

**LAW OFFICES**  
**L. MORGAN MARTIN, P.A.**  
**1121 THIRD AVENUE**  
**CONWAY, SOUTH CAROLINA 29526**

L. Morgan Martin  
Mary Ashley Martin

Phone: (843) 248-3177  
Fax: (843) 248-2842

July 27, 2017

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

**RECEIVED**  
JUL 28 2017  
SC Court of Appeals

Re: Stefano Brooks, #358949, Appellant vs State of South Carolina, Respondent  
Case No.: 2015-CP-26-00259

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case along with three (3) copies and a self-addressed, stamped envelope. Also, enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondent.
2. A copy of the Order Denying Application for Post Conviction Relief.
- 3) The Order Denying Motion to Alter or Amend.

Sincerely,



L. Morgan Martin  
1121 Third Avenue  
Conway, SC 29526  
(843) 248-3177  
Attorney for the Appellant

cc: Valerie Garcia Giovanoli  
Asst. Attorney General  
Post Office Box 1549  
Columbia, SC 29211

19

STATE OF SOUTH CAROLINA

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IN THE COURT OF APPEALS

JUL 28 2017

SC Court of Appeals

\_\_\_\_\_  
Appeal from Horry County

Honorable Judge Michael Nettles, Circuit Judge

\_\_\_\_\_  
CA NO. 15-CP-26-00259  
\_\_\_\_\_

FILED  
HORRY COUNTY  
2017 JUL 27 AM 8:40  
DEBBIE N. EVANS  
CLERK OF COURT  
HORRY COUNTY SC

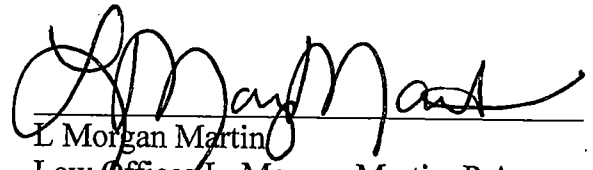
STEFANO BROOKS, #358949,.....Appellant

v

STATE OF SOUTH CAROLINA.....Respondent

\_\_\_\_\_  
NOTICE OF APPEAL  
\_\_\_\_\_

Stefano Brooks appeals the Order of the Honorable Judge Michael Nettles filed March 24, 2017 denying his motion for post conviction relief. Appellant received written notice of the entry of this order March 31, 2017. Appellant timely filed a Motion to Alter or Amend Judgement pursuant to Rule 59(e), South Carolina Rules of Civil Procedure, and that motion was denied in an order dated July 19, 2017.



L Morgan Martin  
Law Offices L. Morgan Martin, P.A.  
1121 Third Avenue  
Conway, SC 29526  
(843) 248-3177

July 21, 2017

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S.C. SUPREME COURT

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Judge Michael Nettles, Circuit Judge

CA NO. 15-CP-26-00259

FILED  
HORRY COUNTY  
2017 JUL 27 AM 8:41  
RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY

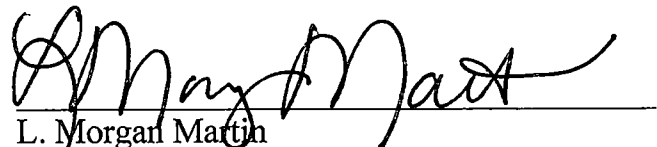
STEFANO BROOKS, #358949,.....Appellant

v

STATE OF SOUTH CAROLINA.....Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Valerie Garcia Giovanoli, Assistant Attorney General, by mailing a copy to her office at Post Office Box 11549, Columbia, South Carolina, 29211 and the Honorable Renee Elvis, Clerk of Court, by personal delivery July 27, 2017.



L. Morgan Martin  
Law Offices L. Morgan Martin, P.A.  
1121 Third Avenue  
Conway, SC 29526  
(843)248-3177

Dated: 7-27-17

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JUL 28 2017

SC Court of Appeals

LAW OFFICES  
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Fax: (843) 248-2842

July 27, 2017

HAND-DELIVERED

The Honorable Renee Elvis  
Clerk of Court for Horry County  
Post Office Box 677  
Conway, SC 29528

Re: Stefano Brooks, #358949, Appellant vs State of South Carolina, Respondent  
Case No.: 2015-CP-26-00259


FILED  
HORRY COUNTY  
2017 JUL 27 AM 8:40  
RENEE ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

Dear Ms. Elvis:

Attached for filing is a Notice of Appeal in the above referenced matter.

