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March 22, 2018

The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
1231 Gervais Street
Columbia, SC 29201

RE : State of South Carolina v. Margaret M. Driggers
2015-CP-32-00881

Dear Mr. Shearouse:

Enclosed please find a Notice of Appeal along with a Certificate of Service and a copy of the Order being appealed. Also enclosed are three copies which I request you stamp as "filed" and return to me by way of our courier.

Thank you for your assistance in this matter.

Yours very truly,

Christina Metze

Christina Metze
Paralegal

cc: W. Joseph Maye, Assistant Attorney General
Lisa Comer, Lexington County Clerk of Court
Margaret Driggers

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAR 22 2018

S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No.: 2015-CP-32-00881

State of South Carolina,

Respondent,

v.

Margaret M. Driggers,

Appellant.

NOTICE OF APPEAL

Margaret M. Driggers, #359524, appeals the Order of Dismissal denying her Application for Post-Conviction Relief filed December 4, 2017, and the Order Denying Rule 59(E) Motion filed February 23, 2018 issued by the Honorable Alison Renee Lee, presiding Judge.

March 21, 2018

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
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Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on W. Jim Maye by depositing a copy of it in the United States Mail, postage prepaid, on March 21, 2018, addressed to his office at:

PO Box 11549
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March 21, 2018

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FILED

2017 DEC -4 AM 11:30

LISA M. COUNTER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Margaret M. Driggers, #359524, Applicant, v. State of South Carolina, Respondent.	Case No.: 2015-CP-32-00881 **ORDER OF DISMISSAL** **ORIGINAL**

This matter comes before this Court by way of an application for post-conviction relief filed March 6, 2015, by Margaret M. Driggers (Applicant) alleging trial counsel was ineffective for failing to sufficiently prepare Applicant's case for trial, failing to timely review discovery with Applicant, and failing to interview Applicant's witnesses. Respondent made its Return on December 19, 2016, requesting an evidentiary hearing be held.

An evidentiary hearing into the matter was convened August 10, 2017, at the Lexington County Courthouse. Applicant was present at the hearing and represented by Aimee Zmroczek, Esquire. Respondent was represented by Assistant Attorney General W. Joseph Maye of the South Carolina Attorney General's Office. Applicant testified on her own behalf; no other witnesses were called by Applicant. The State presented testimony from Lexington County Solicitor Rick Hubbard, Deputy Solicitor Shawn Graham, and plea counsel Emily Howard, Esquire.

In addition to the presentation of testimony relevant to the allegations of the Application, the parties also conducted an examination of witnesses for the purposes of reconstructing the guilty plea hearing of Applicant. Respondent provided communications from Court

Administration indicating that the transcripts from Applicant's guilty plea hearing and Motion to Reconsider hearing were not available. At the conclusion of the hearing, this Court requested proposed orders from both parties.

This Court had before it Applicant's appellate records, Lexington County Clerk of Court's records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the Lexington County Clerk of Court records for this current proceeding. After reviewing the record in its entirety, along with the testimony and evidence presented at the evidentiary hearings, this Court finds Applicant has failed to establish any constitutional deprivations or other grounds entitling her to relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its March 2014 term of court, the Lexington County Grand Jury indicted Applicant for Murder (2014-GS-32-00897), Armed Robbery (2014-GS-32-00898), and Burglary First Degree (2014-GS-32-00899). She was represented originally by Mark Schnee, Esquire. Mr. Schnee's request to be relieved as counsel was granted, and Ms. Emily Howard was assigned to the case on December 19, 2013. Deputy Solicitors Shawn Graham and Rick Hubbard[1] prosecuted the case.

On April 10, 2014, Applicant was presented with an offer to plead guilty to Voluntary Manslaughter, Armed Robbery, and Burglary First Degree, with a negotiated range of 15-30

[1] Mr. Rick Hubbard has since been elected to the position of 11th Circuit Solicitor.

years for each offense, each sentence to run concurrently. On April 11, 2014, Applicant proceeded to a plea hearing before the Honorable Thomas A. Russo, where she plead guilty to the negotiated charges. Judge Russo sentenced Applicant to thirty (30) years imprisonment for each charge, all sentences to run concurrently. A Motion to Reconsider was heard by Judge Russo on May 6, 2014, but Judge Russo did not alter Applicant's sentence.

