. 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.

RS

Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 U.S. 668, 688 (1984)). 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. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

A. Ineffective Assistance of Counsel

Applicant testified Counsel was ineffective for failing to object to the indictments before the day of the plea because the indictments were not specific enough to be able to fully prepare an adequate defense. Applicant also stated that because there was no objection to the indictments, the issue was not preserved for appellate review. Applicant testified he believed Counsel did not read the full police reports, which lead to Applicant pleading guilty to an improper charge. Applicant stated if Counsel had told him the indictments were defective, he would have gone to trial or asked to have the case dismissed. Applicant testified he met with Counsel at the detention center the day before his plea, and Counsel told him there was nothing improper with Oconee County for charging him with these crimes. Applicant stated he and Counsel discussed the indictments, and Counsel told him there was no way to prove they were real. Applicant also stated he and Counsel had never discussed the underlying facts of the case or Applicant's side of the story. Applicant stated he wanted to plead guilty, but he felt there were too many unknowns at that time.

On cross-examination, Applicant admitted that, in response to the plea judge, he did affirm he was satisfied with Counsel, he had enough time to discuss his case with Counsel, and he wanted to plead. Applicant also acknowledged he told the plea judge he wished to give up his constitutional rights, including the right to present any defense to these charges. Applicant further admitted he agreed with the recitation of facts presented during the plea by the solicitor, including the fact that the cars at issue were found in Seneca in Oconee County. Applicant stated although he told the plea judge these things, he did not like the answers he had received from Counsel the day before, and, at that time, he was unaware of the existence of the Dyer Act.

Counsel testified he had been practicing law for approximately 36 years at the time of Applicant's case, with a substantial portion of that time spent on criminal work. Counsel testified he met with Applicant five or six times in person and exchanged letters and phone calls. Counsel stated he had read the Dyer Act, and he discussed the issue of federal versus state charges with Applicant and explained to Applicant it was proper for him to be charged in both jurisdictions. Counsel explained Applicant was only charged with possession of stolen vehicles and changing a VIN number in South Carolina, not with stealing the vehicles or taking the vehicles across state lines. Counsel stated he explained to Applicant that all the State had to prove was that the stolen vehicles were found within the jurisdiction of Oconee County, and part of Counsel's strategy at trial would have been to challenge that element.

Counsel further testified the indictments he first received were not stamped or certified, so he requested certified copies and explained the indictment process to Applicant. Counsel testified, in his experience, there was nothing unusual about the number of indictments handed down on the day of Applicant's indictment. Counsel further testified that he explained to Applicant the indictments were certified as true billed, which means they are true on their face, unless Applicant can prove they are not. Counsel stated since neither he nor Applicant were present when the grand jury met, there was no way to prove Applicant's claims, and Counsel explained that to Applicant. Counsel further stated it was his opinion that there was no basis to challenge the indictments.

Counsel testified he and Applicant discussed possible defenses to these charges, and Applicant told Counsel he purchased the cars from someone else, but Applicant was unable to provide any documentation for the sale. Counsel stated he investigated the charges by meeting with the officers, viewing the cars, and obtaining documents from Greenville County, as well as

Clayton County in Georgia. Counsel stated he told Applicant he would challenge any aspect of the case Applicant wanted, and Applicant knew that. As an example, Counsel testified he filed a motion for Applicant to get PTI and had a hearing on that motion, even though Counsel had explained to Applicant he would not be eligible for that program without the solicitor's consent.

Counsel testified he had enough time to investigate and prepare the case, and it was solely Applicant's decision to plead guilty. Counsel reiterated Applicant was not charged with nor did Applicant plead to stealing the vehicles, taking the vehicles across state lines, or any other charge regarding Applicant's conduct in Georgia. Counsel testified he felt he had provided detailed, specific answers to Applicant's questions on these issues, and Counsel was prepared on the day of the plea to take the case to trial if necessary. Counsel further stated that he had no doubt Applicant knew what he was doing when Applicant agreed to plead guilty, as Applicant is an intelligent man who actively assisted Counsel in his own defense.

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both."). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975))).

