

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Clarendon County

R. Knox McMahon, Circuit Court Judge

RECEIVED

APR - 1 2016

SC SUPREME COURT

DONNEIL WOODS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000131

APPENDIX

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ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT DATED OCTOBER 14 – 16, 2008	1
FINAL <u>ANDERS</u> BRIEF OF APPELLANT	267
<u>STATE V. WOODS</u> , 2011-UP-487 (S.C. Ct. App. filed October 31, 2011)	277
REMITTITUR	278
APPLICATION FOR POST-CONVICTION RELIEF	279
RETURN	287
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPTEMBER 30, 2013	293
PETITIONER’S EXHIBIT #1 (ARREST WARRANTS).....	404
PETITIONER’S EXHIBIT #2 (APPLICATION FOR COUNSEL)	407
PETITIONER’S EXHIBIT #3 (LETTER DATED JULY 26, 2007 AND MOTION FOR DISCOVERY).....	408
PETITIONER’S EXHIBIT #4 (LETTER DATED JULY 21, 2008 AND MOTION FOR JUDICIAL REVIEW)	417
PETITIONER’S EXHIBIT #5 (LETTER DATED JUNE 30, 2008 AND MOTIONS FOR SPEEDY TRIAL AND BOND).....	421
PETITIONER’S EXHIBIT #6 (EMAIL DATED AUGUST 6, 2008)	424
PETITIONER’S EXHIBIT #8 (INDICTMENT)	425
PETITIONER’S EXHIBIT #9 (SPEEDY TRIAL MOTION).....	427
PETITIONER’S EXHIBIT #10 (TRANSCRIPT DATED AUGUST 26, 2008 OF MOTION FOR SPEEDY TRIAL).....	428
PETITIONER’S EXHIBIT #11 (CERTIFICATE OF MAILING).....	441

PETITIONER’S EXHIBIT #12 (LETTER DATED SEPTEMBER 12, 2008).....442

PETITIONER’S EXHIBIT #13 (RECEIPT FOR DISCOVERY).....444

PETITIONER’S EXHIBIT # 14 (PETITION FOR FUNDS).....445

PETITIONER’S EXHIBIT # 15 (ORDER FOR FUNDS)446

PETITIONER’S EXHIBIT # 16 (SLED DNA REPORT).....449

PETITIONER’S EXHIBIT # 17 (SUBPOENA AND MEDICAL RECORDS).....453

PETITIONER’S EXHIBIT # 20 (INDEX FOR RULE 5 DISCLOSURE AND MOTION FOR
RECIPROCAL DISCOVERY).....487

PETITIONER’S EXHIBIT # 21 (MOTION TO COMPEL)489

PETITIONER’S EXHIBIT # 22 (ORDER FOR FUNDS)490

ORDER OF DISMISSAL493

MOTION TO ALTER OR AMEND PURSUANT TO RULE 59(e), SCRCP501

AMENDED MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e),
SCRCP504

ORDER DENYING RULE 59(e) MOTION AND PRO SE 59(e) MOTION506

INDICTMENT AND SENTENCE SHEETS.....509

- 4) The failure of trial counsel to present favorable evidence, or to elicit that favorable evidence from the State's witnesses; and
- 5) The failure of the State to turn over potentially exculpatory evidence;

In the Order of Dismissal, this Court found that the Applicant failed to offer any proof that the medical records of the alleged victim were in the State's possession. However, as the Applicant argued during the hearing, Nurse Marsha Nelson was called as a witness for the State at Applicant's first trial. Trial Counsel admitted that the State never provided the requested medical records prior to the trial. The Applicant maintains that the State was in possession of these medical records, as there would have been way for the Assistant Solicitor to know whom to call to testify concerning the alleged victim's examination. Further, obtaining the medical records on the Monday the case was called for trial, did not afford trial counsel adequate opportunity to investigate the findings or be prepared to defend the Applicant.

In addition, the South Carolina Supreme Court has held that the failure of trial counsel to present the type of exculpatory evidence that was contained in Nurse Nelson's notes is ineffective assistance of counsel, and not a valid trial strategy. Pauling v. State of South Carolina, 331 S.C. 606 (1998).