Counsel for Applicant, Emily Howard, filed a Rule 203(d)(B)(iv), SCAR Explanation, noting that she could not find any good faith basis for appeal. On September 23, 2014, the Court of Appeals dismissed the action for lack of basis to challenge the guilty plea. The Remittur was sent October 16, 2014. No further action was taken by Applicant on direct appeal.

SUMMARY OF FACTS ADDUCED AT HEARING

The witness presented at the evidentiary hearing testified extensively, the facts adduced from their respective testimonies are summarized as follows:

Solicitor Rick Hubbard

Mr. Hubbard prosecuted the case against Applicant alongside Mr. Shawn Graham, and was present for the various interviews Applicant had with the solicitor's office, as well as for the plea hearing held before Judge Russo. Mr. Hubbard testified that he recalls this particular case quite well and was able to provide a detailed description of the State's theory of the case, the evidence involved, the prosecution of the case prior to Applicant's plea, and the plea hearing.

According to Mr. Hubbard, Applicant, along with co-defendants Demetriss Glenn (hereinafter "Glenn") and Kenneth Walters (hereinafter "Walters"), were arrested in connection with the robbery and murder of Timothy Tice. Tice was found in his home dead as a result of blunt force trauma to the head. Applicant was charged with murder, armed robbery, and burglary

in the first degree. Applicant's co-defendant's were identically charged. Applicant was initially represented by Mark Schnee, but Mr. Schnee was permitted to be relieved as counsel. Emily Howard was assigned as new counsel in late 2013.

According to Mr. Hubbard, the State's theory of the case was that Applicant had planned the robbery and brought Glenn and Walters to assist her. Her plan was to go to Tice's home, as she has done in the past. Once Tice was asleep, Driggers would text the other two co-defendants to come in and rob the home. Problems arose when only co-defendant Walters came in to perform the robbery, and Tice did not remain asleep while the robbery ensued. Tice, a very large statured man, was involved in a physical altercation with Walters. As Tice began to overpower Walters during the altercation, Applicant alerted Glenn to come help. Glenn came into the home to help Walters and Tice was ultimately killed in the altercation after being struck in the head repeatedly with a blunt object, believed to be first with a wine bottle, and then a stool.

Mr. Hubbard described the substantial evidence which inculpated Applicant and the two co-defendants. The State had two witnesses, Charles Plumley and Tyrone Williams, who were able to testify on behalf of the State, support the State's theory of the case, and inculpate all three co-defendants. Both witnesses had already testified against co-defendant Glenn, who was convicted and sentenced to life in prison.

Forensic and physical evidence corroborated the state's theory as the injuries were consistent with blunt force trauma from these types of objects. DNA evidence was found linking Applicant and Kenneth Walters to the crime scene. Cell phone evidence demonstrated communications between Applicant and Tice earlier that night, as well as communications between Applicant and her co-defendants while she was in Tice's home.

#4

After her arrest, Applicant spoke numerous times with authorities and the Solicitor's in her case. The Solicitor's office hoped to have Applicant serve as a witness on behalf of the State in the trial against co-defendant Glenn. Mr. Hubbard conceded that the lack of DNA connecting Glenn to the crime made his case the weakest of the three co-defendants. However, Applicant was deemed an unreliable witness by the Solicitor's office due to her changing her story multiple times. Mr. Hubbard testified substantially as to the complete lack of credibility Applicant showed during her interviews with the Solicitor's office.

Over the course of those communications, the Solicitors received statements from Applicant that inculpated her in the events of that night, and her numerous story changes would have severely limited her credibility to testify before a jury.

Discovery was ongoing from the time of Applicant's arrest, and Mr. Hubbard does not recall any issues concerning delayed discovery production from the Solicitor's office. Furthermore, Mr. Hubbard confirmed that Applicant never provided names of witnesses that could support a defense to the charges she faced.

Co-defendant Glenn was tried and convicted of murder, armed robbery, and burglary in the first degree, and was sentenced to life in prison. At the time of Glenn's trial, Co-defendant Walters and Applicant had yet to plea.

Mr. Hubbard recalls that co-defendant Walters and Applicant were both given the same plea offer of a reduced charge of voluntary manslaughter, armed robbery, and burglary first, with a negotiated sentencing range of 15 to 30 years, each to run concurrently. Both Applicant and co-defendant Walters accepted the Solicitor's plea offer and plead guilty. However, Walters did so

under *Alford*.[2] At the plea hearing for Applicant, Mr. Hubbard understood Judge Russo to view Applicant's role in the crime differently than her co-defendants, that she was a "but/for" reason that the crime ever occurred.

