

**John Garvin
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 29472**

RECEIVED

JUL 11 2018

S.C. SUPREME COURT

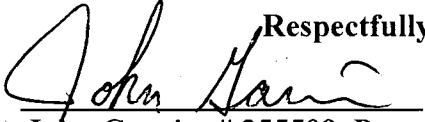
Attn: Hon. Daniel E. Shearouse, Clerk
South Carolina Supreme Court
1232 Gervais Street
Columbia, S.C. 29201

**RE: John Garvin v. State of South Carolina, Appellant Case No. 2018-001211
Motion for Stay and Abeyance**

Dear Hon. Clerk Shearouse,

Enclosed is a DECLARATION OF INMATE FILING, A MOTION FOR STAY AND ABEYANCE with Supporting Affidavit in the above case with a PROOF OF SERVICE on the Respondent, in the format shown by Form 7 in Appendix C to part II of the SCACR, which involves every party in the appeal.

Dated: July 6, 2018

Respectfully,

John Garvin, # 355509, Pro-se

JG/bg

Enclosure

cc: Ms. Jordan A. Cox, Asst. Att'y. General
Mr. Alan M. Wilson, Attorney General

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUL 11 2018

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Hon. Michael G. Nettles, Circuit Court Judge

S.C. SUPREME COURT

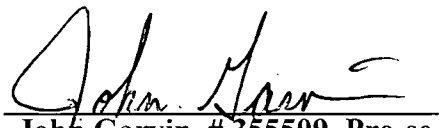
Appellant Case No. 2018-001211

John Garvin Plaintiff/Appellant,
v.
State of South Carolina. Defendant/Appellee.

DECLARATION OF INMATE FILING

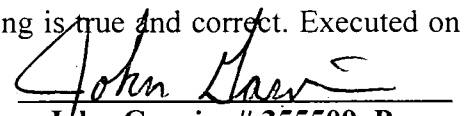
I, John Garvin, declare that I am an inmate confined at Lieber Correctional Institution in Ridgeville, South Carolina. Today this 6th day of July, 2018, I have served a Motion for Stay and Abeyance with Supporting Affidavit and a Certificate of Service on the South Carolina States Attorney General Office and the South Carolina Supreme Court by depositing a copy of it in the Lieber Correctional Institution's internal mail system, pursuant to Rule-262(a)(2), SCACR, and *Moses v. State*, 420 S.C. 500, 803 S.E.2d 718 (2017), to be delivered via SCDC Intra-Agency Mail and via United States First Class Postage and Certified Mail is being prepaid either by me or by the institution on my behalf.

DATED: July 6, 2018.


John Garvin, # 355509, Pro-se.
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 29472

State of South Carolina)
)s.s.:
County of Dorchester)

I declare under the penalty of perjury that the foregoing is true and correct. Executed on this 6th day of July, 2018.


John Garvin, # 355509, Pro-se

RECEIVED

THE STATE OF SOUTH CAROLINA
In The Supreme Court

JUL 11 2018

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Hon. Michael G. Nettles, Circuit Court Judge

S.C. SUPREME COURT

Appellant Case No. 2018-001211

John Garvin Petitioner/Appellant,

v.

State of South Carolina Respondent/Appellee.

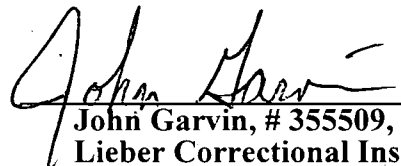
MOTION FOR STAY AND ABEYANCE

To: Ms. Jordan A. Cox, Asst. Att’y. General, Attorney for Respondent/Appellee

Petitioner-Appellant, John Garvin, proceeding as pro-se moves this court for an Order granting a stay and abeyance of this appeal, pursuant to Rule-59(e), SCRPC. This said Motion is made on the grounds that: The time for an appeal is to be stayed by a timely filed post-trial motion to alter or amend the judgment, in Spartanburg County. Which stays the time for an appeal for all parties until receipt of a written notice of entry of the Order granting or denying such motion. *Lucey v. Meyer*, 401 S.C. 122, 736 S.E.2d 274 (S.C. Ct. App., 2012).

Petitioner-Appellant’s Motion is made and based on this attached motion, a supporting affidavit, of John Garvin, and supporting documents, copies of which are served with this motion, and is on the pleadings, papers, records, and files in this action.

DATED: July 6, 2018.


John Garvin, # 355509, Pro-se.
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 29472

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Hon. Michael G. Nettles, Circuit Court Judge**

Appellant Case No. 2018-001211

John Garvin Petitioner/Appellant,

v.

State of South Carolina. Respondent/Appellee.

**AFFIDAVIT OF JOHN GARVIN IN SUPPORT
OF MOTION FOR STAY AND ABEYANCE,
PURSUANT TO RULE-59(e)(f), SCRCP**

NOW COMES John Garvin, being first duly sworn, and hereby deposes and states as follows:

1. I am the Petitioner in the above – captioned case and I make this affidavit in support of the attached Motion for Stay and Abeyance.

