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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM UNION COUNTY
COURT OF COMMON PLEAS

J. MARK HAYES, CIRCUIT COURT JUDGE

2014-CP-44-295

James A. Giles
Appellant

vs.

State of South Carolina
Respondent

NOTICE OF APPEAL

James A. Giles appeals the Order of Dismissal in this Post-Conviction Relief action issued by the Honorable J. Mark Hayes on April 20, 2018. Appellant received written notice of entry of this order on May 7, 2018.

May 8, 2018
York, South Carolina

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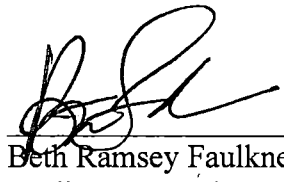
PROOF OF SERVICE

I certify that I have served the Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid on May 9, 2018 addressed to the attorney of records, Justin J. Hunter, Esq., PO Box 11549, Columbia, SC 29211.

May 8, 2018
York, South Carolina



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MOTION TO FILE *IN FORMA PAUPERIS*

I, Beth Ramsey Faulkner, hereby motion the court to allow the filing of the Notice of Appeal in this matter, without requirement of the filing fee. Appellant appeals the Order of Dismissal in this Post-Conviction Relief action and Appellant was appointed Counsel on the Post- Conviction Relief action due to indigency by Appointment of Counsel dated August 10, 2016 (see attached).

May 8, 2018
York, South Carolina

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May 8, 2018

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: *James A. Giles v. State of South Carolina*
Case No.: 2014-CP-44-00295

Dear Ms. Kitchings:

Please find enclosed the original and one copy of the Notice of Appeal, Motion to File *In Forma Pauperis*, a copy of the order that is the subject of the appeal, and Proof of Service in the above referenced matter. Please file these documents with your office and return the copies to me in the enclosed self- addressed stamped envelope.

By copy of this letter, I am also serving the Defendant's counsel.

If you have any questions concerning this matter, please do not hesitate to contact me at (803) 818-5700.

With kind regards, I am

Yours very truly,

Beth Ramsey Faulkner
Attorney

BRF/tsh

Enc.: As Noted.

cc: Justin J. Hunter, Esq.
James A. Giles

BETH RAMSEY FAULKNER
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The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
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(6)

STATE OF SOUTH CAROLINA COUNTY OF UNION	IN THE COURT OF COMMON PLEAS OF THE SIXTEENTH JUDICIAL CIRCUIT
James Giles, S.C.D.C. No. 264478, Applicant, v. State of South Carolina, Respondent.	2014-CP-44-295 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 22, 2014. Respondent made its Return on December 15, 2014. With the consent of the Respondent, Applicant filed an amended PCR application on January 25, 2018. Additionally, Applicant filed an amended PCR application January 30, 2018. An evidentiary hearing into the matter was convened on Tuesday, January 30, 2018, at the Moss Justice Center in York County, South Carolina. Applicant was present at the hearing and represented by Beth Faulkner, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Vanessa Cason, Esquire, testified. Applicant's former counsel Ross Burton, Esquire, testified. Appellate Defender LaNelle DuRant, Esquire, also testified. This Court had before it a copy of Applicant's records from the Union County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the transcript of Vanessa Cason's deposition, Applicant's PCR Application, the exhibits introduced at the PCR hearing, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant

to orders of commitment of the Union County Clerk of Court. Applicant was indicted at the September 2007 term of the Union County Grand Jury for Burglary, First Degree (2006-GS-44-1207), Kidnapping (2006-GS-44-1208), Strong Arm Robbery (2006-GS-44-1209). Applicant was represented by Vanessa Cason, Esquire. On September 12, 2007, Applicant underwent a jury trial. Halfway through the trial, Ms. Cason was relieved as counsel and Applicant proceeded pro se with Ms. Cason as standby counsel. Applicant was subsequently convicted of the charges as indicted and sentenced by the Honorable John C. Hayes, III, to concurrent terms of thirty years for burglary (first degree), thirty years for kidnapping, and fifteen years for strong arm robbery.

A Notice of Appeal was timely filed on Applicant behalf and an appeal was perfected by Appellate Defender LaNelle DuRant. Ms. DuRant raised the following issues on appeal:

1. Did the trial court err in quashing the jury without following the procedure for a Batson motion by not requiring the State to prove purposeful racial discrimination?

2. Did the trial court err in not granting Appellant's request for a continuance after the trial court granted Appellant's motion to relieve his trial counsel and proceed pro se where he had only been supplied his discovery information the day before trial?

The South Carolina Court of Appeals affirmed Applicant's conviction and sentence by an unpublished opinion. State v. Giles, 2010-UP-154 (Ct. App. filed on February 23, 2010).

On May 24, 2010, Applicant submitted a Petition for Writ of Certiorari, seeking review of the Court of Appeals decision. The Supreme Court of South Carolina granted certiorari and affirmed the decision of the Court of Appeals. State v. Giles, Op. No. 27353 (filed on January 15, 2014). Applicant submitted a petition for rehearing, which was denied by the Supreme Court on February 21, 2014. The Remittitur was sent on February 21, 2014.