Mr. Hubbard admits that he is not able to recall each colloquy question specifically. However, he testified that he and his solicitors always pay close attention to ensure that a colloquy is thorough, and are prepared to stand and alert the court to any inadequacy in qualifying the plea. Mr. Hubbard said he does not recall anything out of the ordinary during the plea hearing, does not recall any inadequacy in qualifying the plea, and was confident that there was no need to supplement the colloquy in any way.

Margaret Driggers

Applicant Margaret Driggers was called to testify after Mr. Hubbard.[3] At the time of hearing, Applicant was 32 years old and had an 8th grade education. Prior to these charged crimes, Applicant had only two prior misdemeanors on her record.

Applicant began her testimony with information about her difficult background growing up, but also states that it does not excuse anything that happened regarding Tice. She confirms that she met quite a few times with the Solicitor's office to provide her statement, but states that she merely elaborated on her story. Applicant claims that she was scared, upset, and lacked information and discovery to prepare for her meeting with the Solicitor. Applicant testified that she does not have any witnesses to aid in her defense, and that her listing of this as an allegation

#6

[2] Walters requested an *Alford* plea, and the Solicitor's office acquiesced. There was no testimony from any witness indicating Applicant requested an *Alford* plea.

[3] In order to accommodate Mr. Hubbard's scheduling needs, this Court and the parties agreed to allow Mr. Hubbard to testify first. Following the conclusion of his testimony, the evidentiary hearing then proceeded in proper order with Applicant's case in chief.

was a result of her just not understanding the PCR process. However, Applicant adamantly asserts that she did not see any discovery until approximately four days before she was required to enter her plea.

Applicant was shown a packet of discovery materials, she conceded that those materials were directed to her with a note from her attorney that she should read and review the materials thoroughly so that they could review them when Ms. Howard returns "on Friday". Applicant also concedes that those materials had her own hand written notes throughout the pages. Applicant maintains that she was not shown any discovery until approximately four days before her plea.

In consideration of the plea offer from the Solicitor's office, Applicant provided contrasting testimony as to whether her attorney "promised" her a set number of years in sentencing. Ultimately, Applicant conceded that she was not guaranteed any certain number of years by anyone, aside from the negotiated range of the plea deal. In consideration of the plea, Applicant spoke at length with Ms. Howard and her mother.

Applicant's guilty plea hearing was conducted on April 11, 2014. Applicant recalls her guilty plea hearing before Judge Russo and that Judge Russo asked her numerous questions during the hearing. During cross-examination, Applicant testified that she confirmed for Judge Russo the following responses during colloquy:

1) She confirmed she was not under the influence of drugs or alcohol during her plea;
2) She understood the charges she faced as well as the plea offer given by the State;
3) She confirms that she understood the minimum and maximum sentences that accompanied her charges;
4) She confirms that the Solicitor conducted a recitation of facts and evidence against her, and that she did not disagree with Solicitor's recitation;
5) She confirmed for Judge Russo that she had not been threatened, coerced, or forced to plead guilty;
6) She confirmed that she understood the rights and protections she was waiving in deciding to plead guilty;

7) She confirmed that she willingly waived those right and plead guilty;
8) She confirmed that she was in fact guilty of the crimes for which she was pleading guilty; and
9) She expressed satisfaction with the services provided by her attorney, Ms. Howard.

Applicant indicated during her testimony that she had been made aware of all of these questions before her plea hearing as a result of her discussions with Ms. Howard. The only colloquy question for which Applicant did not provide an unequivocal confirmation was that she did not need any additional time with her attorney. Applicant testified that she did not believe her attorney had sufficient time to prepare for trial and claims that this fact influenced her decision to plead guilty. She now feels she should have gone forward with trial and presented her side of the story.

Shawn Graham

Deputy Solicitor Shawn Graham was called by Respondent to testify. Mr. Graham's testimony was markedly similar to the testimony provided by Rick Hubbard, and the evidence against the Applicant was again described for the court. Mr. Graham confirms that the Solicitor's office had hoped to use Applicant as a witness for the state in prosecuting co-defendant Glenn. However, her story kept changing with each interview. Mr. Graham adds that the last interview was inculpatory as to Applicant's role in the events leading to Tice's murder.