2. I am presently in the custody of Warden, Randell Williams at Lieber Correctional Institution, pursuant to a judgment of the Spartanburg County Court of General Sessions of the State of South Carolina rendered on May 23, 2013, convicting me of drug trafficking, pursuant to S.C. Code Ann. § 44-53-370(e)(3), and sentencing me to 25 years imprisonment.

3. A direct appeal was taken and the South Carolina Court of Appeals affirmed the conviction and sentence on November 26, 2014. Petitioner’s initial application for post-conviction relief was dated October 28, 2015 and filed on November 18, 2015. To challenge the constitutionality of the erroneous conviction and to vindicate Petitioner’s rights that had actually been denied at trial.

4. On April 22, 2016, Petitioner filed six (6) pro-se motions in the Spartanburg County Court of Common Pleas.

5. On July 5, 2016, the Respondent has filed its Answer/Return to Petitioner’s PCR application.

6. On February 21, 2018, a motion hearing was held at the Spartanburg County Courthouse to address the outstanding pending motions filed by Petitioner, John Garvin.

7. At that hearing the Honorable Michael G. Nettles, Circuit Court Judge, heard and ruled on Petitioner’s six (6) pro-se motions. Insomuch as, ordering the Respondent to submit a proposed order to the courts.

8. During the motion hearing I represented myself.

9. On March 1, 2018, the Respondent sent Petitioner a copy of its proposed order.


STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT
))
John Garvin,)
) Petitioner,) NOTICE OF MOTION FOR RECONSIDERATION
) TO ALTER/AMEND JUDGMENT, PURSUANT TO
v.) RULE-59(e), SCRPC.
))
State of South Carolina,)
) Respondent.)
))
_____) CASE NO.: 2015-CP-42-4699

To: Ms. Jordan Cox, Asst. Att’y. General, Attorney for Respondent.

YOU WILL PLEASE TAKE NOTICE, that upon the affidavit of John Garvin, sworn to on the 7 day of June, 2018, a Motion will be made at a term of this Court, for an Order granting the Reconsideration to Alter/Amend Judgment, from which the judgment entered in this action was on the 21st day of February, 2018. This motion is made based on the following grounds: (1) the Petitioner hereby again objects to the Respondent’s proposed order, which intentionally omits and distort the facts within the proposed order. (2) The Courts have overlooked the facts stated in the Petitioner’s affidavits in support of his Motions. (3) The Respondent’s proposed order intentionally omits Petitioner’s denied Motion to Conduct Discovery.

Petitioner’s Motion is made and based on this notice of motion, the affidavit of John Garvin in support of motion, supporting documents, copies of which are served with this notice, and on the pleadings, papers, records, and files in this action.

DATED: June 7, 2018.


John Garvin, # 355509, Pro-se.
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 29472

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SPARTANBURG COUNTY
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Exhibit - A

11. On May 21, 2018, the Respondent's would re-submit the same proposed order and on May 29, 2018, his honor signed the Respondent's proposed order, where Petitioner received a copy of it on June 1, 2018.

12. Petitioner would like to reiterate his admonition that the Respondent's proposed order intentionally omits and distort the facts of the reason why Petitioner is asking for the grand jury documents. When this court has granted Petitioner full access to the grand jury documents.

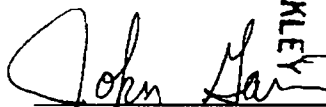
13. The Petitioner hereby again objects to the Respondent's proposed order, which intentionally omits and distort the facts within the proposed order.

14. The Courts have overlooked the facts stated in the Petitioner's affidavits in support of his Motions.

15. The Respondent's proposed order intentionally omits Petitioner's denied Motion to Conduct Discovery.

16. The Petitioner makes this Motion for Reconsideration to Alter/Amend Judgment, to correct any such deficiency, prior to rendering a final decision on this matter.

WHEREFORE, based upon the forgoing the Petitioner prays that the Court reconsiders granting the Respondent's proposed order denying Petitioner's Motion for Entry of Default and Judgment in Default, the order denying in part and granting in part his Motion to Inspect Grand Jury Documents and to Challenge Array of Grand Jury. The order denying his Motion for Leave to File Requests for Production, Interrogatories, and Request for Admissions and the court denying his Motion to Conduct Discovery. Furthermore, the Petitioner respectfully requests that the Court direct an entry of a new judgment and/or alter or amend the judgment signed on May 29, 2018. The Petitioner's motion should be granted in the interest of justice and for such other and further relief as may be proper and equitable. Executed on this 7 day of June, 2018.