PCR Application

In his application for post-conviction relief, Applicant alleged grounds of ineffective assistance of counsel and ineffective assistance of appellate counsel. On January 25, 2018, Applicant filed an Amended and Supplemental PCR Petition, alleging the following grounds of relief:

1. Ineffective Assistance of Counsel of Ross Burton

    a. "Applicant was coerced into signing a court order to provide a blood sample. Furthermore, the court order was based on Schmerber v. California, 384 U.S. 75 (1966), and this order was a Schmerber violation. Furthermore, this signing of the order was a violation of Applicant's constitutional rights related to search and seizures."

2. Ineffective Assistance of Counsel of Vanessa Cason

    a. "Failed to move to suppress any blood and DNA evidence and any testimony or expert opinions stemming from the unlawful collection of the blood sample from Applicant, as set forth above."

    b. "Failed to object to the procedure used to strike and choose the jury..."

    c. Vanessa Cason's opening statement to the jury was a mere three sentences. She failed to adequately explain Applicant's defense to the jury or to make any appeal to the jury on Applicant's behalf. Furthermore, in one of her three sentences, she indicated 'the defense will attempt to show that the state's evidence is questionable at best and that many of the items, that the state is going to put up have been tampered with...' However, she never attempted to make show throughout the trial that any of the evidence had been tampered with."

    d. "Failed to investigate the State's witnesses, including the alleged victim, Barbara Wilburn."

    e. "Failed to make a motion to dismiss the kidnapping charge."

    f. "Failed to cross-examine Ms. Wilburn on the kidnapping allegations and elements."

    g. "Failed to file a Rule 5 and/or Brady motion requesting the state's evidence against Applicant."

    h. "Failed to file a motion to suppress or object to the admission of testimony and evidence taken from the crime scene and the blood sample collected

from Applicant based on a lack of establishment of chain of custody."

i. "Failed to cross-examine Jeffrey Crooks from SLED, one of the State's main witnesses."

j. "Failed to object to the admission of photographs from the crime scene, when they were admittedly, according to witness Donald Nix, taken by William F. Gault, who never testified."

k. "Vanessa Cason gave erroneous advice about sentencing to Applicant"

3. Ineffective Assistance of Counsel of LaNelle DuRant

a. "Failed to raise the issue of whether or not there was any error by the trial court in the selection of the jury during Applicant's trial"

At the PCR hearing, Applicant additionally alleged the trial judge gave insufficient Faretta[1] warnings when Applicant wished to relieve Ms. Cason and proceed pro se.

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of

[1] Faretta v. California, 422 U.S. 806 (1975)

counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel as to Ross Burton

Applicant alleged Mr. Burton was ineffective because Applicant was coerced into signing a court order to provide a blood sample. He alleges the court order was based on Schmerber v. California, 384 U.S. 75 (1966), and this order was a Schmerber violation.

Mr. Burton testified at the PCR hearing he was appointed to represent Applicant but only represented him for a few months. He testified Applicant claimed he was not at the scene of the crime and did not commit the crime, so a blood sample order would support this defense and exonerate Applicant. Mr. Burton testified he was relieved as counsel because Applicant was unhappy and wanted him to investigate how his blood got in the victim's house. Mr. Burton

explained that blood of unknown origin was found in the victim's house after the incident and the case was unsolved for years. Meanwhile, Applicant's blood was taken by SLED for an unrelated incident. Applicant's blood sample in the SLED's database indicated a possible match to the victim's house, and the State requested Applicant's blood sample to confirm the match.

This Court finds Applicant has failed to meet his burden of proving Mr. Burton was ineffective in this regard as there is no evidence of coercion and there was no Schmerber violation. This Court had before it a copy of a Consent Order For Suspect Samples To Be Taken From Defendant For Testing, filed September 11, 2006, and signed by the State, Mr. Burton, Applicant, and the Honorable Thomas W. Cooper. The consent order appears valid on its face. This Court finds it was not error for Mr. Burton to consent to the blood draw as a successful test would have helped Applicant's defense that he was not present at the crime scene location.

Furthermore, Applicant has failed to meet his burden of proving he was prejudiced by Mr. Burton's actions as he has failed to show evidence of a Schmerber violation. Applicant alleged the blood draw violated Schmerber. To obtain a search warrant, Schmerber requires a showing that (1) probable cause to believe the suspect has committed the crime, (2) a clear indication that relevant material evidence will be found, and (3) the method used to secure it is safe and reliable. State v. Baccus, 367 S.C. 41, 54, 625 S.E.2d 216, 223 (2006). Here, there is no prejudice to Applicant's allegation because it is likely police could have obtained a warrant to obtain Applicant's blood as there was probable cause to believe Applicant committed the crime as his DNA (submitted from an unrelated incident) matched the blood DNA found at the victim's house. There is an indication that relevant material evidence would be found because a blood draw will either reveal a match or no match. Lastly, the method is safe and secure because the method of drawing blood was done by health care professionals at a hospital. Thus, even if Mr.

Burton had objected, it is unlikely a Schmerber violation would have been found. Accordingly, this allegation must be dismissed.

Ineffective Assistance of Counsel – Vanessa Cason

Failure to move to suppress any blood and DNA evidence

Applicant alleged Ms. Cason was ineffective for failing to move to suppress any blood and DNA evidence and any testimony or expert opinions stemming from the unlawful collection of the blood sample from Applicant, as set forth in the preceding section.