In the Order of Dismissal, the Court only addresses the allegation of ineffective assistance of counsel, and does not address the Applicant's claims of the denial of his due process rights. In addition, the Court does not address the Applicant's claims of trial counsel's failure to adequately conduct her investigation into his case.

The Supreme Court has held that a Rule 59(e), SCRCP, motion must be filed in order to preserve for appeal an issue that was presented at a PCR hearing but that was not included in an Order dismissing a PCR. See Marlar v. State, 375 S.C. 407, 653 S.E.2nd 266 (2007); see also S.C. Code Ann. Section 17-27-80 ("requiring PCR courts to 'make specific findings of fact, and state expressly its conclusions of law, relating to each issue

presented"). Consequently, the Applicant requests that the Court reconsider its original Order of Dismissal and make full findings of fact and conclusions of law with regard to his claim and all of his requested basis for relief.

WHEREFORE, having set forth his grounds, the Applicant respectfully requests that the Court alter or amend its Order of Dismissal pursuant to the arguments made above.

Respectfully submitted,



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ATTORNEY FOR THE APPLICANT

December 23, 2013

STATE OF SOUTH CAROLINA)
 COUNTY OF CLARENDON)
)
 Donneil Woods #272800)
 Applicant,)
)
)
 v.)
)
 State of South Carolina)
 Respondent,)

In The Court of Common Pleas
 Third Judicial Circuit

2012-CP-14-~~0012~~²¹⁰

Amended Motion To Alter Amend
 Judgment Pursuant To Rule 59(e)
 SCRPC

BEULAH CLERK OF COURTS
 CLARENCE COUNTY
 2013 FEB 24 PM 5:50

Now Comes Applicant Donneil Woods motioning to this Honorable Court to Amend to Applicant Rule 59(e) SCRPC, that was dated and filed in this court on December 23, 2013.

Applicant position in this motion is the fact that applicant has made several arguments in this case leading to the fact that the prosecutor's office of Clarendon County had not disclose all material and medical records to the defendants. The record also reflects in its entirety, that the respondents has made several arguments to refute applicant's allegation that the prosecution for the state had indeed withheld evidence from the applicant.

Although applicant had received all material and medical records after trial, and had presented these facts of material to this court in his pcr hearing dated on September 30, 2013, however, this Honorable Court still denied applaicant's claim on November 21, 2013. Applicant points out that this court base its decision specifically on (2) two grounds, Ineffective Assistance of Counsel and Brady Violation.


In this motion, applicant don't refute that he indeed raised ineffective assistance of trial counsel and a brady violation. However, applicant don't want this court to lose sight that he's actual innocence of the charges against Sheila Summers. Applicant

further pleads; he ask this court to review his claim under the actual innocence analysis thats announce in Schlup v. Delo, 115 S.Ct. 851 (1995). ("Prisoners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt").

Appllicant argues although this court has ruled that the material and medical records wasen't in the prosecution possession; however, applicant points out that no reasonable jurist would have found him guilty of Criminal Sexual Conduct 1st degree, Kidnapping and Strong Arm Robbery if the trial juror would have heard and reviewed the medical records, regardless if trial counsel was indeed ineffective for not having records, or if the prosecution was at fault for not disclosing the records, the fact of the matter still remains the same, and thats Donneil Woods is actual innocence.

Therefore, Applicant ask this court to grant applicant's motion to amend judgment that applicant is actual innocence based on the preponderance of the evidence in its entirety.

Sincerely,



Donneil Woods #272800

February 12, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF CLARENDON)
)
 Donneil Woods, #272800,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2012-CP-14-00210

**ORDER DENYING
 RULE 59(e) MOTION AND
 PRO SE RULE 59(e) MOTION**

BEULAH COUNTY CLERK OF COURT
 JAN 15 2015 9:36AM

This matter comes before the Court by way of Applicant's motion pursuant to Rule 59(e), SCRCF and Applicant's pro se attempt to amend the Rule 59(e) motion. Applicant applied for post-conviction relief (PCR) on May 4, 2012. The State filed its return on August 31, 2012. A hearing into the matter was convened at the Sumter County Courthouse on September 30, 2013. Applicant was present and represented by Blair C. Jennings, Esquire and Raymond E. Chandler, Esquire. The State was represented by David Spencer, Esquire, of the South Carolina Office of the Attorney General. The Court dismissed Applicant's PCR and Applicant filed his Motion to Alter or Amend the Order of Dismissal on December 11, 2013. Counsel and the Court were timely served a copy of the Motion.