John Garvin, # 355509, Pro-se.
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 29472

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RIDGEVILLE COUNTY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
)	
John Garvin,)	MEMORANDUM OF LAW IN SUPPORT
Petitioner,)	OF MOTION FOR RECONSIDERATION
)	TO ALTER/AMEND JUDGMENT,
v.)	PURSUANT TO RULES-59(e), SCRPC
)	
State of South Carolina,)	
Respondent.)	CIVIL ACTION
_____)	CASE NO.: 2015-CP-42-4699

Petitioner, John Garvin, proceeding as pro-se, makes this Motion for Reconsideration to Alter/Amend Judgment, pursuant to Rule-59(e), SCRPC. Hereby, moves this Court to reconsider and/or alter/amend the judgment in this action entered on February 21, 2018, by the Honorable Michael G. Nettles, Circuit Court Judge, on the grounds that: (1) the Petitioner hereby again objects to the Respondent’s proposed order, that intentionally omits and distort the facts within the proposed order. (2) The Courts have overlooked the facts stated in the Petitioner’s affidavits in support of his Motions. (3) The Respondent’s proposed order intentionally omits Petitioner’s denied Motion to Conduct Discovery.

PROCEDURAL HISTORY

Petitioner is a state prisoner incarcerated at Lieber Correctional Institution in Spartanburg, South Carolina. That is presently serving a twenty-five (25) year sentence for drug trafficking imposed on May 23, 2013, by the Spartanburg County Court of General Sessions following his trial. A direct appeal was taken and the South Carolina Court of Appeals affirmed the conviction and sentence on November 26, 2014. See State v. Garvin, No. 2014-UP-414, 2014 WL 6721427 (Ct. App. S.C. Nov. 26, 2014). Petitioner’s initial application for post-conviction relief was dated October 28, 2015 and filed on November 18, 2015. To challenge the constitutionality of the erroneous conviction and to vindicate Petitioner’s rights that had actually been denied at trial.

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Petitioner is not represented by counsel on the state PCR action. On December 9, 2015, Rodney W. Richey, Esquire, was appointed as Petitioner's court appointed attorney for his proceeding. On March 2, 2016, Petitioner wrote Mr. Richey and instructed him to file two Motions before the Courts. ((1.) A Motion to Amend PCR, (2.) A Motion to Inspect Grand Jury Documents and Challenge/Array of Grand Jury). After more than over a month of waiting for a reply from Mr. Richey with no response about the filing of said Motions. Petitioner decided to relieve Mr. Richey as his counsel and had filed with the Courts on April 22, 2016, six (6) Pro-se Motions ((1.) A Motion to Relieve Counsel, (2.) A Motion for Leave to Amend PCR, (3.) A Motion to Inspect Grand Jury Documents, (4.) A Request for Production, (5.) A Motion for Leave to serve, File Interrogatory, and Request for Admissions, and (6.) A Motion to Compel Attorney to Produce Client's File)), and mailed off copies to Alicia A. Olive, Asst. Attorney General; Hon. M. Hope Blackley, Spartanburg County Clerk of Court; and to Rodney W. Richey, Esquire. On April 26, 2016, Asst. Attorney General, Alicia A. Olive, wrote a letter to the Spartanburg Clerk of Court, refusing to consider Petitioner's Pro-se Motions and choosing not to even acknowledge receiving Petitioner's Motion to Relieve Counsel. On June 6, 2016, Petitioner wrote three separate letters addressed to the Hon. Rosalyn W. Frierson, Director of The South Carolina Court Administration; to The Hon. M. Hope Blackley, Spartanburg County Clerk of Court; and to Alicia A. Olive, Asst. Attorney General, about the scheduling of Petitioner's Pro-se Motions, pursuant to Rule 40(a)(2) SCRPC. On June 8, 2016, Petitioner wrote his Court appointed PCR attorney, Rodney W. Richey, Esquire, a termination letter, relieving him as counsel. Then again Petitioner filed with the Spartanburg County Clerk of Court on June 16, 2016, the same Pro-se Motions asking for those Motions to be heard pursuant to Rule-40(a)(2)(h), SCRPC, and was addressed to the very same persons mentioned above as in his April 22, 2016, letter.

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On June 21, 2016, Petitioner wrote a letter to the Spartanburg County Clerk of Court and to Alicia A. Olive, Asst. Att'y. General, in response to Ms. Olive's April 29, 2016, letter about the termination of Petitioner's counsel and the filing of his six (6) Pro-se Motion, pursuant to Rule-40(a)(2)(h), SCRCF. Then on June 24, 2016, as a follow-up in regards to Petitioner's June 13, 2016, letter about his six (6) Pro-se Motions being scheduled for a Motion Hearing, pursuant to Rule-40(a)(2)(h), SCRCF. Petitioner wrote the Spartanburg County Clerk of Court, whereas, they acknowledged receiving said letter, "file it and e-mailed the Attorney General's Office."