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective in this regard. First, this Court finds there is no evidence a Schmerber violation occurred. Whether or not a Schmerber violation existed is not a question for this Court, but rather a direct appeal issue. Regardless, the evidence appears the blood draw was done pursuant to a signed consent order from which there is no evidence of unlawful coercion. This Court finds Ms. Cason was not deficient for failing to move to suppress, as there do not appear to be any grounds by which a motion could have been successfully argued. Furthermore, this Court finds Applicant has failed to prove he was prejudiced as a result of Ms. Cason's actions as Applicant has failed to meet his burden of showing this motion would have been successful. As Applicant has failed to prove Ms. Cason was deficient in this regard, or that the motion would have been successful, this allegation must be dismissed.

Failure to object to the procedure used to strike and choose the jury

Applicant alleged Ms. Cason was ineffective for failing to object to the procedure used to strike and choose the jury. During jury selection, Applicant used his peremptory challenges to strike eight white males and two white females from the jury. The State requested, pursuant to Batson v. Kentucky, that the trial judge conduct an inquiry as to whether Applicant had a race

neutral reason for striking the ten white jurors. Applicant responded that the jurors were "not right" for the jury. The trial judge ruled that the reason was racially neutral on its face, but gave the court nothing by determine whether the reason was pretextual and was not sufficient under Batson. The trial court quashed the jury panel. Following the selection of a new jury panel, the trial judge further expounded on his ruling, reiterating that striking a juror because the juror is not right for the jury is no reason. He again noted that while it may be "technically, semantically, intellectually racially neutral," for purposes of articulating a reason for striking a juror, it was not race neutral. On direct appeal, the Supreme Court found the trial court was correct in holding Applicant's reason that the jurors were "not right" for the jury was not race neutral for Batson purposes as it was not a clear and reasonably specific explanation for exercising the challenge. State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014).

At the PCR hearing, Ms. Cason testified she explained to Applicant that he needed to provide actual reasons for striking the jurors instead of basing the strikes on race. Applicant testified he told Ms. Cason which strikes to make during jury selection.

First, since the Supreme Court has already upheld the legality of Applicant's jury selection procedure pursuant to Batson, this Court cannot overrule the Supreme Court on this issue and the lawfulness of the jury selection procedure remains the law of the case.

Next, Applicant mentions the trial judge relied on a case, State v. Easley, that he later clarified on the record was in error, but did not change his ruling. The record shows the trial judge did not say he made his Batson ruling based on State v. Easley[2] and he did not later say relying on this case was in error. The relevant portion of the record indicates the trial judge stated after clarifying his ruling: "I may be wrong in my ruling but I believe that while it was not filed

[2] The context makes it clear trial judge was referring to State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996) over which he presided at the trial level and which discusses the steps a trial court must take in a Batson analysis.

the Easley case set aside the clear specific. I still think there must be some reason and I think that someone is not right for the jury is no reason." Tr. 50, ll. 19-23. Nowhere does the trial judge admit that he relied on bad law in making his Batson ruling. State v. Easley was not overruled or modified in regard to its Batson analysis and this case remains upheld law. Furthermore, the trial judge's Batson ruling was upheld on appeal by the Court of Appeals and Supreme Court. Thus, Ms. Cason was not ineffective for failing to object to Judge Hayes' ruling in regard to these remarks.

Applicant further alleges Ms. Cason was ineffective for failing to object to the fact that four jurors that Applicant had previously struck were seated on the second jury. This Court would again reiterate Ms. Cason was not ineffective as the Batson procedure was upheld on appeal. This Court further finds any objection would be without merit because the jurors were properly seated. Applicant asserts that jurors he previously struck, prior to the Batson ruling, cannot later serve on the jury. The case of State v. Franklin, 318 S.C. 47, 456 S.E.2d 357 (1995) is directly on point and holds that such jurors cannot be later excluded. "When a Batson violation is found to have occurred, members of the tainted jury and all persons who were struck may be placed back in the jury venire." Franklin, 318 S.C. at 51, 456 S.E.2d at 359 (citing State v. Jones, 293 S.C. 54, 358 S.E.2d 701 (1987)). Our Supreme Court held that a juror who was improperly excluded by a Batson violation may be seated because "to hold otherwise would inadvisably reward a party for his own improper conduct." Id. The Court held that excluding a juror who was improperly excluded by a party's Batson violation would "reward him for the very discrimination Batson was designed to prevent" by allowing the discriminatory strike to remain. Ultimately, the Court held that when a Batson violation was found to have occurred, the jury

selection process begins *de novo* with every juror placed back in the jury panel with the possibility of being seated on the subsequent jury.[3]

This Court finds Ms. Cason was not ineffective in this regard, as no violation occurred. After Applicant's Batson violation, the jury panel started anew with all jurors placed back in the venire. Applicant's previous strikes, which were found to be improper, do not continue on through the second proper jury selection. The procedure was lawful and appropriate pursuant to Batson and Franklin. Applicant cannot be rewarded for his improper conduct by having his discriminatory strike remain throughout the subsequent jury selection. As no violation occurred, this Court finds Ms. Cason was not ineffective for failing to object to this procedure.