Sincerely,

LAW OFFICES L. MORGAN MARTIN, P.A.

  
L. Morgan Martin  
Attorney for the Appellant

cc: Valerie Garcia Giovanoli  
Attorney for the Respondent

RECEIVED  
AUG 01 2017  
S.C. SUPREME COURT

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JUL 28 2017  
SC Court of Appeals

Other Counsel of Record:

Valerie Garcia Giovanoli  
Assist Attorney General  
Post Office Box 1549  
Columbia, SC 29211  
Attorney for Respondent

**LAW OFFICES  
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July 27, 2017

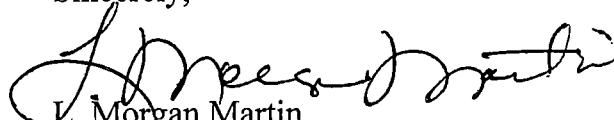
Valerie Garcia Giovanoli  
Asst. Attorney General  
Post Office Box 1549  
Columbia, SC 29211

Re: Stefano Brooks, #358949, Appellant vs State of South Carolina, Respondent  
Case No.: 2015-CP-26-00259

Dear Ms. Giovanoli:

Please find enclosed a Notice of Appeal in the above referenced case.

Sincerely,

  
L. Morgan Martin  
Attorney for Appellant

cc: Honorable Jenny Abbott Kitchings

**RECEIVED**

AUG 01 2017

S.C. SUPREME COURT

**RECEIVED**

JUL 28 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

Stefano Brooks, #358949,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

2015-CP-26-259

ORDER OF DISMISSAL

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JUL 28 2017

SC Court of Appeals

COURT REPORT  
HORRY COUNTY, SC

17 FEB 24 AM 8:18

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 13, 2015. Respondent made its Return on July 31, 2015. An evidentiary hearing into the matter was convened on February 7, 2017 at the Horry County Courthouse. Morgan Martin, Esquire represented Applicant. Ralph Prioleau Jr., under the supervision of Rutledge Johnson, Esquire, pursuant to the Student Practice Rule under Rule 401 of the State of South Carolina, represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, the Honorable Clifford Leon Welsh testified. Officer Clements of the South Carolina Highway Patrol also testified. This Court had before it a copy of the records of the Horry County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's return, the Guilty Plea transcript, the Sentencing Transcript, and the Motion for Reconsideration Transcript.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the

January 2011 term of the Horry County Grand Jury for trafficking cocaine base, 100-200 grams (2011-GS-26-218). Clifford L. Welsh, Esquire, represented Applicant.

Applicant pled guilty to the lesser included offense of trafficking cocaine, 28-100 grams, on May 15, 2012. In exchange for Applicant's guilty plea, the State also dismissed three of Applicant's pending criminal charges.<sup>1</sup> The Honorable Benjamin H. Culbertson deferred sentencing until a later date, but Applicant failed to appear and absconded from the jurisdiction. He was later arrested in Louisiana and expedited back to Horry County for sentencing. On February 14, 2014, Judge Culbertson sentenced Applicant to twenty-five (25) years' imprisonment. Applicant filed a Motion for Reconsideration of his sentence. On March 31, 2015, the Honorable Culbertson denied Applicant's Motion for Reconsideration.

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

1. "Ineffective Assistance of Counsel"
  - a. "Defense counsel failed to conduct an adequate investigation into the Applicant's case."
  - b. "Defense counsel failed to adequately advise the Applicant of all possible defenses and legal and factual claims that could be made at trial, and failed to adequately advise the Applicant of all available plea offers."
2. "Involuntary Guilty Plea"
  - a. "The Applicant's pleas of guilty were not knowingly, voluntarily, or intelligently entered."

At the hearing, Applicant proceeded on his claims of ineffective assistance of plea counsel and involuntary guilty plea.