The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charges to Applicant and informed Applicant of the maximum possible sentences. The plea judge also discussed Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant told the plea court that he was satisfied with his attorney. Applicant admitted he was guilty of this offense and agreed with the facts presented by the State at the plea. This Court finds that Applicant understood the terms of the plea and the possible sentence.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case. Counsel is a trial practitioner who has extensive experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, Applicant's constitutional rights, the State's evidence, possible defenses, and answered all of Applicant's questions.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Counsel testified that he reviewed the indictments and found no reason to believe there were any irregularities with the grand jury process or that the charges were

improperly brought in Oconee County. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

B. Subject-Matter Jurisdiction

Further, this Court finds Applicant has failed to meet his burden of proof regarding his allegation that the Circuit Court lacked jurisdiction. Defects in the indictment do not affect subject-matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (citing U.S. v. Cotton, 535 U.S. 625 (2002)). Applicant may challenge the subject-matter jurisdiction of the trial court at any time. Id. at 100, 610 S.E.2d at 498 (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). However, any challenge to the legality and sufficiency of the process of the state grand jury does not implicate the subject-matter jurisdiction of the circuit court. Evans v. State, 363 S.C. 495, 509-10, 611 S.E.2d 510, 518 (2005). “[C]ircuit courts obviously have subject-matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499. This Court finds Applicant’s conviction involved a criminal charge in General Sessions Court, and the circuit court had proper subject-matter jurisdiction.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing on this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

RSS

CONCLUSION

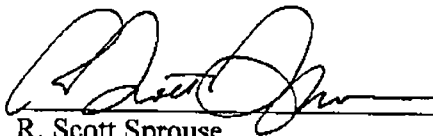
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice. This Court also finds, as to all other allegations, that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

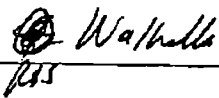
IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 5 day of April, 2017.



R. Scott Sprouse
Presiding Judge
Tenth Judicial Circuit


Walthall

, South Carolina.

FILED OCOBEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2017 APR 14 P 4:20

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 2014CP3700718

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

George Cleveland, III, SCDC #357770 ^{2017 APR 28 P 2:07}
PLAINTIFF(S) State of South Carolina
DEFENDANT(S)

Submitted by: Court	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. See Page 2 for additional information.
- 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
- STAYED DUE TO BANKRUPTCY**
- 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: **The Applicant's Motion to Amend filed April 17, 2017 is DENIED. After careful consideration of the filings of counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Furthermore, the Court directs Mr. Cleveland's attention to the Formal Order that was signed April 14, 2017, to address his concerns that a formal order was not issued.**

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT 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:

Copies to:
Atty (P) Cleveland (D) McAllister
DSS _____ other _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 GEORGE CLEVELAND, III,)
 Plaintiff,)
 vs.)
)
 STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 10th JUDICIAL CIRCUIT
 CASE NO.: 2014-CP-37-0718

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: GEORGE CLEVELAND, III, Bar No. PROSE Address: 400 HUNTER STREET, SENECA, S.C. 29678 Phone: 8647847223 Fax _____ E-mail: gcleland7475@gmail.com Other: _____	Defendant's Attorney: S.C. A.G. OFFICE LINDSEY A. McCALLISTER, Bar No. _____ Address: P.O. BOX 11549, COLUMBIA, S.C. 29211-1549 Phone: 803-734-3970 Fax _____ E-mail: _____ Other: _____
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- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: RULE 59 (e) S.C.R.C.P. Motion
 Estimated Time Needed: 30 Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

PROSE

Signature of Attorney for Plaintiff / Defendant

MAY 10, 2017
 Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
- EXEMPT: (check reason)
 - Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: _____
- Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other: _____

JUDGE CODE _____
 Date: _____

CLERK'S VERIFICATION

Collected by: *aw* Date Filed: _____
 MOTION FEE COLLECTED: \$ *Exempt*
 CONTESTED - AMOUNT DUE: \$ _____

FILED OCONEE COUNTY, SC
 BY CLERK OF COURT
 2017 MAY 15 A 11:00

ENTERED
aw
 COMPUTER
 no copies

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE)	FOR THE TENTH JUDICIAL CIRCUIT
)	Case No. 2014-CP-37-0718
GEORGE CLEVELAND, III)	
S.C.D.C. NO. 357770)	
Applicant,)	APPLICANT'S RULE 59 (e) MOTION
v.)	TO ALTER/ AMEND THE APRIL 14,
STATE OF SOUTH CAROLINA,)	2017 DENIAL OF P.C.R. APPLICATION
Respondent,)	
_____)	

FILED OCONEE COUNTY, SC
 BEVERLY H. WHITEFIELD
 CLERK OF COURT
 2017 MAY 15 A 11:01

To: CIRCUIT COURT JUDGE SCOTT SPROUSE

1. IF YOU WILL PLEASE TAKE NOTICE: George Cleveland, III, proceeding pro se, respectfully submits this *Rule 59 (e) S.C.R.C.P.* to alter/ amend the April 14, 2017 Judgment that denied my P.C.R Application on the following grounds:

The **ORDER OF DISMISSAL** is wholly erroneous; the Judgement, *id.*, is in conflict with the legal holding of the South Carolina. Supreme Court, i.e. *Simmons v. State* 416 S.C. 584, 788 S.E. 2d. 220 (2016), and of the United State Supreme Court, i.e. *Strickland v. Washington* 466 U.S. 668, 104 S.CT. 2052, 80 L.ED. 2d. 674 (1984)



JURISDICTION AND VENUE:

2. *Rule 59 (e) S.C.R.C.P.* states the following relevant language:

“A motion to alter or amend the judgement, shall be served not later than 10 days after the receipt of written notice of the entry of the order.” See Applicant’s Exhibit 1 (hereinafter A.E.) Copy of *Rule 59 (e). IBID.*

3. I received the April 14, 2017 Filed Judgment that denied my *P.C.R.* Application in the above captions case on May 01, 2017 by first class United States Mail, see A.E. 2, at ¶2; accordingly, this Court has Jurisdiction to alter/ amend the April 14, 2017 *P.C.R.* Judgment respectively.

ARGUMENT:

**THE APRIL 14, 2017 IS IN CONFLICT WITH *Simmons. v. State*
CASE-LAW OF THE S.C. SUPREME COURT, AND *Strickland v.*
*Washington***

OF THE US. SUPREME COURT:

4. Under *Simmons v. State 416 S.C. 584, 788 S.E. 2d. 220 (2016)* (hereinafter *Simmons*), the South Carolina Supreme Court reasoned how South Carolina Circuit Court Judges must do in determining whether my *P.C.R.* Application should be granted or denied:

“In ruling on an Application for *P.C.R.* ‘[t]he [*P.C.R.*] court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.’ S.C. Code Ann. § 17-27-80 (2014). The *P.C.R.* general denial of all claims not specifically addressed in the *P.C.R.* Court’s general denial of all claims not specifically addressed in the *P.C.R.* Court’s order ‘does not constitute a sufficient ruling on any issues since it does not set forth **specific findings of fact and conclusions of law,**’ “, see *Simmons, id.*, at 592, at 220, see also *Strickland v. Washington* 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d. 674 (1984), *id.*, at 690, at 2066.

5. In this Court’s *Order of Dismissal*, it failed to make **specific findings of facts, and conclusions of law** based on my specific *cognizable claims*¹ pursuant to the *Simmons* court demand, instead this Court requested the other party, i.e. the S.C. Attorney General’s Office (Asst. A.G. Lindsey A. McCallister) to type up an Order of Dismissal that met its’ intent of side-stepping my specific arguments., see. A.E.3-5 the Side-Step Order of Dismissal dealt with past tense statements of: me “admitting” at the hearing (at my Guilty Pleas Hearing) that I was satisfied with Mr. Day, I agreed with the facts of the Solicitor which *Simmons* rejects these Statements grounds that the Side-Step Order, *id.*, dealt with matters outside of the

¹ My specific claims were, and still are: **INEFFECTIVE ASSISTANCE OF COUNSEL; OCONEE COUNTY GENERAL SESSIONS COURT LACKED JURISDICTION TO SENTENCE ME ON OCTOBER 13, 2014 BECAUSE THE STOLEN VEHICLES CROSSED STATE LINES (GA. INTO S.C.) UNDER ART. VI OF U.S. CONST., AND UNDER THE NATIONAL MOTOR VEHICLE THEFT ACT (A.K.A.: THE DYER ACT) TITLE 18 U.S.C.A § § 2312, 2313; SEE A.E.13-17; DEFECTIVE INDICTMENTS ON THE GROUNDS THAT OVER 100- DEFENDANTS WERE INDICTED IN LESS THAN 8-HOURS, DIRECT INDICTMENT WAS IMPROPER BECAUSE OF IMPROPER SERVICE, AND ALL 3- INDICTMENTS LACKED CRITICAL INFORMATION, SEE A.E. 18-22**

scope of my Post-Conviction-Relief-Application, i.e. after my guilty plea of October 13, 2014. *Simmons* required this Court to only look into my specific claims, arguments, legal authorities, and my evidence. *IBID*.

7. *Simmons* also required this Court to rule on my specific subject matter jurisdiction argument, but instead, this Court inserted defective indictments caused the Oconee County General Sessions Court lacked subject matter jurisdiction, see A.E. 4-5.

8. MY SPECIFIC P.C.R. CLAIMS THAT WERE NOT SPECIFICALLY RULED ON ARE:

9. The Oconee County Sheriff's Office's Case Report written by Deputy McCreary's own admission in his report that the vehicles were stolen from Georgia, not South Carolina. The *Supreme Clause* under the *U.S. Const. Art. VI*, and the *Dyer Act* barred South Carolina from any prosecution², see A.E. 31, see also A.E. 14-16.