Failure to give an adequate opening statement

Applicant alleged Ms. Cason was ineffective for giving an opening statement that was only three sentences long and did not explain Applicant's defense or appeal to the jury. He alleged Ms. Cason did not make an attempt to show that the evidence had been tampered with, despite telling the jury "the defense will attempt to show that the state's evidence is questionable at best and that many of the items, that the state is going to put up have been tampered with...". Tr. p. 59. This Court finds that although Ms. Cason's opening was brief and, arguably, weak, Applicant has failed to meet his burden of proving Ms. Cason was ineffective. This Court finds Ms. Cason's opening that the evidence was tampered with was not deficient as it was simply her opinion of what the State's evidence would show. This Court finds Applicant has failed to meet his burden of proving he was prejudiced by Ms. Cason's actions. This Court finds Applicant's guilt was clearly established, especially considering the positive DNA match of Applicant's

[3] During the PCR hearing, Applicant and his appellate counsel used State v. Edwards, 384 S.C. 504, 682 S.E.2d 820 (2009) to support Applicant's position. This Court finds Edwards is misapplied here because it held that previously struck jurors may not be excluded *when the trial court errs* in granting the State's Batson motion. In Applicant's case, the trial court did not err in granting the State's Batson motion (and was upheld by the Supreme Court) so Edwards would not apply to his situation.

blood in Ms. Wilburn's house, and any conclusion that Ms. Cason's opening statement was prejudicial would be speculative. As Applicant has failed to meet his burden of proving Ms. Cason was ineffective in this regard, this allegation must be dismissed.

Failure to investigate the State's witnesses

Applicant alleged Ms. Cason was ineffective for failing to investigate the State's witnesses including the victim. Applicant alleged the victim, Barbara Wilburn, was found incompetent to testify in the trial of J.C. Rice in the year 2000 or 2001 and Ms. Cason should have investigated this for Applicant's trial to impact Ms. Wilburn's testimony during the trial. Applicant alleged Ms. Wilburn's testimony was inconsistent and contradictory and the trial court should have held a competency hearing based on her incompetency at a 2001 trial. Applicant testified Ms. Cason said she did an independent investigation of the State's witnesses but never shared the information with Applicant. Ms. Cason testified she reviewed all discovery with Applicant and attempted to speak with the witnesses he gave her by using an investigator.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

This Court finds Applicant has failed to meet his burden of proving Ms. Cason's investigation was deficient. This Court finds Ms. Cason obtained discovery and used an investigator. Regarding the victim, Ms. Wilburn, this Court finds Applicant has failed to prove

Ms. Cason was ineffective for failing to call her competency into question. This Court finds Ms. Wilburn's competency at a prior trial had no relevance to Applicant's case. This Court finds if Ms. Cason challenged Ms. Wilburn's competency at trial based on a trial many years before, it is likely such testimony would be kept out as irrelevant. Further, this Court finds Applicant has failed to meet his burden of proving he was prejudiced as his allegation is completely speculative and not supported by any evidence. Applicant has failed to specify at what trial Ms. Wilburn testified, the date of the trial, the particular subject matter, how Ms. Wilburn was involved, and how her competency was challenged at that point. This Court will not speculate as to Ms. Wilburn's competency and how Ms. Cason's investigation could have been more effective. As Applicant has failed to meet his burden of proving Ms. Cason's actions were deficient in this regard and that the outcome of his trial would have been different, this allegation must be dismissed.

Failure to make a motion to dismiss the kidnapping charge

Applicant alleged Ms. Cason was ineffective for failing to dismiss the kidnapping charge. Applicant alleged there was nothing in the incident report that ever stated that Ms. Wilburn alleged she was seized, confined or kidnapped against her will. He further alleged there was no substantial evidence was presented at trial that Applicant seized, confined or held Ms. Wilburn against her will.

This Court finds although the evidence of kidnapping was arguably weak, it was still sufficient for the jury to decide. S.C. Code § 16-3-910 states someone commits kidnapping if they "unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law." S.C. Code Ann. § 16-3-910. This Court finds the record reflects evidence existed to send the case to the jury. Evidence was presented

from Ms. Wilburn herself when she testified, "Well certainly I tried to run out the back door but it was locked and he prevented me from doing that because he had the scissors see. And I think he had his left hand on the back of my sweater there holding on to me. He had the scissors. I said I have some silver coins." Tr. p. 116, ll. 1-5. She also testified, "Well I couldn't get out the back and so he came behind me. Like I said he held onto the back of my sweater – he had the scissors - so that's when I came back. I can't remember the exact moment when I went back there but I did. I tried to get him to go ahead and take my car. I said you know - I think he said again that I'm going to kill you." Transcript p. 117, ll. 16-21. This testimony would support the State's allegation that Applicant unlawfully seized, confined, or kidnapped Ms. Wilburn. Any conflicting testimony would be a factual question for the jury, however because there is evidence that could support this allegation, it is unlikely a motion to dismiss the indictment would have been unsuccessful. Accordingly, this Court finds Applicant has failed to meet his burden of proving Ms. Cason was ineffective for failing to move to dismiss the kidnapping indictment and this allegation must be dismissed.

Failure to cross-examine Ms. Wilburn on the kidnapping allegations and elements

Applicant alleged Ms. Cason was ineffective for failing to properly cross-examine Ms. Wilburn concerning the kidnapping allegations.

Ms. Wilburn testified on direct examination that she could not get out of her house because the door was locked and because Applicant held on to her sweater while holding scissors. On cross examination, Ms. Cason asked Ms. Wilburn the following:

> Q: Okay. Ms. Wilburn, you said that when you went to go out the back door you were prohibited from going out the back door because it was locked, is that correct? You couldn't get out the back door because it was locked.
>
> A: Well I had locked it earlier. See that was two o'clock in the morning and the doors were locked so I couldn't get out. But of course you know when

somebody's frightened you like that you are going to run and try to get out but I could not get out.

