

Lowcountry Law Office

4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
Phone: 843-323-4353 Fax: 843-323-4101  
E-Mail: [Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

February 1, 2018

**RECEIVED**

FEB 06 2018

S.C. SUPREME COURT

The Honorable Daniel E. Shearhouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

RE: ✓ Larry L. Phillips v State of SC; Case #: 2014-CP-18-0735  
John B. Robinson v State of SC; Case #: 2014-CP-18-0406

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post-Conviction Relief (PCR) case(s). Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal; and
- (5) A Request for Representation on Appeal.

The Applicant(s) – Appellant(s) were represented by me as indigent, pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR case. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support, thereof, are signed by me as attorney for the Applicant(s) – Appellant(s). Should you need anything further, do not hesitate to contact me.

Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis  
South Carolina Bar #: 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
[Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

Enclosure(s). As stated above.  
RDD/mmt

cc: Megan H. Jameson, Assistant Attorney General  
Kimberly McCall, Appellate Division, SCCID

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Kristi L. Harrington

Case #: 2014-CP-18-00735

Larry L. Phillips,

Appellant.

v.

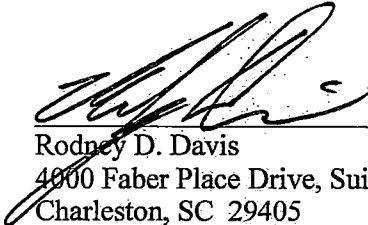
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Larry L. Phillips appeals the denial of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Kristi L. Harrington on December 11, 2017. Counsel for the Appellant received the filed Order of Dismissal on or about January 3, 2018.

January 23, 2018



Rodney D. Davis  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

Counsel of Record:  
Ruston W. Neely, Assistant Attorney General  
Office of the Attorney General, State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

RECEIVED

FEB 06 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Kristi L. Harrington

Case #: 2014-CP-18-00735

2018 JAN 26 PM 5:02  
CERTIFIED COPY  
Dorothy Harrington  
CLERK OF SUPERIOR  
COURT - DORCHESTER COUNTY

Larry L. Phillips,

Appellant.

v.

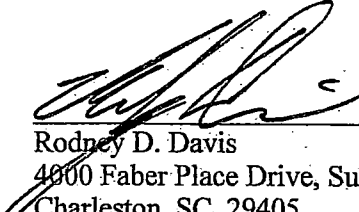
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Larry L. Phillips appeals the denial of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Kristi L. Harrington on December 11, 2017. Counsel for the Appellant received the filed Order of Dismissal on or about January 3, 2018.

January 23, 2018

  
Rodney D. Davis  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

Counsel of Record:  
Ruston W. Neely, Assistant Attorney General  
Office of the Attorney General, State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Kristi L. Harrington

Case #: 2014-CP-18-00735

2018 JAN 26 PM 5:02  
CERTIFIED COPY  
DORCHESTER COUNTY

Larry L. Phillips, Appellant.

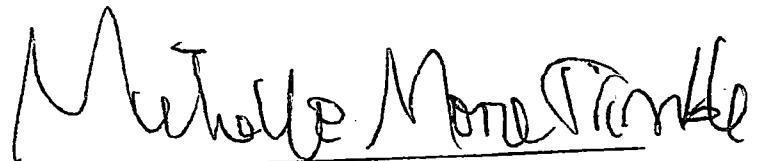
v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy, via US Mail, to the address of record, Ruston W. Neely, Assistant Attorney General, Office of the Attorney General, State of South Carolina, P.O. Box 11549, Columbia, South Carolina 29211-1549, on January 24, 2018.

January 24, 2018



Michelle Moore Trimble  
Paralegal to Rodney D. Davis  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

Larry L. Phillips, #180675,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

2014-CP-18-0735

**RECEIVED**

FEB 06 2018

FINAL ORDER OF DISMISSAL

CLERK OF COURT  
DORCHESTER COUNTY

SUPREME COURT

2017 DEC 27 PM 4:02  
CERTIFIED COPY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 25, 2014. Respondent made its return on or about July 1, 2015, requesting the application be summarily dismissed based upon expiration of the statute of limitations and is barred by the doctrine of laches. A hearing into this matter was held on December 11, 2017 at the Dorchester County Courthouse. Applicant was represented by Rodney Davis, Esquire. The State was represented by Ruston W. Neely, Esquire, of the Attorney General's Office.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed July 7, 2015 and filed July 31, 2015, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 19, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed an "Amended Application for Post-Conviction," on June 10, 2015, asserting that the solicitor unlawfully impaneled the grand jury. On August 6, 2015, Applicant

filed a response captioned, "Applicant's Response to Conditional Order of Dismissal," in which Applicant alleges:

1. The solicitor unlawfully impaneled the grand jury,
2. The solicitor committed a Brady violation by failing to produce exculpatory evidence
3. Constructive fraud by the solicitor.