Mr. Graham was confident that no discovery production issues arose in this case and that all materials had been properly provided to Applicant's attorney. Through documentary evidence, Mr. Graham was able to confirm that the last discovery disclosure (a record of the interview Applicant had with the Solicitor's office) was provided on March 27, 2014. Mr. Graham concedes that there was a substantial amount of documents and discovery materials produced in this case. However, he agrees that much of it would not be relevant to Applicant's

defense. In addressing the potential trial of Applicant, should she decline the plea offer, Mr. Graham noted that trial had been set for April 21, 2014. However, he agrees that he would have consented to a request for continuance given that Applicant's attorney, Emily Howard, had only recently been assigned as counsel.

Mr. Graham was present for the guilty plea hearing and confirms that he does not recall any need to supplement the colloquy of the judge. Like Mr. Hubbard, Mr. Graham cannot recall each specific colloquy question, but reiterates that he is always listening closely to ensure no questions are left out of the Judge's qualification of the plea. He does not recall anything out of the ordinary or lacking concerning Applicant's plea and Judge Russo's qualification and acceptance of the plea.

Emily Howard

Ms. Emily Howard was called by Respondent to testify as to her legal representation of Applicant. Ms. Howard had worked in criminal law in various capacities for nine years, before becoming a financial advisor. Ms. Howard received the Notice of Appointment for Applicant's case on December 19, 2013, and recalls the case quite well.

Her first efforts included attempting to contact prior counsel, Mark Schnee. However, her call was never returned and Ms. Howard proceeded with the case as if "starting from scratch". Ms. Howard met with Applicant for the first time on January 3, 2014. Over the course of the next four months of representation, Ms. Howard testified that she met with her client numerous times for the purpose of reviewing Applicant's case and to review the discovery materials. This testimony is corroborated in detail by the task and timesheet records kept by Ms. Howard which were admitted at hearing (See Respondent's Exhibit 4). These records set forth that discovery

materials were first provided to Applicant on January 28, 2014. Ms. Howard identified some of those discovery materials to be the packet of papers that Applicant had reviewed and put hand written notes on. These discovery materials with notations were also admitted into evidence, and Ms. Howard testified that she believed they had been provided to Applicant on January 28, 2014. (Respondent's Exhibit 3). The task and timesheet records indicate that Ms. Howard visited Applicant for review of the case fourteen times; five of those times explicitly identify discovery review as a task conducted during the visit. (See Respondent's Exhibit 4, entries 2, 6, 9, 10, 12, 16, 17, 19, 20, 22, 24, & 26). This exhibit also demonstrates that discovery was reviewed by Ms. Howard and/or discussed with the Solicitor four more times, totaling more than thirteen additional hours. (*Id.* at entries 5, 8, 15, & 21).

Ms. Howard testified that she thoroughly reviewed all discovery provided to her and did not have discovery materials withheld or delayed in any way. Ms. Howard did comment that she had hoped to acquire a copy of the trial transcript of co-defendant Glenn's trial. However, this was admittedly not "discovery" required from the State. Furthermore, Ms. Howard knew the general content of the witnesses who testified against Glenn.

Ms. Howard agrees that there was a good deal of discovery, but much of it was not relevant as it included a great deal of information on the State's early suspects in the case. After ruling some of the discovery materials irrelevant, Ms. Howard concedes that she did not show every single page of discovery to LCDC for her client to review. After assessing the discovery and evidence against Applicant, Ms. Howard was not able to identify any reasonable theory of defense for the case, nor did Applicant provide any witnesses for Ms. Howard to interview. Accepting a favorable plea offer was Ms. Howard's advice to Applicant in this case.

#10

During her testimony, Ms. Howard noted that Applicant was more concerned with her bond and how much time she may face, not with whether or not to maintain her innocence and proceed with a trial. After receiving the plea offer from the Solicitor on April 10, 2014, Ms. Howard took the offer to Applicant and discussed the offer at length with her. Ms. Howard had also begun having discussions with Applicant as to the possibility of entering a guilty plea well in advance of the offer being provided by the State.

During her discussions with Applicant, Ms. Howard conveyed what had taken place at co-defendant Kenneth Walter's plea hearing, but never guaranteed any certain number of years for Applicant's sentencing. After the thorough discussion, Ms. Howard confirmed that Applicant decided to accept the plea offer that night. Ms. Howard was confident that if Applicant had instead wished to proceed with trial on the April 21, 2014 date, she would have had enough to time to prepare; she would nevertheless have requested a continuance for additional time and to obtain co-defendant Glenn's trial transcript.