Transcript p. 122, l. 25 – 123, l. 8. This Court finds Ms. Cason did question Ms. Wilburn on the kidnapping allegations and whether or not she was confined in her house due to Applicant or because her doors were locked. This questioning challenges the elements of kidnapping as it suggests Ms. Wilburn could not leave her house because the doors were locked. Although it may be weak, this Court finds Ms. Cason did cross-examine Ms. Wilburn in this regard. Furthermore, this Court finds Counsel's cross-examination was not deficient and this Court will not speculate whether a "better" cross-examination would have helped Applicant. See Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997). Accordingly, this allegation must be dismissed.

Failure to file Rule 5 and/or *Brady* motion

Applicant alleged Ms. Cason was ineffective for failing to file a Rule 5 or Brady motion requesting the State's evidence. He also alleged the evidence turned over to Ms. Cason was not turned over in time for her to properly prepare for trial. He alleged the Chain of Custody from the Union Public Safety Department was printed on August 31, 2007, and Applicant's trial started on September 11, 2007. Applicant alleged this failure to obtain evidence in a timely manner denied Ms. Cason the time she needed to properly file and serve any necessary motions, including any motions to suppress. Furthermore, Applicant alleged Ms. Cason failed to turn over evidence to Applicant she received from the State.

Ms. Cason testified she reviewed the discovery with Applicant and attempted to speak with the witnesses Applicant provided her. She testified she had a private investigator help her contact these witnesses and she went to the hospital in Union to inquire about the blood draw. She testified that she did not file the discovery motions but received the full file from the Solicitor's Office on two occasions and received Mr. Burton's full file. Ms. Cason testified she

received full discovery and Mr. Burton's file was identical to the one provided to her by the Solicitor's Office. She testified she could not recall when she received the chain of custody but she would normally receive it as part of the general discovery and believed she had seen it before the printed date of August 31, 2007. Ms. Cason further testified she reviewed all of the evidence against Applicant at the police department. Ms. Cason testified she had received the chain of custody in discovery and believed she had seen this chain of custody before August 31, 2007.

This Court finds Ms. Cason was not ineffective for failing to file a Rule 5 or *Brady* motion. This Court finds Ms. Cason was not deficient for failing to make the motions as she was provided all discovery from the State and received Mr. Burton's full case file. This Court finds Ms. Cason shared and discussed the discovery with Applicant prior to trial. This Court would also point out at trial, Applicant complained he did not receive the chain of custody in time and the trial judge found the State had complied. Tr. 147. This Court finds Applicant has failed to meet his burden of proving Ms. Cason was missing documents or that additional documents would have turned up had she filed the discovery motions. This Court further finds Applicant has failed to prove Ms. Cason did not receive the discovery in a timely manner that prevented her from fully preparing for trial. This Court will not speculate as to how Ms. Cason could have differently prepared for the trial.

Furthermore, this Court finds Applicant has failed to prove Ms. Cason did not have the Chain of Custody form in time to prepare for trial or make evidentiary motions. Ms. Cason testified she had already received the Chain of Custody sheet and this Court will not speculate as to whether she had enough time to prepare for trial. Applicant has failed to show which evidentiary motions were necessary and how exactly the trial court would have ruled on these

motions. Despite his testimony, Applicant has failed to show exactly what issues existed with the chain of custody that would call for Ms. Cason to make a motion to suppress.

This Court finds Ms. Cason did turn over the State's evidence to Applicant as she testified she discussed the evidence with him and provided him a copy in jail. Ms. Cason testified she met with Applicant once a month prior to trial. Applicant has failed to show that Ms. Cason's actions were deficient or that the outcome of his trial would have been different had she provided him physical copies of the discovery at an earlier date and Applicant has failed to show that he was prejudiced even assuming Ms. Cason did not timely share discovery with Applicant.

As Applicant has failed to meet his burden of proving Ms. Cason was deficient regarding the discovery material, and that he was prejudiced as a result of her actions, this allegation must be dismissed.

Failure to file a motion to suppress or object to the admission of testimony and evidence taken from the crime scene and the blood sample collected from Applicant based on a lack of establishment of chain of custody

Applicant alleged Ms. Cason was deficient for failing to file a motion to suppress or object to the testimony and evidence taken from the crime scene and the blood sample collected from Applicant based on a lack of establishment of the chain of custody. Applicant alleged the State failed to establish a chain of custody and there were in fact, breaks in the chain of custody in the evidence collected from the crime scene and the blood sample collected from Applicant.

Applicant has failed to show that Ms. Cason's performance was deficient in this regard, and has failed to show that the outcome of his trial would have been different had Ms. Cason moved to suppress the evidence. This Court has reviewed the Chain of Evidence Report, Evidence Chain of Custody sheet, Transfer of Custody Receipt form, and Chain of Evidence and Applicant has failed to show these reports contain errors. All of these forms show who possessed what certain pieces of evidence. "Proof of chain of custody need not negate all possibility of

tampering so long as the chain of possession is complete." State v. Hatcher, 392 S.C. 86, 92, 708 S.E.2d 750, 753 (2011). This Court finds that these forms appear to show a proper chain of possession even if additional, cumulative forms were not contemporaneously filled out. Furthermore, the testimony at trial from the State's witnesses appears to show a complete chain of possession for the evidence taken from the victim's home. Applicant has not provided credible evidence that there are issues with the chains of custody that would require the reversal of Applicant's convictions and this Court will not speculate. See Hatcher, 392 S.C. at 95 ("The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be.") As Applicant has failed to meet his burden of proving Ms. Cason was deficient regarding the chain of custody forms, and that he was prejudiced as a result of her actions, this allegation must be dismissed.