On July 5, 2016, the Respondent has filed its Answer/Return to Petitioner's PCR application. On August 9, 2016, Petitioner wrote a letter to the Hon. Judge J. Mark Hayes, II, about Petitioner's Pro-se Motions not being scheduled for an immediate hearing. On August 10, 2016, Petitioner wrote a letter to the Hon. Rosalyn W. Frierson, Director of the South Carolina Court Administration, as a formal complaint for the Respondent's violation of Rule-506, SCACR, Staff Attorney and Law Clerk Conduct, in the form of a letter. On August 14, 2016, Petitioner wrote to the Spartanburg County Clerk of Court again about the scheduling of Petitioner's Pro-se Motions and their violation of Rule-506, SCACR, Staff Attorney and Law Clerk Conduct. On August 22, 2016, the Spartanburg County Clerk of Court's, Sr. Clerk, Ms. P.F. Moore, responded to Petitioner and notified him that if he would like his Motions filed, that he needs the proper court papers worked and then it will be filed and forward to the Attorney General's Office where it will be set for hearing. On August 24, 2016, the South Carolina Court Administration responded to Petitioner's June 6, 2016, and his August 10, 2016, letters. On August 30, 2016, Petitioner responded to Spartanburg County Clerk of Court's letter from Sr. Clerk, Ms. P.F. Moore dated August 22, 2016. Also on August 30, 2016, the Respondent finally scheduled for one of Petitioner's Motions to be heard (Motion to Relieve counsel) on September 20, 2016. On September 20, 2016, Rodney W.

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Richey, Esquire, was relieved as counsel, and Susannah C. Ross, Esquire, was appointed as Petitioner's counsel. On November 4, 2016, and on December 2, 2016, Petitioner wrote his second PCR attorney, Susannah C. Ross, Esquire, about filing the six Motions as mentioned-above on his behalf. On January 10, 2017, and on January 11, 2017, Petitioner wrote his counsel a termination letter and also made out a Motion to Relieve Counsel and a Motion to Proceed Pro-se to the Spartanburg County Clerk of Court, the Hon. Edward W. Miller, Cir. Judge, and to Caitlin B. Hasting, Asst. Atty. General, that was clocked stamped filed on January 18, 2017. Also, On January 25, 2017, Petitioner again filed six (6) Pro-se Motions. ((1.) A Motion for Entry of Default and Judgment on Default, (2.) A Motion for Leave to Amend PCR, (3.) A Motion to Inspect Grand Jury Documents; (4.) A Motion for Leave to Conduct Discovery, (5.) A Request for Production (6.) A Motion for Leave to Serve & File Interrogatories & Request for Admission), pursuant to Rule-40(a)(2)(h), SCRCP. Whereas, the Respondent's never even filed a formal response as required by South Carolina Court Rule, Rules-4, 8, & 12, SCRCP.

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Additionally, on January 30, 2017, an evidentiary hearing was convened. Petitioner's Motion to Relieve his PCR Counsel, Susannah C. Ross, Esquire, and a Motion to Proceed Pro-se was heard and granted. However, the Court failed to address Petitioner's six (6) remaining Pro-se Motion that were filed on January 25, 2017. On February 6, 2017, Petitioner wrote a letter to the Hon. Edward W. Miller, Cir. Judge, The Spartanburg County Clerk of Court and Caitlin B. Hasting, Asst. Att'y. General, in regards to when those Pro-se Motions will be heard. And in regards to my February 6, 2017 letter, the Spartanburg County Clerk of Court notice letter chooses to deprive Petitioner by guile. Also in regards to that February 6, 2017, letter the Attorney General stated that a hearing would take place the week of June 26-30, 2017, in a February 22, 2017, letter. On February 27, 2017, Hon. Edward W. Miller, Cir. Judge, signed an order of continuance and

Order Relieving Counsel. On March 24, 2017, Petitioner filed a Motion for Pre-trial Hearing due to the five (5) month gap until his next PCR hearing on June 30, 2017, to simplify the issues, to consider the necessity and the desire to amend his pleadings, to consider the disposition of pending Motions, and to secure admissions of facts/documents into evidence **before the Petitioner's June 30, 2017, PCR evidentiary hearing.** In an April 10, 2017, response letter to that request for a Pre-trial Motion Hearing, the Attorney General refuses to file a formal response as is required pursuant to Rule-4, 8, & 12, SCRPC, and chooses to address Petitioner's Motions at the scheduled June 30, 2017, evidentiary hearing. On May 1, 2017, Petitioner re-filed four (4) out of the six (6) Pro-se Motions ((1.) A Motion to Inspect Grand Jury Documents, (2.) A Motion for Leave to Conduct Discovery, (3.) A Request for Production, (4.) A Motion for Leave to Serve & File Interrogatories & Request for Admission)) and asked the Hon. J. Derham Cole, Chief Admin. Judge, the Hon. J. Hope Blackley, Spartanburg County Clerk of Court, and the Asst. Att'y. General, Valerie Garcia Giovanoli, to schedule the above-mentioned pro-se documents for a **PRIORITY MATTER MOTION HEARING, pursuant to Rule-40(a)(2)(h), SCRPC, to conduct discovery before Petitioner's scheduled June 30, 2017, PCR Evidentiary Hearing.** On May 4, 2017, Petitioner addresses a letter to the Respondent's and the Hon. J. Durham Cole, Chief Admin. Judge, to request that those Discovery Motions be scheduled as a **PRIORITY MATTER** and to be heard before Petitioner's June 30, 2017, PCR Hearing for the possibility to be allowed to conduct discovery; if Petitioner's Motions should be granted. On May 9, 2017, in response to Petitioner's May 4, 2017, letter the Respondent has chosen not to schedule Petitioner's Motions as a Priority Matter for the Discovery Motions to be heard before Petitioner's June 30, 2017, PCR Hearing, as is required by Rule-40(a)(2)(h), SCRPC.