#### **SUMMARY OF TESTIMONY**

At the evidentiary hearing, Applicant testified that he was represented by Clifford L. Welsh, Esquire. Applicant stated that he discussed the facts of the case with Clifford L. Welsh,

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<sup>1</sup> The dismissed charges include trafficking in MDMA or ecstasy, 100-500 dosage units (2011-GS-26-217), attempted murder (2011-GS-26-4023) and assault and battery, second degree (2013-A-26-10202537, not indicted).

Esquire. Applicant stated that he was the passenger during a vehicle checkpoint in the Little River Section of Horry County. Applicant testified that there was no open container in the vehicle. Applicant testified that search and seizure was discussed with his attorney. Applicant claims that he was not familiar with the appropriate motions to file so he left that responsibility to his attorney.

On cross-examination, Applicant admitted that he was under oath at the time of his Guilty Plea. Applicant also admitted that the facts presented during his Guilty Plea were accurate and that he attested to those facts.

Applicant admitted that he was a passenger at the vehicle checkpoint. Applicant also admitted that the open container was presented in the facts and he attested to those facts. Applicant stated that plea negotiations were brought to him by his attorney. Applicant stated that he did not recall if attorney went over his rights. Applicant admitted that he did not return for sentencing as instructed by the Honorable Benjamin Culbertson. Applicant admitted that he was arrested almost two years later in the state of Louisiana.

Counsel testified that he did not file a motion to suppress. Counsel testified that he did not file a motion pertaining to the legality of the Highway Patrol's checkpoint because there was no basis for it. Counsel testified that he was aware of the requirements for a valid checkpoint. Counsel testified that that he did not speak to Highway Patrol officers about the basis for the checkpoint or request records pertaining to it. Counsel knew that it was a common location used for checkpoints. Counsel testified that the District Captain and Major were present for the checkpoint so that took care of the notice and authority requirements. Counsel claimed that he questioned Applicant's standing to object to the initial seizure of the vehicle. However, in his cursory investigation of the checkpoint, he believed it was a valid stop in which officers had the

right to request the driver and passenger step out of the car. At which time, Applicant's drugs fell out of his lap and into plain view. Counsel testified that a passenger can have standing to challenge the search and subsequent seizure of drugs. Counsel testified that he did not think he would have been successful at a suppression hearing.

On cross-examination, Counsel testified that he had received discovery materials for the pending charges. Counsel testified that the problem was not with discovery, but the problem Applicant had is the fact that he had multiple, pending charges including attempted murder, assault and battery, second degree, and trafficking MDMA (ecstasy). Counsel testified that he negotiated a favorable plea deal for Applicant to plead to the *lesser* included offense, thus eliminating a minimum mandatory of twenty-five (25) years, a twelve (12) year recommendation by the Solicitor<sup>2</sup>, and the dismissal of all of Applicant's other charges in exchange for his plea.

Counsel testified that he did not believe the Judge would have suppressed the drugs based on the facts presented. Counsel also testified that he did not file a motion to suppress based on fear that the Solicitor would retract the entire global plea offer, including the twelve (12) year recommendation. Counsel testified that he did not coerce Applicant or force him to plead guilty. Counsel testified that the ultimate decision to plead guilty was Applicant's. Counsel testified that Applicant's failure to appear at sentencing and ultimately absconding complicated the outcome. Counsel testified that he did not have any knowledge that the Applicant would abscond.

On re-direct examination, Counsel testified that the Applicant was not sentenced until he was arrested in Louisiana and expedited back to South Carolina. Counsel also testified that the

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<sup>2</sup> Respondent notes that Applicant ultimately received the maximum sentence of twenty-five (25) years due to his failure to return for sentencing after the judge allowed Applicant to defer sentencing in order to be with his wife when she gave birth. Instead, Applicant absconded to Louisiana where he was later arrested on drug charges and expedited back to Horry County for sentencing.

Highway Patrol opened the door of the vehicle and Applicant was sitting on the cocaine and ecstasy was on his person.

Officer Clemmons testified that he is employed with the South Carolina Highway Patrol. Officer Clemmons testified that he is stationed in Horry County. Officer Clemmons testified that Applicant's PCR counsel requested Highway Patrol records and data for the checkpoint. Officer Clemmons indicated he could find no data, record, or evidence. Officer Clemmons testified that checkpoints are documented and recorded every time.