Additionally, Applicant alleged Ms. Cason was ineffective for failing to object to the blood sample for lack of chain of custody. This Court finds this allegation is without merit for the following reasons. The record reflects the "chain of custody form from the laboratory William Thompson Hospital" was used at trial for identification purposes as State's Trial Exhibit 30. See Tr. 106, 156. Officer Nix identified this form, testifying:

> [T]his form indicates to me the chain of custody from Wallace Thompson Laboratory and the patients name is James Albert Giles; the blood was drawn from James Albert Giles; appears to me the right forearm by Judy Martin and there's the signature where she signed it over to me.
>
> Q: Okay. And she gave you this form when she gave you the blood, is that correct?
>
> A: That's correct.

Tr. 106, ll. 12-20. The chain of custody was also identified by the lab technician Judy Mathis where she testified:

> This is the chain of custody form that we use whenever law officers bring in patients or rather clients or whatever you want to call them for legal blood draws or whatever they want drawn. Usually it's blood alcohol. And what we do is we draw the blood and fill out the various things on here. We sign it and we hand it over to them.

Tr. 156, ll. 19-24. This testimony shows that that Ms. Mathis drew blood from Applicant's forearm, put it in a tube, labeled the tube, and gave the tube to Officer Nix. Tr. 157-158. Officer Nix testified he received the tube of blood from the hospital. Tr. 194. Applicant challenged the hospital's procedure during trial, however Ms. Mathis testified the proper procedure was followed. Tr. 159-160. Officer Nix testified he witnessed the blood draw, received the blood and a signed piece of paper from the Ms. Mathis stating she was turning over the blood to Officer Nix. Tr. 87-88. He further testified that he submitted the blood to SLED in a heat sealed bag that was initialed and dated. Tr. 88. Thus, this Court finds the chain of possession of Applicant's blood was well-established at trial.

Applicant further alleged that the blood vial was defective because it did not have Applicant's initials or name on it. The record reflects Applicant challenged this at trial when he cross-examined Ms. Mathis and Officer Nix on the issue. Both witnesses testified it is not their standard procedure to have the blood-drawee sign the vial because their procedure only requires the lab tech to sign. Applicant has failed to show that this item is not what the State purports it to be, or that it was tainted in any way. This Court will not speculate that this item was not Applicant's blood, especially when no evidence would support that conclusion. Applicant has failed to show any alleged errors with the blood draw or the handling of his blood that would require an objection from Ms. Cason. Furthermore, this Court finds Applicant has failed to show that the outcome of his trial would have been different had Ms. Cason objected to the blood draw or the chain of custody. Accordingly, this allegation must be dismissed.

Failure to cross examine SLED Investigator Jeffrey Crooks

Applicant alleged Ms. Cason was ineffective for failing to cross-examine SLED investigator Jeffrey Crooks. He alleged the SLED records show Item 1.1 as being the "back side of a cable cord" and the cable cord from the telephone was never submitted to SLED, and Ms. Cason didn't cross-examine any witness regarding this. This Court finds this allegation is without merit and the issue was well-fleshed out at trial.

The record reflects the "cable cord"/ "cable end" issue was clarified several times during the trial. When Mr. Crooks took a blood swab from the phone (Item 1.1) he wrote "back side of cable end" to identify it and entered it into the SLED database. Transcript 132. He testified when his writing on Item 1.1 was documented by another tech, it was mistakenly transcribed as "back side of cable *cord*." Transcript 133. Ms. Cason did not cross-examine Mr. Crooks on this issue however this Court finds such cross-examination was not necessary and any testimony would have been cumulative to that already elicited. The record reflects Mr. Crooks explained what evidence he found, where he found it, and how he documented it. He testified where exactly Item 1.1 was found and testified that someone must have mistakenly written "cord" instead of "end." Applicant has not shown what Ms. Cason should have asked from Mr. Crooks and what additional information about this issue would have revealed. This Court will not speculate as to what questions Ms. Cason should have asked. Most importantly, this Court finds that the outcome of Applicant's trial would not have been different by speculating what questions she could have asked on cross-examination and what information would have been elicited. Furthermore, regarding the admission of the item itself, this Court finds the contents of Item 1.1 from trial remain the same regardless of what words were used to describe it. Mr. Crooks testified where he swabbed for this item, and the words he used to describe its location on paper

do not change this item's composition or change the fact that Applicant's blood was found on Item 1.1 inside the victim's home. As Applicant has failed to meet his burden of proving Ms. Cason was deficient, or that he was prejudiced as a result of her actions in this regard, this allegation must be dismissed.