Ms. Howard recalls the plea hearing well, but like the solicitors in the case, is unable to recall explicitly each colloquy question asked by Judge Russo. However she does not recall anything out of the ordinary occurring, does not recall anything lacking in the qualification of the pleas, and does have any reason to believe that Applicant's plea would be involuntary or unknowingly made for any reason.

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 at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh

their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. *Strickland*, 466 U.S. at 689. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice,

#17

that course should be followed. *Strickland*, 466 U.S. 668. "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State,* 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing *Caprood v. State,* 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). 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.

In the context of guilty pleas, *Strickland* is still the applicable test, but it's application is directed toward determining whether the plea was voluntarily, knowingly, and intelligently entered. *Hill v. Lockhart*, 474 U.S. 52, 57, 106 S. Ct. 366, 370 (1985); *Hyman v. State*, 397 S.C. 35, 43, 723 S.E.2d 375, 379 (2012) (citing *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000)).

> A defendant who enters a plea on advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial.

Hyman, at 379 (citing *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011)). A plea is proper if it can be shown that a defendant was "aware of the nature and crucial elements of the

offense, the maximum and any minimum penalty, and the nature of the constitutional rights being waived." *Id.* at 380.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry her burden in this action regarding any of her allegations of ineffective assistance of counsel. Below are this Court's specific finding regarding each of Applicant's allegations of ineffective assistance of counsel:

Allegation: Failure to properly prepare case for trial

While the allegation is not clearly articulated in the Application, Applicant appears to first allege that her decision to plead guilty was influenced by the limited amount of time that plea counsel would have had to prepare for trial, had she decided to decline the plea offer. This claim is essentially a claim of ineffective assistance of counsel for failing to properly prepare her case for trial. Specifically, Applicant alleges: "Attorney did not have enough time to prepare my case considering the charges I had." (PCR Application, pp. 4). Linked to this allegation in the PCR Application is also an assertion that Applicant was not shown her discovery until the day before sentencing; while tangentially related, this Court addresses this allegation separately (Supra).

In support of her inadequate preparation claim, the limited testimony and arguments presented by Applicant at trial can be summarized as follows:

1. Ms. Howard was assigned to represent Applicant and only had approximately four months in which to familiarize herself with the case, review discovery, and prepare herself for a potential trial.
2. The volume of discovery materials was extensive, and Applicant claims to have not seen any of it until just days before her plea.

3. Applicant testified that in retrospect she was not comfortable in confirming for Judge Russo that she did not need more time with her attorney in consideration of her plea and case.
4. Believed that she would possibly get life if she did not plea, but now feels that she should have gone to trial to present her side of the story.

The facts on the record show that Ms. Howard was assigned to represent Applicant on December 19, 2013, and the plea hearing was conducted April 11, 2014. The record also shows that the total amount of discovery, as a whole, was extensive. Applicant however *fails* to demonstrate any communications she had where she explicitly made her desire to go to trial, if not for her concern of the shortened timeframe to prepare, known to Ms. Howard. In contrast, Ms. Howard testified that during her discussion with Applicant, Applicant was more concerned with her bond options and with the amount of time she would ultimately be sentenced to serve. Applicant's own testimony at hearing demonstrated a similar focus on the number of years she may receive as opposed to contemplation of inadequate trial preparation. Applicant likewise fails to demonstrate that she made any such concern known to Judge Russo at her hearing, despite being asked directly about her satisfaction with her attorney and whether she needed any more time to meet with her attorney.

In response to this allegation, the State provided evidence addressing the timeframes at issue. First, Deputy Solicitor Shawn Graham explicitly testified that he would have consented to a continuance for purposes of trial preparation, given the relatively short timeframe since Ms. Howard had been assigned as counsel. Additionally, Ms. Howard testified that had she needed to go to trial with Applicant's case, the time between the April 11th plea and the set trial date of April 21st would have been sufficient for her to adequately prepare for trial. She also adds that, while she would have had enough time to prepare without a continuance, she would have moved

for continuance nonetheless in order to acquire the trial transcript of co-defendant Glenn. Ms. Howard also explains that while there was a substantial amount of discovery, based simply on the number of pages produced by the State, a great deal of that discovery was easily dispensed with as irrelevant to Applicant's case.