At the evidentiary hearing, Applicant alleged his allegations were newly discovered evidence because he did not understand that drug analysis documents were regularly produced by SLED until he was told by a fellow inmate after 5 years' incarceration.

[W]hen a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated... In so holding, we caution that it will be the rare case indeed where the interests of justice will require that a knowing and voluntary guilty plea be vacated through post-conviction relief on the basis of newly discovered evidence, for an unconditional guilty plea involving an admission of guilt and a waiver of trial and all defenses will generally preclude any subsequent challenge to factual guilt.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014)

This Court finds Applicant failed to prove he could not have discovered SLED produced documents certifying the drug analysis conducted by SLED. This Court also finds Applicant has failed to prove the evidence was of such a weight and quality that the interest of justice requires the guilty plea to be vacated. Applicant did not present any documentation proving the drug analysis would not have supported the State's case. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. Therefore,

Applicant has failed to prove either prong of the newly discovered evidence standard and this Application is dismissed as barred by the statute of limitations.

This Court has also reviewed Applicant's responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

Applicant alleges that the Grand Jury did not meet during the time his indictment was true-billed, therefore making his indictment defective and depriving the court of subject matter jurisdiction. This is not accurate, as defects in the indictment do not affect subject matter jurisdiction. However, an Applicant may challenge the subject matter jurisdiction of the trial court, and such a claim may be raised at any time. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777. The circuit courts obviously have subject matter jurisdiction to try criminal matters. Therefore, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit Court had subject matter jurisdiction.

In PCR, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post- Conviction Procedure Act - notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45 and -90 (1996, as amended).

This Court finds that a 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). Further, a defendant must challenge the

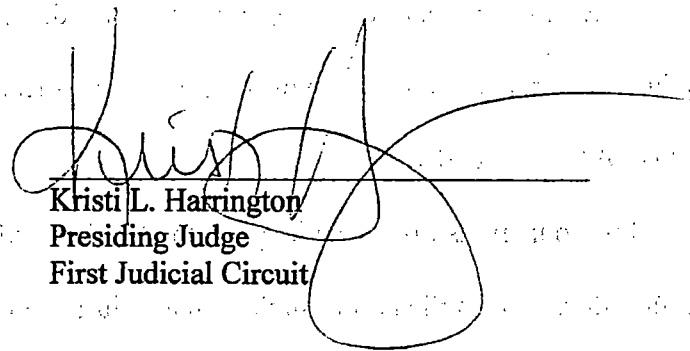
legality and sufficiency of the process before the jury renders a verdict in order to preserve the issue for appellate review. Id. "The regularity of grand jury proceedings is presumed absent clear evidence to the contrary." Id. at 363 S.C. at 514, 611 S.E.2d at 520.

The chief administrative judge for each circuit schedules terms of the grand jury in each county. Applicant has failed to sufficiently challenge the legality and sufficiency of the Georgetown County Grand Jury process. Further, Applicant has failed to provide any evidence that the Grand Jury did not convene as indicated on his true-billed indictment. Because the Applicant has failed to state with any specificity the evidence supporting his claim, this Court summarily dismiss this allegation with prejudice.

**IT IS THEREFORE ORDERED** that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

**AND IT IS SO ORDERED** this 19<sup>th</sup> day of December, 2017.

  
Kristi L. Harrington  
Presiding Judge  
First Judicial Circuit

Mandy Courner, South Carolina.

STATE OF SOUTH CAROLINA ) IN THE SUPREME COURT OF SOUTH CAROLINA  
COUNTY OF DORCHESTER )  
LARRY L. PHILLIPS, )  
Applicant. )  
-versus- ) REQUEST FOR REPRESENTATION ON APPEAL  
STATE OF SOUTH CAROLINA, )  
Respondent. )

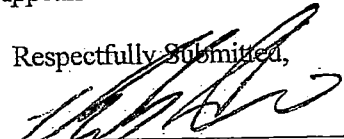
CASE #: 2014-CP-18-00735

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,




---

Rodney D. Davis  
South Carolina Bar #: 12396


Charleston, South Carolina  
January 31, 2018

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )  
 )

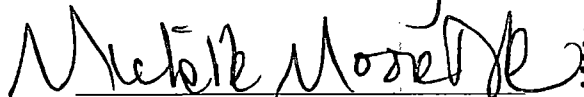
CASE #: 2014-CP-18-00735

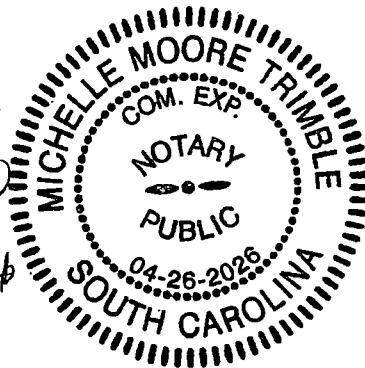
VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* to be filed on behalf of the Applicant-Appellant, **Larry L. Phillips**, and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.