Failure to object to admission of crime scene photographs

Applicant alleged Ms. Cason was ineffective for failing to object to the admission of photographs from the victim's house when they were photographed by William Gault who did not testify. He alleged this denied him the right to cross-examine the photographer. This Court finds this allegation is without merit. The record reflects Officer Nix testified regarding what was depicted in photographs from the crime scene taken by Mr. Gault. Tr. 65, 91, 195, 209. After identifying and reviewing the photographs, Officer Nix testified that the photos fairly and accurately represented what he saw when he went to the victim's house on December 5, 2003. Tr. 91. This Court finds such testimony laid the proper foundation necessary for Officer Nix to testify to what is depicted in the photos. Officer Nix identified what was in the photos and asserted that the photos fairly and accurately represented what he saw that day, thus the foundation was laid and he could testify about the photos and they can be entered into evidence. The photographer of a particular photograph is not required for someone's testimony as long as the foundation is laid. In this case, the record reflects the proper foundation was laid, Officer Nix properly testified, and Ms. Cason was not deficient for failing to object. This Court finds Applicant has failed to show the photographs do not depict what Officer Nix testified they depict, and he has failed to show that an objection would have been sustained. Furthermore, he has failed to show that outcome of his trial would have been different had Ms. Cason objected to Officer Nix's testimony. Accordingly, this allegation must be dismissed.

Sentencing advice

Applicant alleged Ms. Cason gave erroneous advice about sentencing to Applicant. He alleged that Ms. Cason urged Applicant to accept a twenty year plea deal and insisted that if he did not, he would likely be sentenced to life without parole, however no notice had been provided by the State to seek life without parole.

Ms. Cason testified she received a plea offer of ten years and would have gone over this offer on the day she was appointed to represent Applicant. Ms. Cason testified Applicant rejected all plea offers. Applicant testified he did not receive plea offers from Ms. Cason but did receive them from Mr. Burton. He testified Ms. Cason brought a plea offer to his attention during the recess of his trial, stating the State would allow him to plead to a twenty year sentence if he dropped the trial and pled guilty.

This Court finds Applicant rejected all plea offers. This Court finds Applicant's complaint that Ms. Cason told him he would receive life without parole is unfounded and unsupported by credible evidence. The record reflects Applicant did face a possible maximum of a life sentence if found guilty. Regarding the plea offer during trial, Applicant was in the middle of a trial at the time and has not provided any testimony that he would have accepted this plea deal but for Ms. Cason's assertion that he would receive life without parole at trial. Applicant has failed to provide any testimony or evidence to show that he was prejudiced by this advice. Accordingly, this allegation must be dismissed.

The trial judge gave improper Faretta warnings

Applicant alleged that the trial judge gave improper Faretta warnings when Applicant desired to relieve Ms. Cason and proceed pro se. At the beginning of the second day of Applicant's trial Ms. Cason moved to be relieved on behalf of Applicant. Applicant asserted he

was unhappy, just as he was unhappy with Mr. Burton when Applicant relieved him. Tr. 145. After Applicant aired his grievances, Judge Hayes asked if Applicant wanted to relieve Ms. Cason. Applicant replied affirmatively. Tr. 145- 148.

According to the United States Supreme Court, in order to waive the right to counsel, the accused must be (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. Gardner v. State, 351 S.C. 407, 411, 570 S.E.2d 184, 186 (2002). The trial judge must determine whether there is a knowing and intelligent waiver by the defendant. Id. If the trial judge fails to address the disadvantages of appearing pro se, as required by the second prong of Faretta, the appellate courts will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source. Id. There is no scripted Faretta hearing a judge must undertake and "if the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied." Gardner, 351 S.C. at 411-412, 570 S.E.2d at 186 (2002) (internal citations omitted).

This Court finds Judge Hayes made a thorough record and conducted a proper Faretta hearing. Judge Hayes also advised Applicant of his right to counsel, stating "and do you understand that an attorney is a beneficial asset to you. That is you have a right to an attorney and you have one...." Tr. 149, ll. 6-8. Applicant replied that he understood this right. Tr. 149.

Judge Hayes adequately warned Applicant of the dangers of self-representation. Tr. 149-150. Judge Hayes informed Applicant an attorney would be beneficial because an attorney had been through law school and has practiced law. Tr. 149. He advised Applicant that Applicant's reading of the law would not tell him everything, because he has to know the practical aspects and legal rulings. Tr. 149. Judge Hayes advised Applicant it is dangerous to represent yourself

and even though Applicant knows some bits and pieces about the law, by not being a lawyer Applicant does not know how everything works together, what is trivial and what is important to the jury. Tr. 149. Judge Hayes further advised Applicant it is dangerous to represent yourself. Tr. 149. He explained that Ms. Cason was prepared and any issues Applicant had with her could be brought up after trial. Tr. 150. Applicant replied that he understood all of Judge Hayes' advice. Judge Hayes further told Applicant that if he relieves Ms. Cason then she will still operate as standby counsel. Judge Hayes allowed Applicant time to talk to Ms. Cason and his family about the issue before making a decision. After twenty minutes of private discussion, Ms. Cason relayed that Applicant wanted to represent himself and Judge Hayes granted the motion. Applicant represented himself for the remainder of the case.

This Court finds Judge Hayes properly went over the risks of self-representation and the benefits of counsel, and Applicant responded that he understood these risks. Since the trial judge did undertake the specific inquiry into the hazards of proceeding pro se, he is not required to examine Applicant's background. Applicant complains that Judge Hayes did not tell him which specific objections he would have to make, however the trial judge is not required go over every specific detail of representing yourself as long as he goes over the dangers of proceeding pro se. Here, Judge Hayes went over the dangers and warned Applicant that he does not know practical aspects and legal rulings, the details of how the law works as a whole, and what would be relevant to the jury. This Court finds Applicant had some knowledge of the legal process and had researched and filed several motions with the trial court. Even after advising the continuance would be granted, Judge Hayes allowed Applicant time to discuss the issue with his family and counsel. This Court would point out immediately after the motion was granted to allow him to act pro se, Applicant successfully objected to the admission of his prior record.