On cross examination Applicant confirmed that she was asked all of the necessary colloquy questions by Judge Russo which were needed to render her plea voluntary, knowingly, and intelligently made. In response to each of Judge Russo's questions, she affirmed for the court as needed and did not raise any concerns as to her willingness to plead guilty. Applicant also confirmed that she was in fact guilty of the charges against her. Lastly, in the process of discussing her plea offer and her decision of whether or not to accept it, Applicant was aware that her co-defendant Glenn had already proceeded to trial, been convicted, and sentenced to life in prison.

Applicant bears the burden of showing deficient error below acceptable standards of representation and prejudice resulting from the error such that, had the error not occurred, Applicant would probably have proceeded to trial. *Hill v. Lockhart*, 474 U.S. 52, 57, 106 S. Ct. 366, 370 (1985); *Hyman v. State*, 397 S.C. 35, 43, 723 S.E.2d 375, 379 (2012). Based on the evidence presented, this Court finds that Applicant has failed to meet her burden and this claim must be denied and dismissed with prejudice.

First, Applicant has failed to show any actual deficiency in the representation provided by Ms. Howard. Ms. Howard was presented with the plea offer and spent many hours in person with Applicant discussing the offer in detail. The record shows that Applicant was well informed as to the nature and elements of the offense, the maximum and any minimum penalty, and the

nature of the constitutional rights she chose to waive. Applicant also had an opportunity to discuss the plea with family before deciding. Applicant confirms that her attorney reviewed and explained all aspects of the plea necessary for proper qualification of a guilty plea. See *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). In short, the record shows that Applicant knew that she faced potential life sentence if she went to trial, discussed what potential sentences she might receive if she plead, weighed the risks, and chose to waive her rights and plead guilty. A perceived limit of trial preparation time by the client, not once uttered to their attorney or the judge, is not an error attributable to counsel. Further, Ms. Howard is given deference in her professional judgment that she had sufficient time to prepare for a trial if necessary. *Strickland*, 466 U.S. at 689. To the extent that the claim of belated discovery review can be considered as a basis supporting the claim of lack of preparation, this Court does not find Applicant's testimony regarding belated review of discovery at all credible (supra). This Court can find no error by counsel under *Strickland*, and therefore the first prong has not been met.

This Court likewise does not find any prejudice to Applicant stemming from this claim. The position of Applicant, as it is asserted in this matter, is ultimately untenable. The Supreme Court of South Carolina has previously held that an Applicant cannot claim they would have insisted on going to trial, if not for their attorney's lack of attentiveness or preparation, without also showing that the absence of such inattentiveness would have produced additional evidence favoring the defense. See *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Prejudice on the basis of lack of preparation cannot be demonstrated when an Applicant presents no witnesses or any specific testimony establishing he would have had a defense if he had had additional time to prepare for trial." *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749

(1997). "*Hill* makes clear that this prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." *Stalk*, at 595. The record makes clear that Ms. Howard thoroughly reviewed all available discovery and evidence and was not able to create a theory of defense for Applicant in this case. Further, there is no argument or testimony showing that any beneficial facts or evidence were left undiscovered. The rulings from *Stalk* and *Davis* are applicable in this matter to the extent that simply believing that not enough time exists for trial preparation is, by itself, insufficient to establish prejudice. No prejudice has been demonstrated by Applicant.

In consideration of Applicant's first allegation, Applicant has failed to satisfy either prong necessary under *Strickland* and cannot show that her plea was involuntarily, unknowingly, or unintelligently made under *Hill*. This court hereby dismisses Applicant's claim that counsel was ineffective for failing to properly prepare the case for trial.

Allegation: Failure to timely provide discovery to Applicant

Applicant's second basis for post-conviction relief is an ineffective assistance of counsel claim on the basis that her attorney was untimely in providing her with discovery materials. Specifically, Applicant alleges: "I was only shown my motion discovery the day befor sentencing." (PCR Application, pp. 4) (errors in original).

At hearing, Applicant testified that she was not shown any of her discovery materials until four days before her guilty plea hearing was held. Under cross examination, Applicant was shown a set of documents, which Applicant agreed were discovery materials for her case.[4] Within these documents, Applicant confirmed that there was a post-it note attached from Ms.

[4] This set of documents was later admitted without objection as Respondent's Exhibit 3, during the testimony of Ms. Emily Howard.

Howard instructing her to review these materials so that they could go over them when she returns "on Friday". Applicant also confirmed that she had made handwritten notations throughout these discovery materials. Despite these confirmations during cross examination, Applicant still maintained that she was not provided these materials any sooner than four days before her plea hearing. Applicant also admitted on cross examination that she informed Judge Russo that she was satisfied with the services that Ms. Howard had provided her.