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Petition for Writ of Certiorari that was pending in the South Carolina Supreme Court. On November 2, 2017, the Respondent's Motion to Stay was lifted on the PCR proceeding. On February 21, 2018, Petitioner's Pro-se motions was finally heard and ruled upon. Petitioner now brings this Rule-59(e) Motion to Reconsider to Alter/Amend the Court Judgment.

STANDARD OF REVIEW

Rule-59(e), SCRPC, provides, "A motion alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the Order." "[A] Rule-59(e) motion must be filed if issues are not adequately addressed in [the] order to preserve the issues for appellate review." *Marlar v. State*, 375 S.C. 407, 410, 653 S.E.2d 266 (2007). "Pursuant to S.C. Code Ann. § 17-27-80 (2003), the PCR judge must make specific finding of fact[s] and state expressly the conclusions of law relating to each issue presented." *Id.*

ARGUMENT

I.

THE COURT SHOULD GRANT PETITIONER'S MOTION TO RECONSIDER TO ALTER OR AMEND JUDGMENT, PURSUANT TO RULE-59(e).

A. Petitioner's Objections to the Respondent's Proposed Order, That Intentionally Omits and Distort the Facts Within the Proposed Order

Petitioner states that the Respondent's proposed order intentionally omits and distort the facts within its proposed order. The Petitioner Motion to Inspect Grand Jury Documents and to Challenge Array of Grand Jury was granted to Petitioner and was granted with full access to the grand jury documents. However, here in the Respondent's proposed order it intentionally omits and distorts this fact. Whereas, stating in its proposed order that Petitioner is "denied in part and granted in part." The Petitioner has stated to the Honorable Judge Nettles, the reason for obtaining the grand jury documents is because he believes that there was no grand jury that true billed the indictments, that the grand jury was not selected, drawn, or summoned and that the Solicitor, stated during his trial that Petitioner's indictments were not a direct indictment, that it was based off of the arrest warrants. In addition, the Respondent's proposed order and this Court has disregarded

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the facts stated in Petitioner's affidavits in support of his Motion to Inspect Grand Jury Documents and to Challenge Array of Grand Jury. The Respondent's proposed order would state that "Applicant claimed ... that the state has conspired against Applicant." The Petitioner objects to this presented facts and states that he never argued conspiracy as a claim for gaining access to the grand jury documents.

"Pursuant to S.C. Code Ann. § 17-27-80 (2003), the PCR judge must make specific findings of fact[s]." see *Marlar v. State*, 375 S.C. 407, 408, 653 S.E.2d 266 (2003). Inasmuch as, counsel preparing [the] proposed order[] should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the order and File a Rule-59(e), SCRPC, Motion to Alter or Amend if the order fails to set forth the findings and the reasons for those findings. See *Marlar, Supra*. (quoting *Pruitt v. State*, 310 S.C. 254, 256 423 S.E.2d 127 (1992)).

Here in this case, Petitioner has made the courts aware of his objection to the Respondent's proposed order, by and through his daughter via e-mail on March 7, 2018, (see Exhibit-A) and in a March 21, 2018, letter Enclosed with his own proposed order. (See Exhibit-B). The language use in the Respondent's proposed order for Petitioner's Motion to Inspect Grand Jury Documents and to Challenge Array of Grand Jury should not be included in the PCR order, because Petitioner never mentioned a conspiracy as a claim for gaining access to the grand jury documents.

B. The Courts Have Overlooked the Facts Stated in Petitioner's Affidavits in Support of his Motions

The courts have overlooked the facts stated in Petitioner's affidavits in support of his proposed motions and facts the Petitioner has stated in court, concerning the motions that he has presented

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unto the courts. The Petitioner will reiterate the facts concerning each denied motion again hereforth:

1.) Motion for Entry of Default and Judgment on Default

In ruling and denying this motion, the court would state that Petitioner did not show prejudice from the States delay in failing to timely answer his application. *Kneece v. State*, 269 S.C. 177, 236 S.E.2d 745 (1977); *Herring v. State*, 262 S.C. 597, 206 S.E.2d 885 (1974). Whereas, the courts has overlooked the facts Petitioner stated in his affidavits concerning how the state delay has prejudice him by depriving him of his rights to collaterally attack his conviction and proving his allegations within his PCR application. Insomuch as, the delay deprives him of the proper functioning and integrity of the courts in the State of South Carolina in accordance with the rights guaranteed to the Petitioner under Article I, §§ 3, 9 [and 22] of the Constitution of South Carolina and the United States Constitutional Amendment Six and Fourteen.