This Court finds Judge Hayes followed the law and Applicant received his desire to proceed pro se. Furthermore, the record shows no indication that Applicant did not understand his rights or the dangers of self-representation. Because Applicant made an informed decision to proceed pro se, the trial judge's ruling that Applicant shall represent himself was proper. As the trial judge conducted a proper Faretta hearing, this allegation must be dismissed.

Ineffective Assistance of Appellate Counsel

Failure to raise on appeal the issue of whether or not there was any error by the trial court in the selection of the jury during Applicant's trial

Applicant alleged Ms. DuRant was ineffective for failing to raise on appeal the issue of whether or not there was any error by the trial court in the selection of the jury during Applicant's trial. Applicant alleged that Judge Hayes' ruling on the State's Batson motion after the selection of the first jury was erroneous and was based on errors of law and should have been appealed by Ms. DuRant.

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004), citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. See Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836. See also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error). "To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's

unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal." United States v. Mason, 2012 WL 5845807 at *1 (citing Smith v. Robbins, 528 U.S. at 285-86, 120 S. Ct. at 764).

This Court finds Ms. DuRant was not deficient as she did challenge the trial court's ruling and procedure on the State's Batson motion to the Court of Appeals and Supreme Court. In the Court of Appeals she raised: "Did the trial court err in quashing the jury without following the procedure for a Batson motion by not requiring the State to prove purposeful racial discrimination?" In the Supreme Court she raised: "Whether the Court of Appeals erred by finding that the trial court correctly quashed the jury without following the procedure for a Batson motion by not requiring the State to prove purposeful racial discrimination?" The record reflects Ms. DuRant filed a Petition for Rehearing in the Supreme Court but was ultimately unsuccessful. Because she did raise this issue, she cannot be ineffective for failing to do so.

Furthermore, as stated above, the legality of the Batson procedure was upheld by the Court of Appeals and by the Supreme Court and this Court cannot overrule those rulings as they remain the law of the case.

To the extent Applicant alleged Ms. DuRant was ineffective for failing to raise the issue of whether the trial court erred in allowing jurors to be seated on the second jury who had previously been struck during the first jury selection, this Court finds the allegation is without merit. To reiterate this issue as explained above, the four jurors at issue were properly seated because when a Batson violation is found to have occurred, members of the tainted jury *and all persons who were struck* may be placed back in the jury venire. Franklin, 318 S.C. at 51, 456 S.E.2d at 359 (citing State v. Jones, 293 S.C. 54, 358 S.E.2d 701 (1987)) (emphasis added). The Supreme Court held that a juror who was improperly excluded by a Batson violation may be

seated because "to hold otherwise would inadvisably reward a party for his own improper conduct." Id. Ms. DuRant testified when the trial court is found to have erred in its Batson ruling, the jurors cannot be placed back on the second jury; but as in Applicant's case, when the trial court properly found a Batson violation, the previously struck jurors can be seated on the subsequent jury. This Court finds Ms. DuRant was not deficient as Applicant's argument that an error occurred would likely not have been successful on appeal as it is contrary to decided case law. Applicant has failed to meet his burden of proving Ms. DuRant was deficient for excluding this issue, and has failed to prove this issue would have prevailed on appeal. Accordingly this allegation must be dismissed.

Failure to raise on appeal the issue of the trial judge's *Faretta* warnings

Applicant also asserts Ms. DuRant was ineffective for failing to raise on appeal the issue concerning the legality of the trial judge's Faretta warnings. First, for the reasons outlined above, this Court would again find the trial judge did not violate Faretta violation. As no violation occurred, this Court finds Ms. DuRant was not deficient for failing to raise the issue on appeal.

This Court finds Applicant has failed to meet his burden of showing that issue would have been successful on appeal. While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Additionally, our Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). "'Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.'" Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)). Appellate counsel has a professional duty to choose among potential issues according to

their merit. Jones, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not deficient performance. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985). Ms. DuRant testified as to how she approaches every case and how she picked out which issues to raise on appeal in Applicant's case. She testified that she had some concerns about the Faretta issue but did not raise it as she picked out the most meritorious issues to raise on appeal.

"To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal." Mason, 2012 WL 5845807 at *1 (citing Smith v. Robbins, 528 U.S. at 285-86, 120 S. Ct. at 764). Applicant has failed to provide proof that the issue concerning his Faretta warnings would have been successful on appeal, and this Court finds Ms. DuRant was not ineffective. Accordingly, this allegation must be dismissed.

IV. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that his counsels' performances were unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's 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, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24th day of April, 2018.

J. MARK HAYES, II
Presiding Judge
Sixteenth Judicial Circuit

Union, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF UNION) SIXTEENTH JUDICIAL CIRCUIT
)
) CASE NO.: 2014-CP-44-295
JAMES GILES, #264478)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
STATE OF SOUTH CAROLINA)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
N. Beth Ramsey Faulkner, Bar No. _____	Justin J. Hunter, Bar No. _____
Address:	Address:
Post Office Box 1030	Post Office Box 11549
York, South Carolina 29745	Columbia, South Carolina 29211
Phone: _____ Fax _____	Phone: _____ Fax_____
E-mail: _____ Other: _____	E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☒ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff /☒ Defendant — April 18, 2018 Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____