RULE 59(E) STANDARD

Rule 59(e) SCRCF provides for a Motion to Alter or Amend the Court's judgment to preserve the record for appeal. *Pelican Building Centers v. Dutton*, 311 S.C. 56, 427 S.E.2d 673 (1993). The

motion provides the Circuit Court with an opportunity to rule properly after it has considered all relevant facts, law, and arguments. *On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

South Carolina courts have consistently held that "[A] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not. *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). "An argument is not preserved for review when it is presented it to the court for the first time in a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCPP." *Meehan v. Meehan*, 2006-UP-088, 2006 WL 7285712 (S.C. Ct. App. 2006). See also *Crary v. Djebelli*, 321 S.C. 38, 43, 467 S.E.2d 128, 131-32 (Ct. App. 1995) *rev'd on other grounds*, 329 S.C. 385, 498 S.E.2d 21 (1998) (Holding the court could not address the merits of appellants' argument as it was not properly preserved because appellants first presented it to the Court on a motion to alter or amend pursuant to Rule 59(e)).

DISCUSSION

In his motion, Applicant complains that the order addresses only ineffective assistance of counsel and not "Applicant's claims of the denial of his due process rights. In addition, the Court does not address the Applicant's claims of trial counsel's failure to adequately conduct her investigation into his case."

First, as to the allegation of a due process violation, Applicant does not address this issue with any specificity. Nonetheless, the denial of due process is a direct appeal issue and not appropriate for post-conviction relief. *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975).



As to the second issue concerning the generalized "failure to investigate" claim, this Court in its order found "counsel's investigation fell within professional norms and she had adequate time to review the medical records." (Order p. 6). This Court would additionally note that counsel's overall performance fell within professional norms and that Applicant has failed to prove deficiency of counsel. Further, Applicant has failed to offer any evidence to suggest that Applicant was prejudiced from counsel's alleged failure to investigate the case.

Additionally, Applicant claims in his motion: "The Applicant maintains that the State was in possession of these medical records" Applicant had the opportunity and failed to offer any evidence that the State was in possession of the specific records Applicant utilized during the PCR hearing. This Court would note that at the hearing, Applicant abandoned his *Brady* claim. This Court further would note that trial counsel obtained the records herself and therefore, no prejudice would have ensued if there was a failure to disclose. However, this Court finds that the State did not commit a discovery violation.

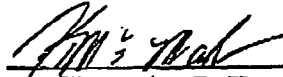
Applicant also filed a *pro se* motion to amend the Rule 59(e) motion. In this Amended Motion, Applicant maintains that he is actually innocent of the underlying charges. Applicant did not argue actual innocence during his Post-Conviction Relief Hearing on September 30, 2013. Applicant had the ability and opportunity to make this argument during the hearing, it is improper to present it to the Court for the first time in a Rule 59(e) motion, and thus his argument is without merit.

Accordingly, this Court denies Applicant's Rule 59(e) motion and further finds that the original order of dismissal comports with the requirements of Rule 52(a), SCRCP.

IT IS THEREFORE ORDERED that Applicant's Motion to Alter or Amend Judgment is **DENIED AND DISMISSED.**



AND IT IS SO ORDERED this 29th day of April, 2014.



The Honorable R. Knox McMahon
Presiding Judge
3rd Judicial Circuit

29 April 14

Lexington, South Carolina



WITNESSES

Todd Avant-CCSO

DOCKET NO. 2008-GS-14- 0365

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

AUGUST TERM 2008

THE STATE

vs.

DONNELL WOODS

ARREST WARRANT NUMBER

J121801

J121802

J121803

ACTION OF GRAND JURY

True Bill

Constance L. Hill

Foreperson of Grand Jury

Date: *08/21/08*

VERDICT

*Guilty as charged all 3
Counts*

Matthew W. Gardner

Foreperson of Petit Jury

Date: *10-16-08*

Indictment for

CRIMINAL SEXUAL CONDUCT FIRST DEGREE
KIDNAPPING
STRONG ARM ROBBERY

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT FIRST DEGREE
KIDNAPPING
STRONG ARM ROBBERY

At a Court of General Sessions, convened on August 21, 2008, the Grand Jurors of CLARENDON COUNTY present upon their oath:

COUNT ONE – CRIMINAL SEXUAL CONDUCT FIRST DEGREE

That DONNELL WOODS did in Clarendon County between June 23, 2006, and June 24, 2006, violate Section 16-3-652 of the Code of Laws of South Carolina (1976), as amended, in that the said Donnell Woods did engage in, or attempt to engage in, a sexual battery in and upon Sheila Summers by using aggravated force and aggravated coercion upon her and assaulting her with the intent to engage sexual battery with the said Sheila Summers.