On cross-examination, Officer Clemmons testified that he was not involved with the checkpoint. Officer Clemmons also testified that he was not employed in Horry County at the time of the checkpoint. Officer Clemmons testified that he had no knowledge of the checkpoint. Officer Clemmons claims that he is a record's custodian. Officer Clemmons testified that some records are kept in Columbia, South Carolina and that he did not search there for any records. Officer Clemmons testified that the location of the checkpoint in this case was an area that is commonly known for accidents and DUIs.

#### **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 hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). This Court finds the testimony of Counsel and Officer Clemmons to be credible. This Court further finds that the testimony by Applicant is not credible, especially with regard to the open container that was found in the vehicle at the time of the traffic stop.

### **Ineffective Assistance of Counsel**

Applicant alleges he received ineffective assistance of counsel. Applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence. (citing Rule 71.1 (e), SCRPC). When an applicant alleges ineffective assistance of counsel, 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E. 2d 813 (1985).

Applicant must prove that counsel's performance was deficient. Attorneys are held to an objective standard of "reasonably effective assistance" under "prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E. 2d at 625, citing Strickland. The presumption will always be that counsel was effective and the applicant must overcome the presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989). The probability must lie that because of counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). A guilty plea defendant is entitled to effective assistance of counsel. In a PCR action, the guilty plea defendant must prove that because of counsel's deficient performance, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985).

This Court finds that Counsel was effective in his representation concerning the decision not to file a motion to suppress. Counsel testified that it was a strategic decision not to file a motion to suppress. Counsel testified that his negotiations with the State led to Applicant pleading to a lesser charge, with a recommendation for less than half of the minimum mandatory

he was facing and in exchange for his other charges being dismissed. Counsel also testified that he was afraid that if he did file a motion to suppress, the plea offer would have been retracted. Counsel was not confident in getting the drugs suppressed based on his cursory investigation of the checkpoint. Counsel was familiar with the case law regarding driver checkpoints and that he believed this checkpoint met all of the requirements to be a valid one. This Court finds that Counsel was effective in his representation. This Court finds that Counsel effectively negotiated a sentence in the best interest of his client, but because of Applicant's failure to appear, the Court sentenced him to more time. This Court finds that Applicant waived all non-jurisdictional defenses when he pled guilty, including the right to challenge the checkpoint, challenge the search and seizure of the drugs, and the right to present any defenses.

This Court also finds that Counsel met the objective standard of "reasonably effective assistance" under "prevailing professional norms." Cherry, at 117 (citing Strickland). The standard does not require that Counsel deliver Applicant the most perfect representation with zero error, but rather that his advice, decisions, and conduct are reasonable based on the professional norms in criminal defense. This Court finds that it was certainly a reasonable decision not to file a motion to suppress in this case. Furthermore, Applicant has failed to overcome the presumption that Counsel was effective. Id. Accordingly, this Court finds the 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 unprofessional errors in his representation of Applicant.

Even assuming *arguendo* that his performance fell below the standard of reasonable performance, no prejudice resulted to Applicant. Strickland, *supra*. There was insufficient

evidence presented at the PCR hearing to prove that Applicant would have been successful in a suppression motion. In order for Applicant to meet his burden of proof under the prejudice prong of Strickland, he must show that but for Counsel's deficient performance, he would not have pled guilty. Hill, supra.

Applicant's claim is that Counsel should have moved to have the drugs suppressed. The evidence presented at the PCR hearing with regard to a suppression hearing was from Counsel, who testified to his knowledge of the circumstances of the checkpoint and his knowledge of the requirements for the checkpoint to be lawful. He also testified that in his opinion, the checkpoint was lawful although he did not request official Highway Patrol checkpoint records. Officer Clemmons testified that upon request, he could not find any records in the Horry County Highway Patrol office with regard to a checkpoint that occurred over six (6) years ago. He also testified that he was not part of the checkpoint nor did he work in Horry County at that time.

