



WALLER LAW GROUP

March 20, 2018

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

RECEIVED

MAR 26 2018

S.C. SUPREME COURT

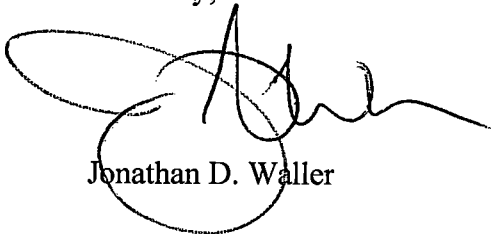
Re: Larry Junior Coles vs. State of South Carolina
C/A No: 2015-CP-21-1279

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Coles in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,



Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Michael G. Nettles, Circuit Court Judge

2015-CP-21-1279

RECEIVED

MAR 26 2018

S.C. SUPREME COURT

Larry Junior Coles, # 294158,

Appellant,

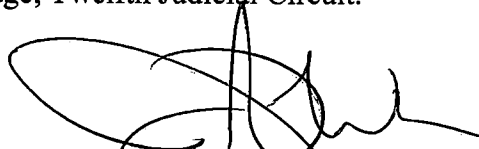
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Larry Junior Coles, # 294158, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed March 9, 2018, issued by the Honorable Michael G. Nettles, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Waller Law Group
SC Bar No.: 76290
1116 Blanding Street
Suite 2B
Columbia, SC 29201
803-520-7278 (phone)
jonathan@wallergroupsc.com
ATTORNEY FOR PETITIONER

March 20, 2018

Other Counsel of Record:

Lindsey A. McCallister, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Michael G. Nettles, Circuit Court Judge

2015-CP-21-1279

RECEIVED

MAR 26 2018

S.C. SUPREME COURT

Larry Junior Coles, # 294158,

Appellant,

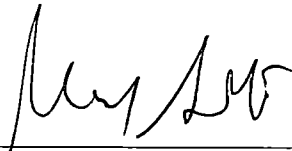
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Lindsey A. McCallister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.



M. David Scott

23
March 20, 2018

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2101279

Larry Junior Coles

2018 MAR -9 AM 11:53 South Carolina State Of

DORIS POULOS O'HARA

PLAINTIFF(S)

CCCP & GS DEFENDANT(S)

FLORENCE COUNTY, SC Attorney for: Plaintiff Defendant
 Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

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

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

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

3/9/2018

Date

For Clerk of Court Office Use Only

This judgment was entered on **March 8, 2018**, and a copy mailed first class or placed in the appropriate attorney's box on **March 9, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Jonathan D Waller 1116 Blanding Street Suite 2B
Columbia, SC 29201

Johanna Catalina Valenzuela PO Box 142 Columbia, SC
29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - 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.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELTH JUDICIAL CIRCUIT

Larry Junior Coles, #294158,)
)
Applicant,)

C. A. No. 2015-CP-21-1279

v.)

ORDER OF DISMISSAL

State of South Carolina,)
)
Respondent.)

2018 MAR - 8 PM 4: 19
DORIS POULOS O'HARA
C.C.P. & G.S.
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Larry Junior Coles (Applicant) on April 30, 2015. Respondent made its Return on August 17, 2015. An evidentiary hearing into the matter was convened on November 16, 2017, at the Florence County Courthouse before the Honorable Michael G. Nettles. Jonathan Waller, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Vick Meetze, Esquire, (Counsel) testified for the State. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, Applicant's appellate records, the application, the State's Return, and the transcript.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the January 2015 term of the Florence County Grand Jury for burglary – second degree (2015-GS-21-00007). Applicant was represented by Vick Meetze, Esquire. On March 23, 2015, Applicant proceeded to trial by jury, but then chose to enter a guilty plea after the trial began. The

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Honorable D. Craig Brown sentenced Applicant to a term of imprisonment of one-hundred months.

Applicant filed a timely notice of appeal. However, the appeal was dismissed due to Applicant's failure to provide a sufficient explanation for an appeal from a guilty plea pursuant to Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was returned on October 27, 2015.

ALLEGATIONS

In his application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that:
 - a. "My attorney misled me into pleading guilty which he never went over my case with me and after coming to visit me he threaten[ed] me by saying he [was] going to make sure I get time, which [was] a conflict of interest in 2012 when I'd filed a P.C.R. on the same Vick Meetze;"
 - b. "I tried to fire him and that's violation of rule 1.16(A)(3) of Rule 407 S.C.R.C.R., which gives a client the right to discharge an attorney at any time with or without cause;"
 - c. "Violation of my 6th Amendment rights."

At the evidentiary hearing, counsel for Applicant informed the Court Applicant was proceeding on claims of ineffective assistance of counsel due to a conflict of interest, failure to properly investigate the facts and circumstances of Applicant's case leading to an involuntary guilty plea, and failure to ensure Applicant received necessary correspondence regarding his appellate rights.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant

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

Ineffective Assistance of Counsel/Involuntary Guilty Plea

In a PCR action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Id. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington, 466 U.S. 668, 689 (1984). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688). 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. With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Further, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "A guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). Additionally, "the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Applicant testified he was represented by Counsel on these charges, despite having filed a PCR action and a complaint with the Bar regarding Counsel's representation on previous charges. Applicant also testified he told Counsel he did not want Counsel to represent him again, and Counsel responded by telling Applicant he would "make sure [Applicant] went up the road on these charges." Applicant testified he and Counsel only met one time at the county jail, when

Counsel brought copies of discovery, although Applicant further testified they did not discuss the contents of that discovery.