It is worth noting that Applicant's hearing was conducted on Friday, April 11, 2014. Had these documents been provided to Applicant only four days before her hearing, as Applicant alleges, then that would mean Ms. Howard intended to return Lexington County Detention Center on the day of the hearing to review discovery materials with her client. Such an intention is unlikely, is not supported by Ms. Howard's task and timesheet records, and is not supported by any witness the testimony.

Ms. Howard testified that the discovery materials entered as Exhibit 3 were provided to Applicant sometime in January, and believes that specific day to be January 28, 2014. This recollection is corroborated by her task and time records, wherein entry 7, dated January 28, 2014, indicates "Discovery review. Took client discovery to LCDC for review." (See Respondent's Exhibit 4). Ms. Howard's testimony, corroborated by her task and time records, indicates that she visited LCDC and reviewed discovery with Applicant numerous times, most occurring well before the date of Applicant's plea hearing. Ms. Howard agrees that she did not present every single piece of paper in the discovery to Applicant, but again indicates that much of it simply did not have relevance to the case.

#19

Again, in order to show ineffective assistance of counsel, Applicant bears the burden of showing deficient error and prejudice such as to render the plea involuntary, unknowingly, or unintelligently made. *Hill*. Applicant has failed to carry her burden of proof.

This Court does not find Applicant's testimony regarding discovery review to be credible. Outside of Applicant's testimony, there is no other basis to support her claim. In contrast, Ms. Howard's testimony regarding her efforts to review the discovery and discuss the discovery with her client is credible and corroborated by multiple exhibits. There is no error of counsel demonstrated by Applicant and this Court finds Ms. Howards efforts regarding discovery to be exemplary in nature.

Applicant has also failed to demonstrate how prejudice would ensue even if her allegations were accurate. The allegation only asserts that she herself had not been shown discovery until just days before the plea. Such would not detract from an attorney's well reviewed and thoughtfully evaluated opinion of discovery, and then advising their client that no reasonable defense to the charges is available and that a negotiated guilty plea is the best course of action when compared to proceeding to trial. Applicant has failed to show how receiving her discovery earlier would have had any influence on her decision to plead guilty. This Court finds that Applicant has failed to demonstrate prejudice as to this claim.

In consideration of Applicant's second allegation, Applicant has failed to satisfy either prong necessary under *Strickland* and cannot show that her plea was involuntarily, unknowingly, or unintelligently made under *Hill*. This court hereby dismisses Applicant's claim that counsel was ineffective for failing to timely provide Applicant with her discovery.

#20

Allegation: Failure to interview Applicant's witnesses

Applicant alleges plea counsel was ineffective for failing to interview witnesses. Specifically, Applicant alleges: "Attorney did not interview any of my witnesses." (PCR Application, pp. 4).

By Applicant's own admission, she did not have any witnesses to aide in her defense and asserts that the claim was a consequence of her lack of understanding for the PCR process. Likewise, Rick Hubbard, Shawn Graham, and Emily Howard all testified that they were never informed of witnesses that could provide a defense for Applicant, nor witnesses that should be interviewed by counsel. This Court finds that there is no evidentiary basis to support this claim and hereby dismisses the same with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and

2. The Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 30th day of November, 2017.

ALISON RENEE LEE
Presiding Judge
11th Judicial Circuit

Columbia, South Carolina

FILED
2017 DEC -4 AM 11:31
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

ar
#22

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015-CP-32-00881

Margaret M. Driggers	**State of South Carolina**
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: _____	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ 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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

Applicant's post-conviction relief application is denied and dismissed with prejudice. Applicant shall remain in the custody of the State.

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

LISA M. COUNTS
CLERK OF COURT
LEXINGTON, SC
2017 DEC -4 AM 11:30
FILED

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled
		$
		$
		$

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.**

Circuit Court Judge Al Lewis Lee **Judge Code** 2118 **Date** 11/30/2017

For Clerk of Court Office Use Only

This judgment was entered on the 4th day of Dec., 20 17 and a copy mailed first class or placed in the appropriate attorney's box on this 5th day of Dec., 20 17 to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Zmroczek
PO Box 11910, Columbia SC 29211
ATTORNEY(S) FOR THE PLAINTIFF(S)

W. Joseph Maye - 1000 Assembly St
Capital & Collateral Lit Div Colu SC 29201
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

SCRCP Form 4C (10/2011)

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015-CP-32-00881

Margaret M. Driggers

2018 JAN -2 AM 11:15

State of South Carolina

LISA M. ESHER
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

Applicant's Motion to Reconsider is denied.