In addition, to Petitioner's above stated facts he states that the delay deprives him of access to the courts within a reasonable time to accord Petitioner of a swift and imperative remedy, which constitutes a denial of Petitioner's due process rights and fair judicial review pursuant to U.S. Const. Amend. VI and XIV, Insomuch as, to S.C. Const. Art. I, §§ 3 and 22. The delay in his PCR proceeding is in violation of South Carolina Constitution and the United States Constitution has caused a substantial prejudice to Petitioner's rights to procedural due process and a right to fair judicial review. Whether prejudice to the Petitioner has accrued weighs in Petitioner's favor. For his anxiety over the state's inaction and delay of his PCR proceedings is obvious, and his inability to get and receive proper judicial review is determinative of how much longer he would have to spend in prison.

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ANDERSON COUNTY
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M. HEPE BEACHLEY

2.) Motion to Inspect Grand Jury Documents and to Challenge Array of Grand Jury

In regards to this motion, Petitioner will not reiterate what he has already presented in this Memorandum. Please see Petitioner's Objections to the Respondent's Proposed Order argument.

3.) Motion for Leave to File Request for Production, Interrogatories and Request for Admissions

In ruling and denying these discovery motions, the court would state that Petitioner could not articulate his need for or the relevancy of such information and therefore cannot demonstrate good cause to invoke these discovery tools. This ruling is in violation of S.C. Code Ann. § 17-27-80 (2003), whereas, the PCR judge must make specific finding of fact[s] and state expressly the conclusions of law relating to this issue here that's presented. Markar, at 408.

The Petitioner has stated in court that discovery is needed to prove the issues that he is trying to present within his PCR application. This court would also overlook the affidavits in support of his Motion to Conduct Discovery and Request for Production. (See Exhibit-C and D). The Petitioner states that the process of discovery is available to him under the South Carolina Rules of Civil Procedure. See S.C. Code Ann. § 17-27-150(A). "All applications are entitled to full and fair opportunity to present claims in one's PCR application." Manga v. State, 2017 WL 3045812, at *7 (S.C. S.Ct. July 19, 2017)(quoting Robertson, 418 S.C. 513, 795 S.E.2d 29, 33 (2016) and Odom, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999)). "[T]he interests of justice require PCR courts to be flexible with procedural requirements before PCR applications suffer procedural default on substantial claims. Such flexibility is consistent with the purpose and spirit of [South Carolina] Rules of Civil Procedure." Mangal, at *7 (*emphasis supplied by the court*). The South Carolina Supreme Court "encourage[s] trial courts in PCR cases to use the discretion [that is] grant[ed] [to] them on procedural matters to find reasonable ways ---within the flexibility of [South Carolina] Rules--- to reach the merits of substantial issues." Id. The South

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Carolina Supreme Court's decision in *Manga* places a high burden on a PCR application to fully investigate the case prior to the evidentiary hearing. Discovery is necessary to investigate all the potential grounds for relief.

Here in this case, the information sought from the interrogatories and request for admissions is necessary, because the alleged scheme to defraud the courts is based on the institutional quality of the Respondent's witness's knowledge of the falsity of their representation and their knowledge that the representation was relied on by the Petitioner and the Courts. Moreover, to deny, the Petitioner of that information would impair the Petitioner's ability to prove each issue within his PCR application. The denial of discovery in this case denies the Petitioner of his right to pursue and prove a violation of his constitutional rights by his court appointed attorney, Scott D. Robinson, Esquire and Asst. Solicitor, James E. Hunter.

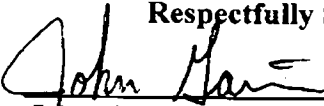
C. The Respondent's Proposed Order Intentionally Omits Petitioner's Denied Motion to Conduct Discovery

On February 21, 2018, the Honorable Michael G. Nettles, Circuit Court Judge, denied Petitioner's Motion to Conduct Discovery. Within the Respondent's proposed order it intentionally omits Petitioner's denied Motion to Conduct Discovery. Petitioner states that there is no specific finding of facts and no conclusions of law relating to this motion ever being presented to the courts. See *Marlar, Supra*.

CONCLUSION

For the reasons set out above, Petitioner respectfully, request that this Honorable Court grant this Motion for Reconsideration to Alter/Amend Judgment.

DATED: June 7, 2018
Ridgeville, South Carolina

Respectfully Submitted,

John Garvin, # 355509, Pro-se.
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 29472

FILED
CLERK OF COURT
STANBURY COUNTY
2018 JUN 12 AM 8:33
HOPE BLAINELEY

Garvin, Bernard

From: leniagarvin1 <leniagarvin1@aol.com>
Sent: Wednesday, March 7, 2018 10:06 PM
To: mnettlej@sccourts.org
Subject: States Att'y. Gen. Proposed Order

RE: John Garvin v. State of South Carolina
2015-CP-42-4699

Dear Hon. Judge Nettles,

I send you this e-mail on behalf of my father, John Garvin, who was before you in the Spartanburg County Court of Common Pleas for a PCR motion hearing on February 21, 2018, representing himself as pro-se. Today he received a proposed order drafted by the States Attorney General, Valerie Garcia-Giovanoli, that does not grant him full access to his grand jury indictment documents, as you have ordered in his favor. The States drafted proposed order only grants him access to documents that he already has. And therefore defies the order you gave, granting him full access to the grand jury documents and what he has asked from the State in his Motion to Inspect Grand Jury Documents and to challenge Array of Grand Jury.