10. The Oconee County Indictments were phony on the grounds that Mr. Day failed to object under *S.C. Code Ann. § 17-27-80* ("Every objection to any Indictment for any defect...") The specific defects: 10th Circuit Solicitor's Office Employee Ms. Brenda Bachert failed to provide the specific location, and the specific date she allegedly served me the Direct Indictment for the Honda Accord (2012GS3700802).

² Specific legal authorities that barred South Carolina Prosecution in this case: Supremacy Clause under the U.S. Const.; *The Dyer Act, id.*, *City of Cayce v. Norfolk Southern Ry., Co.*, 395, 706, S.E. 2d. 6, S.C. (2014); *U.S. v. Turley* 352 U.S. 407, 77 S.Ct. 397 U.S. (1957); *Strickland v. Washington* 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed. 2d. 674 (1984), see A.E. 14-22, see also *IBID*, (Supporting evidence), and my prejudice under the 14th Amend. of U.S. Const., see A.E. 3-40.

Further, 110- Defendants were allegedly Indicted in 8-Hours on October 08, 2012, and that the purpose of the Grand Jury under *Branzburg v. Hayes* 408 U.S. 665, 686, 687 92 S.C.T. 2646, 2657, LED. 2d. 626 (1972) ("The grand jury... 'duel function of determining if there is probable cause to believe that a crime has been committed and of protecting citizens against unfounded criminal prosecutions.' "Quoted from *U.S. v. Sells Engineering Inc.* 463 U.S. 418, 103 S.C.T. 3133 (1983), *id.*, at 423, at 3137, see A.E.20-27.

11. The February 29, 2016 Oconee County Sheriff's Office letter stated that on October 08, 2012 when the alleged Oconee County Grand Jury met, Sgt. David Smith who was an witnesses on the face of the Indictments, and charging Officer did not even leave the Sheriff's Office to testify in front of the Oconee county Grand Jury, see A.E.31, see also A.E. 32-36 and my prejudice legal citation. *IBID*.

12. The *Simmons* Court requires this Court, not the South Carolina Attorney General's Office to address each, and every one of my *P.C.R.* claims, my supporting evidence, and my legal authority (prejudice), this Court as *Simmons* puts it, the Court is you: **Judge Sprouse, not Ms. McCalister**, furthermore; pursuant to the Rules of Professional Conduct you are to remain: "**Patience;**" and "**Independent;**" and, not to help the State. This is the sole reason why South Carolina has 3-Branches of government, so that no one Office, or Branch controls or helps the other. *Simmons* rejects this notion of the Circuit Court Judge, and the Asst.A.G. (McCalister) teaming up against me to **derail my P.C.R.** but instead, *Simmons*

requires this Court to “ ‘make **specific findings of facts and conclusions of law.**’ ” *Simmons, id.*, at 592, at 220.

13. Based on the foregoing facts, supporting evidence, and legal authorities, I pray for the following relief:

PRAYER FOR RELIEF:

14. **WHEREFORE; GRANT** my *Rule 59 (e) S.C.R.C.P.*, and Alter/Amend the April 14, 2017 Judgment of this Court by making specific findings of fact, and conclusions of law under *Simmons v. State 416 S.C. 584, 788 S.E. 2d. 220 (2016)* on my claims of: the Stolen Vehicles crossing State Lines; Oconee County General Sessions Court lacked Subject Matter Jurisdiction under the *Supremacy Clause U.S. Const. Art. VI*; and the *Dyer Act Title 18 §§ 2312, 2313*. Plea Counsel failed to object under S.C. Code Ann. § 17-27-80 on the 110 defendants indicted in just 8- hours on October 08, 2012, failing to state the specific address the stolen vehicles were recovered at, improper service of the Direct Indictment by Ms. Bachert of the Solicitor’s Office, Charging Investigator: Sgt. David Smith of the Oconee County Sheriff’s office never testified in front of the Oconee County Grand Jury on October 08, 2012, despite his name being on the fact of all 3- indictments.

15. **Apply** my specific errors, and my prejudice, I argued under the *Dyer Act, §17-27-80*; the *14th Amendment* of the *U.S. Const.* pursuant to *Strickland v. Washington 466 U.S. 668, 104 S.C.T. 2052, 80 L.ED. 2d. 674 (1984)* two-prong legal analysis on

my Ineffective Assistance of Counsel Claim under the 6th Amendment of the U.S.
Const.

16. Order any other relief this Court deems just proper, and/ or impartial
respectively.

Respectfully Submitted,

s/

George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleland7475@gmail.com



Dated: May 10, 2017

George Cleveland IV
Winter Street
Cay SC 29678

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OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™



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DANIEL E. SHEAROUSE; CLERK OF COURT
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Columbia, SC 29211