COUNT TWO - KIDNAPPING

That DONNELL WOODS did in Clarendon County between June 23, 2006, and June 24, 2006, violate Section 16-3-910 of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully seize, confine, abduct, and carry away, without the authority of law, and by the use of force Sheila Summers.

COUNT THREE – STRONG ARM ROBBERY

That DONNELL WOODS did in Clarendon County between June 23, 2006, and June 24, 2006, feloniously or unlawfully take from the person by means of force or intimidation goods or monies of the said Sheila Summers, such goods or monies being described: money and personal belongings.

Against the peace and dignity of the state, and contrary to the statute in such case made and provided.

C. Kelly Jackson

SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF CLARENDON)
 STATE VS.)
 DONNIEL WOODS)
 AKA:)
 Race: Black) Sex: Male Age:)
 DOB: [REDACTED] 1975) SS#: [REDACTED])
 Address: Sumter, SC 29150)
 DL#) SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-CR-14-0365

AW#: J121801
 Date of Offense: June 23, 2006
 S.C. Code §: 16-03-0652
 CDR Code #: 0160

CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE
 DATE 5/4/2008
 Beth A. Roberts
 CLERK OF COURT
 CLARENDON COUNTY, SC

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or ~~PLEADS~~

TO: Criminal Sexual Conduct - 1st Degree

in violation of § 16-3-652(2) of the S.C. Code of Laws, bearing CDR Code # 0 1 1 6 1 0

NON-VIOLENT
 VIOLENT
 SERIOUS
 MOST SERIOUS
 Mandatory GPS (CSC)
 §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (Defendant Initial)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

[Signature]
 Solicitor

Defendant

Attorney for Defendant

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 or 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 with 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: _____

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.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred, Defendant Waives Hearing, Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient:	
*Fine:	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§35.13 (Public Def/Prob)	\$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ <u>3.96</u>
§90.11 TP (SCCA Surcharge)	\$5 \$ <u>5.00</u>
TOTAL	\$ <u>133.96</u>

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: _____

[Signature]
2 1 1 12 17
Oct 16, 2008

Court Reporter: [Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
STATE VS.)
DONNIEL WOODS)
AKA:)
Race: Black Sex: Male Age:)
DOB: [redacted] 1975 SS#: [redacted])
Address: Sumter, SC 29150)
DL# SID#)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#: 2006-SS-14-0365
AW#: J121803
Date of Offense: June 23, 2006
S.C. Code §: 16-11-0325
CDR Code #: 0137

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 5/4/2017
Beverly A. Collier
CLERK OF COURT
CLARENDON COUNTY, SC

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was [X] CONVICTED OF or [] PLEADS
TO: Strong Arm Robbery
in violation of § 16-11-325 of the S.C. Code of Laws, bearing CDR Code # 0, 1, 3, 7
[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS (CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: [] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.
ATTEST:
[Signature] Solicitor Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center,
for a determinate term of 15 days/months/years or [] 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 with 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.

[X] CONCURRENT or [] CONSECUTIVE to sentence on: _____
[X] 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.
[] The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred, [] Defendant Waives Hearing, [] Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms:
[] set by SCDPPPS

PTUP _____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Table with columns for Recipient, *Fine, and amounts. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §35.13 (Public Def/Prob) \$500, §73.3, 1B TP (Law Enforce. Funding) \$25, §33.7, 1B TP (Drug Court Surcharge) \$100, §50-21-114(BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$ 3.90, §90.11 TP (SCJA Surcharge) \$5, TOTAL \$ 133.90

[] Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

Court Reporter: [Signature]

PRESIDING JUDGE [Signature]
Judge Code: 2111217
Sentence Date: Oct 16, 2006