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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.**

Circuit Court Judge _____ **Judge Code** 2118 **Date** 12/27/2017

For Clerk of Court Office Use Only

This judgment was entered on the 2nd day of January, 20 18 and a copy mailed first class or placed in the appropriate attorney's box on this 2nd day of January, 20 18 to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Zmroczek
PO Box 11901 Columbia SC 29211
ATTORNEY(S) FOR THE PLAINTIFF(S)

W. Joseph Maye 1000 Assembly St
CCL Div. Columbia SC 29201
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL DISTRICT
COUNTY OF LEXINGTON	)	
Margaret M. Driggers, #359524	)	
Applicant,	)	
	)	
v.	)	MOTION TO RECONSIDER
	)	
State of South Carolina,	)	
Respondent.	)	

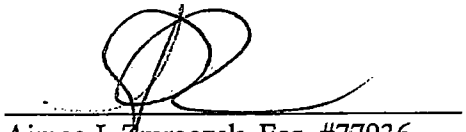
NOW COMES, Applicant, Margaret Driggers, by and through her undersigned counsel, and moves pursuant to Rule 59(e) SCRCP for an order altering or amending the court's prior order filed on December 4, 2017, denying Applicant's claim and dismissing with prejudice. While the court has ruled in the State's favor, the Applicant submits this motion to ensure that she has "enable[d] the lower court to rule properly after it has considered all relevant facts, law, and arguments." Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 546, 546 (2000). Specifically all allegations submitted in the memoranda by Applicant regarding:

1. Ineffective assistance of counsel;
2. Failure to properly prepare case for trial;
3. Failure to timely provide discovery to Applicant; and
4. Failure to interview Applicant's witnesses.

THEREFORE, counsel requests that Order be reconsidered for the above listed specific

reasons and issues not specifically listed above but raised during the trial of this matter.

Respectfully Submitted,



Aimee J. Zmroczek, Esq. #77936
A. J. Z. Law Firm, LLC
2003 Lincoln Street
P.O. Box 11961
Columbia, SC 29211
(803) 400-1918 telephone
(803) 403-8005 fax
ajzlawfirm@gmail.com
Counsel for Applicant

Columbia, South Carolina
Dated: December 18, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
Margaret M. Driggers, #359524,	)	
Applicant,	)	2015-CP-32-00881
	)	
-vs-	)	CERTIFICATE OF SERVICE
	)	
State of South Carolina,	)	
Respondent.	)	

I certify that, on this date, I served a copy of the Motion to Reconsider dated December 18, 2017, by depositing it in the U.S. Mail in an envelope with sufficient postage affixed, addressed as follows:

W. Joseph Maye
Assistant Attorney General
SC Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

Christina A. Metze

Columbia, South Carolina

Dated: 12/18/17

ORIGINAL

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
Margaret M. Driggers, #359524, Applicant, v. State of South Carolina, Respondent.	Docket No.: 2015-CP-32-00881 **ORDER DENYING MOTION TO RECONSIDER**

This matter comes before the Court by way of a Rule 59(e), SCRCP motion filed by Applicant to alter or amend this Court's Order filed December 4, 2017. The Motion for Reconsideration was filed with the Clerk of Court on December 18, 2017.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any new material fact or any principle of law that was either overlooked or disregarded in the previous Order. Accordingly, this Court hereby **DENIES** Applicant's Motion to Reconsider this Court's previous Order denying Applicant's claim and dismissing with prejudice filed December 4, 2017. Pursuant to Rule 59(f), oral argument is not necessary.

AND IT IS SO ORDERED.

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
February 20, 2018

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP3200881

Margaret M Driggers #359524		**State of South Carolina**	
PLAINTIFF(S)		**DEFENDANT(S)**	
Submitted by:		**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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:

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	**Judge Code**	2/26/2018 **Date**

For Clerk of Court Office Use Only

This judgment was entered on **23rd February 2018**, and a copy mailed first class or placed in the appropriate attorney's box or **26th February 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Jendrzejewski Zmroczek
PO Box 11961
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

William Joseph Maye
1000 Assembly St.
Capital And Collateral Litigation Div.
Columbia, SC 29201

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Lisa M. Comer - 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), SCRCP.

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.