Applicant has failed to present sufficient evidence that the checkpoint was unlawful. The evidence is speculative, at best, to show that a suppression motion would have proved successful. It is a stretch to assume that because an Officer with no connection to this case, who cannot find records in Horry County of a traffic checkpoint from over six years ago, that may or may not be in Columbia means that no records ever existed. Nor does the law require such records. The legal requirements for setting up a License or DUI Checkpoint in South Carolina are: (1) that law enforcement must have a valid reason for the checkpoint; (2) supervisory approval is needed; and (3) law enforcement must publicize the checkpoint. Without demonstrating by a preponderance of the evidence that the checkpoint was unlawful, Applicant equally fails to prove that had Counsel been successful in suppressing the drugs on that basis, Applicant would not have pled guilty. In fact, the evidence supports Counsel's claim that he would not have been successful at

suppression and would have risked Applicant's favorable plea deal. Applicant did not plead guilty because Counsel failed to make a winning motion for suppression, but rather, he pled guilty because Counsel negotiated the deal of a lifetime for Applicant.

Therefore, this Court finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance.<sup>3</sup> The burden of proof has not been met. Therefore, these allegations are denied.

### **Involuntary Guilty Plea**

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court finds the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the 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

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<sup>3</sup> Applicant's only prejudice flows from his decision to abscond from the jurisdiction prior to sentencing.

errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Court finds the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel and therefore, has been treated as such in the section *supra*.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds that Applicant failed to present evidence as to the other allegations, and thus, this Court deems the other allegations abandoned.

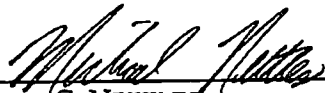
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. *See* Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.


*[Space left blank intentionally]*

**IT IS THEREFORE ORDERED THAT:**

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
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 21 day of March, 2017.

  
\_\_\_\_\_  
MICHAEL G. NETTLES  
Presiding Judge  
Fifteenth Judicial Circuit

  
3-21-17, South Carolina

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

\_\_\_\_\_  
STEFANO BROOKS, #358949,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

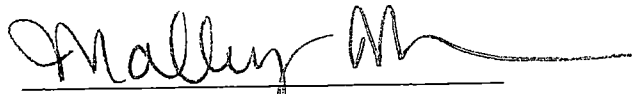
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HORRY COUNTY  
2017 JUL 27 AM 8:41  
KELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

\_\_\_\_\_  
**CERTIFICATE OF SERVICE**  
\_\_\_\_\_

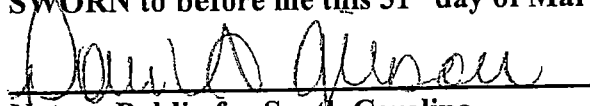
The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Mr. L. Morgan Martin, Esquire**  
**Law Offices of L. Morgan Martin, P.A.**  
**1121 Third Avenue**  
**Conway, SC 29526**

This 31<sup>st</sup> day of March, 2017.

  
\_\_\_\_\_  
MALLORY MORRIS  
LEGAL ASSISTANT FOR RESPONDENT

SWORN to before me this 31<sup>st</sup> day of March, 2017.

  
\_\_\_\_\_  
Notary Public for South Carolina.

My Commission Expires: 8/29/2021

**RECEIVED**

JUL 28 2017

SC Court of Appeals

2015-CP-26-0259

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 Stefano Brooks, #358949, )  
 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

2015-CP-26-0259

**ORDER DENYING MOTION TO ALTER  
 OR AMEND**

FILED  
 CLERK OF COURT  
 HORRY COUNTY, S.C.  
 2017 JUL 27 AM 8:11

This matter comes before the Court by way of Applicant's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRPC. A hearing into the matter was convened on June 1, 2017, at the Horry County Courthouse. Applicant was present at the hearing and was represented by L. Morgan Martin, Esquire. Valerie Garcia Giovanoli of the South Carolina Attorney General's Office represented the Respondent. I signed an Order of Dismissal in this matter on March 21, 2017.

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend the judgment.

**IT IS THEREFORE ORDERED:**

1. That Applicant's motion is denied and dismissed.
2. Applicant shall remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19 day of July, 2017.

*Michael G. Nettles*  
 MICHAEL G. NETTLES  
 Presiding Judge  
 Fifteenth Judicial Circuit

**RECEIVED**

JUL 28 2017

SC Court of Appeals

*[Signature]*, South Carolina

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JUL 28 2007

SC Court of Appeals

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