The States proposed order intentionally omit and distort the facts of the reason as to why my father is asking for the grand jury documents. Whereas, my father has stated in an affidavit and in court that he does not believe that the grand jury was selected, drawn, or summoned and that the General Session Court was without jurisdiction and that the indictment is so vague, indefinite and unclear, that it constitutes a violation of his due process. Insomuch as, the Asst. Solicitor, James E. Hunter, stated during Petitioner's trial that the indictment was based on the warrants with no evidence or allegations of facts to support the indictment. That it was not a direct indictment. (See Tr.p. 11, Ln.22-24).

My father is hereby asking that you not sign the States proposed order and that you allow him to draft a proposed order for the motion hearing that was held on February 21, 2018.

I thank you for taking the time to read this e-mail and a prompt reply consistent with this e-mail is prayed for.

Respectfully,

Le'Nia Garvin on behalf of John Garvin

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN 12 AM 8:33
M. HOPE BLACKLEY

Exhibit-A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Hon. Michael G. Nettles, Circuit Court Judge

Case No. 2015-CP-42-4699

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN 29 AM 10: 01
M. HOPE BLACKLEY

John Garvin Petitioner/Appellant,

v.

State of South Carolina Respondent-Appellee.

NOTICE OF APPEAL

This Notice is hereby given that John Garvin, Petitioner-Appellant in the above name case, hereby appeals the Order of judgment. (Following timely Motion to reconsider and/or Alter/Amend Judgment dated June 7, 2018). This appeal is taken from a motion hearing that was held before the Honorable Michael G. Nettles and was held on February 21, 2018, respectively. Petitioner-Appellant received written notice of the entry of the Order on June 7, 2018. And enters in this action for an appeal of the decision made on May 29, 2018. A copy of the foregoing Judgment and/or Order are included with this Appeal.

DATED: June 25, 2018.

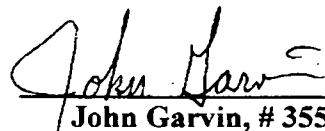

John Garvin, # 355509, Pro-se.
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 29472

Exhibit - B

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

John Garvin, # 355509,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2015-CP-42-4699

ORDER ON APPLICANT'S
PRO SE MOTIONS

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN -4 AM 11:54
S. HOPE BLACKLEY

This matter is before the Court from an application for post-conviction relief filed November 13, 2015. A hearing was convened February 21, 2018 at the Spartanburg County Courthouse to address a number of outstanding motions filed by Applicant *pro se*. Applicant was present and represented himself. Respondent was represented by Valerie Garcia Giovanoli of the Office of the Attorney General.

At the start of the hearing, the court inquired into whether Applicant was asserting his right of self-representation knowingly and voluntarily. Applicant confirmed he previously relieved two court appointed attorneys. Applicant indicated he was aware of his right to counsel and the dangers of proceeding *pro se*. Applicant also indicated it was his wish to represent himself in his PCR action. Applicant proceeded to put his motions before the court. The court rules as follows on Applicant's motions:

I. *Motion for entry of default and judgment in default*

Applicant moved for an entry of default and judgment in default. Applicant argued the State failed to respond to his PCR application within the 90 days required by the rules. However, Applicant failed to show how he was prejudiced by the delay. For an applicant to be granted default judgment in post-conviction relief, he must show prejudice from

the State's delay in failing to timely answer his application. Kneece v. State, 269 S.C. 177, 236 S.E.2d 745 (1977); Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974). The mere passage of time, alone, is not prejudicial. Having failed to show how he has been prejudiced, Applicant's motion is denied.

II. *Motion for leave to amend petition*

Applicant moved for leave to amend his PCR application. Respondent did not oppose this motion. This Court finds Applicant is entitled to amend his application. Therefore, Applicant's motion is granted.

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SPARTANBURG COUNTY
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M. HOPE BRADLEY

III. *Motion to inspect grand jury documents and challenge array of grand jury*

Applicant moved to inspect and challenge grand jury documents and proceedings. Applicant claimed he believes no grand jury ever convened to indict him and that the State has conspired against Applicant. Respondent agreed a PCR applicant may be entitled to grand jury documents, but only upon a showing of good cause. Respondent argued Applicant's conspiracy claim was pure conjecture and not the basis for good cause. Respondent also informed the court that upon her investigation, she does not believe the documents Applicant seeks (impanelment documents including the sex, age, race of grand jury members, minutes of grand jury proceedings, etc) even exist. This court finds Applicant is entitled to copies of his indictment which bears the true bill stamp and the signature of the Grand Jury Foreperson. Therefore, the motion is denied in part and granted in part.

IV. *Motion for leave to file requests for production, interrogatories, and requests for admissions*

Applicant moved for leave to file requests for production, interrogatories, and requests for admissions. Attached to Applicant's motions were the actual requests and interrogatories, which are extremely specific and detailed in nature. However, Applicant could not articulate his need for or the

relevancy of such information and therefore cannot demonstrate good cause to invoke these discovery tools. Therefore, these motions are denied.