  
\_\_\_\_\_  
Rodney D. Davis  
South Carolina Bar #: 12396

SWORN to and subscribed to me this  
31 day of January, 2018.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission expires 4/26/2026



# Lowcountry Law Office

4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
Phone: 843-323-4353 Fax: 843-323-4101  
E-Mail: [Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

February 1, 2018

Kimberly McCall  
South Carolina Commission on Indigent Defense  
PO Box 11433  
Columbia, SC 29211-1433

RE: Larry L. Phillips v State of SC; Case #: 2014-CP-18-0735  
John B. Robinson v State of SC; Case #: 2014-CP-18-0406

Dear Ms. McCall:

Enclosed is a duplicate set of Appeal documents that I have forwarded to the Clerk of the Supreme Court of South Carolina concerning the above-listed Post Conviction Relief (PCR) cases. I was appointed to the PCR cases pursuant to a contract that I have with your office. I have requested that your office assume the appeal of the cases.

Should you have any questions, please do not hesitate to contact me.

Thank you for your assistance with this matter.

Sincerely,



Rodney D. Davis  
South Carolina Bar # 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
[Davis@LowCountryLawOffice.com](mailto:Davis@LowCountryLawOffice.com)

Enclosure(s). As stated above.  
RDD/mmt

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

Larry L. Phillips, #180675,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

2014-CP-18-00735

**CONDITIONAL ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed April 25, 2014.

#### **I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. Applicant was indicted at the October 2007 term of the Dorchester County Grand Jury for Trafficking cocaine, 28-100g, 1<sup>st</sup> offense (2007-GS-18-01411), Failure to Stop for a Blue Light, 1<sup>st</sup> offense, (2007-GS-18-01413), and Possession with Intent to Distribute (PWID) Marijuana (2007-GS-18-01412). Applicant was represented by Thaddeus J. Doughty, Esquire. Applicant appeared before the Honorable Diane S. Goodstein, on May 22, 2008, where he pleaded guilty as indicted to all three charges. Judge Goodstein sentenced Applicant to twelve (12) years' imprisonment for Trafficking in Cocaine, five (5) years' imprisonment for PWID Marijuana, and to three (3) years' for Failure to Stop for a Blue Light. Applicant did not appeal his convictions or sentence.

## **CURRENT APPLICATION**

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Violation due process
2. Ineffective assistance of counsel, fake imprisonment
3. Mental physiological & physical disability from carwreck problems (stroke) at the time affected my judgment of time of plea.
4. Co-horts & bribery by attorney to take plea offer

Before this Court are the records of the Dorchester County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Statute of Limitations**

This Court finds that this Application for Post-Conviction Relief must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the Remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pleaded guilty to the offenses he challenges in this application on May 22, 2008. Applicant did not appeal his conviction or sentence, so he was therefore required to file this

application on or before May 25, 2009. This application was filed on April 25, 2014, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

### **Laches**

This Court also finds that this application must be summarily dismissed based on the doctrine of laches. The Applicant has filed this application five (5) years after he was found guilty on the charges. The doctrine of laches bars the Applicant from raising these allegations in a post-conviction relief application. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

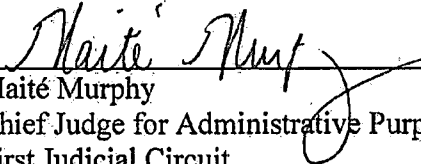
### **III. CONCLUSION**

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant

shall file any reasons he may have with the Dorchester County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
J. Clayton Mitchell, Esquire  
PCR Division, 1<sup>th</sup> Circuit  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 7 day of July, 2015.

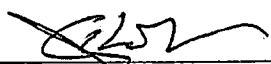
  
Maité Murphy  
Chief Judge for Administrative Purposes  
First Judicial Circuit

St. George, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 LARRY L. PHILLIPS, #180675 )  
 Plaintiff, )  
 vs. )  
 )  
 STATE OF SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FIRST JUDICIAL CIRCUIT  
 CASE NO.: 2014-CP-18-00735

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: Larry L. Phillips, Bar No. #180675 Address: Allendale CI, 1057 Revolutionary Trail, Fairfax SC 29827 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: J. Clayton Mitchell, Bar No. 101443 Address: PO Box 11549, Columbia SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 _____ Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	7/1/2015 Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID – AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b>	JUDGE CODE _____
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED – AMOUNT DUE: \$ _____	

Lowcountry Law Office  
Rodney D. Davis  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405



**\$1.10<sup>00</sup>**  
US POSTAGE  
FIRST-CLASS  
FROM 29405  
02/01/2018

stamps.com



The Honorable Daniel E. Shearhouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia SC 29211-1330