Applicant testified after he was released on bond, Counsel contacted him to discuss a plea offer of three years. Applicant stated he wanted a probationary sentence, but the solicitor would not agree. Applicant further testified he rejected offers of three years and four years. Applicant testified he and Counsel did not discuss the elements of the charges, what the State would have to prove, or any collateral consequences of a conviction. Applicant also testified he and Counsel never discussed potential defenses, despite the fact Applicant thought he had one in that he entered the home because he was hiding from police, not because he intended to burgle it. Applicant testified the only conversations he had with Counsel were regarding Applicant's desire for Counsel to be relieved, and when Counsel informed him law enforcement wanted to speak with him about another, more serious charge. Applicant testified he also told the investigator from the Public Defender's Office that he did not want Counsel to represent him.

Applicant further testified he decided to plead guilty after the trial started because Counsel told him there would be twenty-one law enforcement witnesses against him, and Applicant felt he "could not beat the State." Applicant also testified he saw some pictures at trial that were not in his discovery. Applicant testified Counsel advised him to plead guilty. However, on cross-examination, Applicant acknowledged he understood he did not have to enter a plea and could have continued with his trial. Applicant also testified he understood at the time of the plea that he was facing a sentencing range of zero to ten years, and he never informed the judge of the previous offer of three years or told the judge he expected to receive that same offer.

Applicant also acknowledged he raised the issue of Counsel's representation of him to the trial judge before the trial began, and he made a motion for a continuance so he could hire a

private attorney, which the trial judge denied. The transcript reflects the trial judge engaged in a thorough discussion regarding Counsel's previous representation of Applicant and the previous PCR action, which Applicant acknowledges was withdrawn and dismissed. Tr. 27-31. Applicant was offered the option of representing himself, which he declined, and during the plea colloquy, Applicant indicated multiple times he was satisfied with Counsel's representation. Tr. 30, 109-10.

Counsel testified he had represented Applicant on a previous charge, for which Applicant was convicted, and he was aware Applicant did not want Counsel to represent him again. Counsel testified he was not concerned about the previous PCR action, as it was eventually withdrawn without an evidentiary hearing, and he considers it to be simply part of the job. However, Counsel did agree communication with Applicant was difficult under the circumstances, and Counsel felt Applicant did not want to listen to him. Counsel testified Applicant was cooperative with his office's investigator.

Counsel explained Applicant was wanted by police for questioning on another matter, and when law enforcement tried to initiate a traffic stop, there was a car chase, and Applicant, who was a passenger in the car, fled to an unoccupied house. Counsel further testified the State's position at trial was that Applicant had then stolen some items from inside the house, which were recovered nearby at the home of Applicant's girlfriend. Counsel testified he felt Applicant had a defense to the charges on the ground that Applicant's actions did not meet the statutory elements of burglary in that there was no intent to commit a crime inside the house – there was no arrest warrant for Applicant at the time of the attempted traffic stop, and since Applicant was trying to hide, it was not logical for him to commit a larceny and then leave the house to stash the stolen items. Counsel testified he explained this defense and why he felt it

was valid to Applicant, but even with a solid defense, he could not make Applicant any promises as to the outcome at trial.

Counsel further testified Applicant had a conversation with his girlfriend after the trial began and decided he wanted to plead guilty, and Counsel did not try to talk Applicant out of that decision. Counsel testified the offer at that time was a “straight-up” plea with no recommendation from the State. Counsel confirmed Applicant had previously been offered three years, but Applicant was firm that he did not want to accept that offer. Counsel testified the decision to stop the trial and enter a plea was solely Applicant’s decision.

Regarding Applicant’s claim his guilty plea was induced by ineffective assistance of counsel, namely a conflict of interest and Counsel’s alleged failure to fully investigate the facts and circumstances of Applicant’s case, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant’s testimony regarding Counsel’s ineffectiveness is not credible, while also finding Counsel’s testimony is credible. This Court finds Counsel provided effective assistance in this case, and Applicant’s decision to plead guilty was made freely and voluntarily. Counsel formulated a valid defense based on Applicant’s version of the facts and explained to Applicant what the defense was and why Counsel felt it was valid. This Court finds Applicant understood he had the option to proceed with trial, as well as the sentencing range he could receive in a “straight up” plea without a recommendation from the State. Additionally, the transcript reflects Applicant was afforded an opportunity to place his issues with Counsel on the record before the trial and plea began, including the fact that Applicant had filed a previous PCR against Counsel and Counsel’s alleged comment that he would see Applicant “sent up the road.” The transcript also reflects the judge questioned Applicant at length during the plea colloquy regarding whether he was satisfied with Counsel, and Applicant indicated he was.

This Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged he was aware he could continue with his trial, and Applicant told the plea judge he was satisfied with Counsel's representation and had no complaints. Tr. p. 109-10. Accordingly, this Court finds Applicant understood the terms of the plea and entered into it freely and voluntarily.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 (“[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.”). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance such that his guilty plea was rendered involuntary. The allegation is hereby denied and dismissed.

Ineffective Assistance of Counsel – Failure to Properly Notify Applicant of Appellate

Procedure

The Supreme Court of the United States has specifically “reject[ed] a bright-line rule that counsel must always consult with the defendant regarding an appeal.” Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). Further, the Supreme Court of South Carolina has expressly stated that “[a]bsent extraordinary circumstances, there is no constitutional requirement that a defendant be

informed of the right to a direct appeal from a guilty plea.” Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Extraordinary circumstances arise, however, when a defendant inquires about an appeal, and counsel has a duty to advise him in that instance. Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

Applicant testified he wanted to appeal, but the only documentation he ever received was the final order from the Court of Appeals dismissing the appeal. Applicant testified he did not receive a letter from Counsel notifying him of his responsibility to submit an explanation for the appeal.

Counsel testified Applicant directed him to file an appeal, which Counsel did. Counsel testified he included language in the notice indicating he did not believe there were any meritorious issues for appeal, and the Court of Appeals then directed Counsel to notify Applicant of Applicant’s obligation to furnish an explanation of the issues Applicant wished to raise. Counsel testified he drafted the letter that was sent to Applicant explaining this procedure. Counsel further testified his usual procedure is not to close an appeal file until the Court of Appeals receives a copy of the letter from Counsel notifying the client of the proper procedure. Counsel testified if the Court of Appeals had not received proof of appropriate correspondence between Counsel and Applicant, the Court of Appeals would have directed Counsel to correct the deficiency.

This Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Counsel’s testimony on this issue to be credible, while also finding Applicant’s testimony is not credible. The Court finds

Counsel filed a timely notice of appeal, along with a statement, pursuant to Rule 243(d)(1)(B)(iv), that Counsel saw no meritorious issues for appeal. Further, the record reflects and this Court finds Counsel complied with the Court of Appeals' directive to notify Applicant of Applicant's responsibility to submit a guilty plea explanation to the Court of Appeals by sending a letter outlining the procedure. This allegation is therefore denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

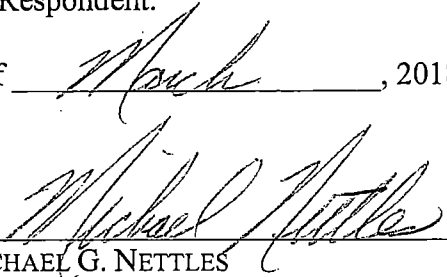
The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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IT IS THEREFORE ORDERED:

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

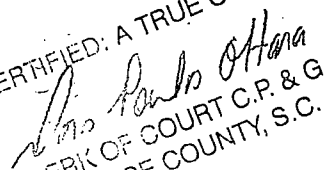
AND IT IS SO ORDERED this 1 day of March, 2018.


MICHAEL G. NETTLES
Presiding Judge
Twelfth Judicial Circuit

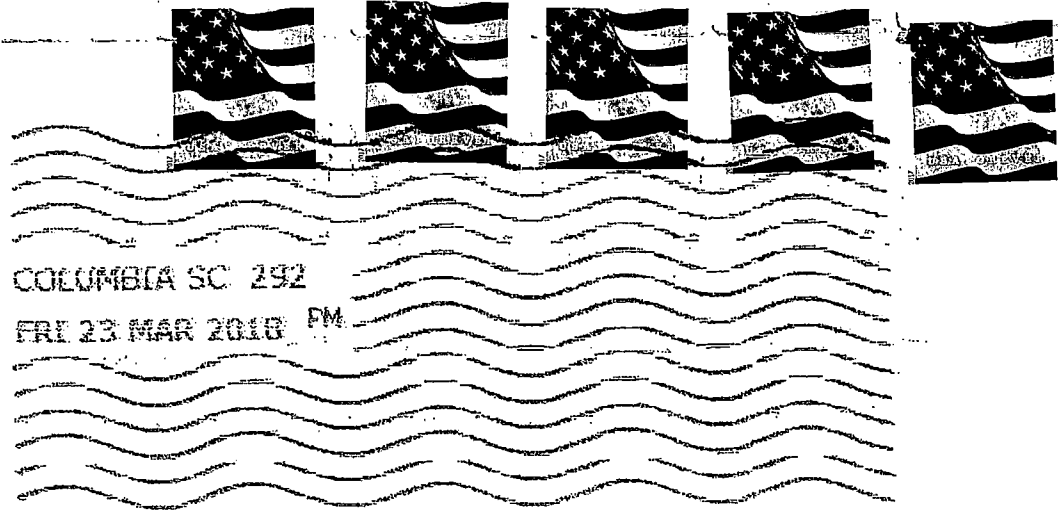
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DORIS POULOS O'HARA
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COLUMBIA SC 292

FRI 23 MAR 2018 PM

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