V. *Motion to compel defense attorney to produce defense file*

Applicant moved to compel his trial counsel, Scott D. Robinson, to supply him with a copy of his defense file. Respondent did not oppose the motion, but expressed concern regarding how many times trial counsel must supply a copy of his defense file to Applicant. Trial counsel is ordered to provide a copy of his defense file from Applicant's criminal case to Applicant within ten (10) days of service of this order upon him. In the event trial counsel has previously provided a copy of his defense file to Applicant, trial counsel should submit to the Attorney General an affidavit swearing to such. The Attorney General shall then file his affidavit in this action with the Spartanburg County Clerk of Court. This motion is granted.

VI. *Motion for a pre-trial hearing*

Applicant moved for a pre-trial hearing to resolve issues prior to his evidentiary hearing. This motion is granted and the hearing held on February 21, 2018 shall constitute a pre-trial hearing.

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SPARTANBURG COUNTY
2018 JUN 4 11:54
M. HOPKINS
BLANKLEY

VII. *Motion to subpoena witnesses for evidentiary hearing*

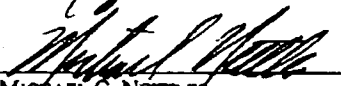
Applicant orally moved for leave to subpoena law enforcement officers involved in his criminal case to testify at his PCR evidentiary hearing. This Court finds Applicant is entitled to subpoena witnesses he intends to call during his PCR evidentiary hearing. Therefore, the motion is granted.


Applicant further indicated all of his outstanding motions have been resolved and no other matter is pending before the court.

Respondent requested Applicant be ordered to serve copies of any subpoenas he issues for a

witnesses' appearance at the hearing in order to provide proper notice to the State. Respondent's request is granted. Applicant must serve a copy of any subpoena issued for a witness to testify at the evidentiary hearing.

AND IT IS SO ORDERED this 29 day of July, 2018.


MICHAEL G. NETTLES
Presiding Judge
Seventh Judicial Circuit

 South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN -4 AM 11:55
M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

May 4, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Cpt. Carlin # 355509

CASE # 2015CP42-4699

Applicant

CERTIFICATE OF SERVICE

VS
State
Respondent

I certify that, on this date, I served a copy of the Notice on Applicant's Pro Se Motions
in this action dated 5-25 2018 on 6-4-18

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Cpt. Carlin
Megan Jamison

6-5-18
(Date)

[Signature]
(Signature)

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

JOHN GARVIN, #355509,

Applicant,

v.

STATE OF SOUTH CAROLINA,

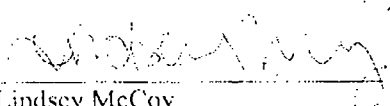
Respondent.

CERTIFICATE OF SERVICE

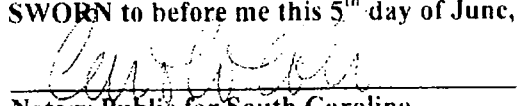
The undersigned hereby certifies that a true copy of the **Order on Applicant's pro se Motions** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

John Garvin, #355509, SA-0028-B
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472

This 5th day of June, 2018.


Lindsey McCoy
Legal Assistant

SWORN to before me this 5th day of June, 2018.


Notary Public for South Carolina.

My Commission Expires: 5/20/2025

RECEIVED

JUL 11 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Hon. Michael G. Nettles, Circuit Court Judge

Appellant Case No. 2018-001211

John Garvin Petitioner/Appellant,

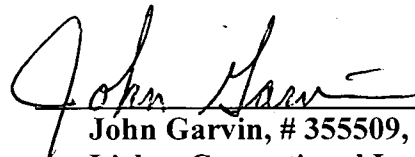
v.

State of South Carolina Respondent-Appellee.

PROOF OF SERVICE

I, John Garvin, certify that I have serve a **DECLARATION OF INMATE FILING and A MOTION FOR STAY AND ABEYANCE with Supporting Affidavit** on the Court by depositing a copy of it in the Institutional Mailbox to be delivered via United States First Class Postage Certified Mail on July 6, 2018, addressed to the Hon. Daniel E. Shearouse, S.C. Supreme Court Clerk, 1232 Gervais Street, Columbia, S.C. 29201 and to Ms. Jordan A. Cox, Asst. Att’y. General and Mr. Alan M. Wilson, Attorney General, 1000 Assembly Street, Columbia, S.C. 29201.

DATED: July 6, 2018.


John Garvin, # 355509, Pro-se.
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 29472

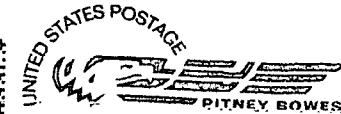
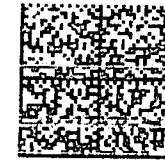
John Garvin - #355509
Lieber Correctional Institution
136 Wilborn Ave.
Ridgeville, S.C. 29472

CERTIFIED MAIL



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FIRST CLASS



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Attn: Hon. Daniel E. Shearouse, Clerk
South Carolina Supreme Court
1232 Gervais Street
Columbia, S.C. 29201

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