

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

ORIGINAL

Certiorari to Spartanburg County  
J. Mark Hayes, II, Circuit Court Judge

Jeffrey E. Jeter -- Appellant,

-vs-

State of South Carolina -- Respondent,

Appellate Case No. 2017-000076

APPENDIX and RECORD ON APPEAL

- APPENDIX (A) Forgery Indictment(s) No. 09-GS-42-1413; 1414; 1415; 1416; 1802 (All Forgery under \$5,000).
- APPENDIX (B) Appellant's Rule 60(b)(3), SCRC Motion (C/A NO. 2011-CP-42-1967).
- APPENDIX (C) State's Return
- APPENDIX (D) Lower Court's Order denying Appellant's motion
- APPENDIX (E) Appellant's Motion to alter/amend judgment
- APPENDIX (F) State's Return to Appellant's motion to alter/amend
- APPENDIX (G) Order denying motion to alter/amend

Submitted                      2017,  
Pelzer, SC. 29669

Respectfully Submitted,

/s/   
Jeffrey E. Jeter

Appellant, pro-se

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
OF THE SEVENTH JUDICIAL CIRCUIT

Jeffrey Eugene Jeter, #131471 )

C/A No.: 2011-CP-42-1967

Applicant, )

**ORDER DENYING APPLICANT'S  
RULE 60(b), SCRPC MOTION**

v. )

State of South Carolina, )

Respondent. )

This matter comes before the Court by way of Applicant's Motion for Relief from Judgment or Order Pursuant to Rule 60(b), SCRPC, filed February 22, 2016 and June 14, 2016. Respondent would submit the following:

CLERK OF COURT  
SPARTANBURG COUNTY  
2016 OCT 31 PM 1:21  
M. HOPKINS  
M. HOPKINS

**PROCEDURAL HISTORY**

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the March 2009 term of the Spartanburg County Grand Jury for five counts of forgery less than \$5,000 (09-GS-42-1413, -1414, -1415, -1416, and -1802), two counts of receiving stolen goods (09-GS-42-1419, and -1420), and obtaining money by false pretenses (09-GS-42-1421). He was subsequently indicted in October 2010 for two counts of petit larceny – 3<sup>rd</sup> or subsequent (10-GS-42-5616, and -5617). He was represented by James A. Cheek, Esquire. On October 28, 2010, Applicant pleaded guilty as indicted. The Honorable Roger L. Couch sentenced Applicant to confinement for concurrent terms of ten years for one count of forgery (09-1802), obtaining money by false pretenses, petit larceny, and both counts of receiving stolen goods. Judge Couch also sentenced Applicant to ten years for the four remaining forgery charges, to be served consecutively to the other sentences



and Applicant's probation revocation, for an aggregate sentence of forty years. Applicant filed a *pro se* Motion for Resentencing. Following a hearing, Judge Couch denied the motion on December 17, 2010. A timely notice of appeal was filed, but the South Carolina Court of Appeals dismissed the appeal on December 2, 2010, for a failure to demonstrate any issues preserved for appellate review. The Remittitur was returned on December 21, 2010.

Applicant then filed an Application for Post-Conviction Relief (PCR) on May 2, 2011. Respondent made its Return on May 2, 2012. In his Application, Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that:
  - a. A conflict of interest existed because Counsel (James Cheek) is associated with the Spartanburg Community Memorial Committee, which was a victim in the case and Clay Allen insured Applicant that James Cheek would not have anything to do with his case,
  - b. Applicant never received a copy of his discovery materials,
  - c. Counsel failed to object to the excessive sentence give by the Court when it exceeded the maximum authorized by law,
  - d. Counsel failed to file a Motion to withdraw guilty plea when the court failed to follow the State's recommendation,
  - e. Applicant signed a legally binding contract with the solicitor's office regarding a plea offer, which was not enforced.

An evidentiary hearing into the matter was convened on November 9, 2012, at the Spartanburg County Courthouse before the undersigned. Applicant was present at the hearing and represented by Jonathan C. Bonds, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Following the hearing, Applicant's PCR application was denied and dismissed by written order filed January 18, 2013.

CLERK OF COURT  
SPARTANBURG COUNTY  
2016 OCT 31 PM 1:21  
M. HOPE BLACKLEY

---

Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense, filed a Petition for Writ of Certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court of South Carolina denied the petition by written order dated August 21, 2014. The Remittitur was returned to the Circuit Court on September 8, 2014.

---

II.

Rule 60(b)(3), SCRPC, provides that the Court may relieve a party from a final judgment based upon "fraud, misrepresentation, or other misconduct of an adverse party[.]" Rule 60(b)(5), SCRPC, provides that the Court may relieve a party from a final judgment where "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." In a motion seeking relief pursuant to Rule 60(b), SCRPC, the movant has the burden of presenting evidence, usually provided by affidavits, proving the facts essential to entitle him to relief. Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). Also, relief under Rule 60(b), SCRPC, requires the existence of a meritorious defense. See Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

III.

As a threshold matter, Respondent submits that Applicant's motion must be denied because of Applicant's failure to timely file his motion. South Carolina Rules of Civil Procedure Rule 60(b)(5) states: "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken." The order upon which the current motion is made was executed on January 16, 2013, by the Honorable J. Mark Hayes, II, and filed January 18, 2013. Applicant was served with the

order on January 22, 2013. The State submits that Applicant's motion was not filed within a reasonable time as mandated by Rule 60(b), SCRCP, nor was it filed within one year of entry of judgment. Applicant's motion was filed three years beyond the entry of the order that is the subject of this motion. Therefore, Applicant's motion is untimely and must be denied and dismissed.

#### IV.

Applicant's allegations are also without merit. Applicant alleges his plea counsel prevented him from fully and fairly presenting his case. He alleges that an offer was made to him on October 8, 2009, that his plea counsel did not inform him of. Applicant also alleges plea counsel had a conflict of interest and that he failed to argue or advise him that the charges constituted a spree. Applicant also alleges his sentence was unconstitutionally enhanced. Specifically, Applicant alleges his prior forgery conviction was more than ten years old, and he was never informed that the offenses were charged as third or subsequent or that he could receive consecutive sentences. He states he received no benefit from pleading guilty and alleges that he could have received less time if he had gone to trial.

Respondent submits Applicant makes no specific allegations of any mistake, inadvertence, surprise, or excusable neglect that would entitle him to relief. Second, there are no allegations of any "newly discovered" evidence is or whether the evidence meets the requirements of after-discovered evidence. Third, Applicant makes no specific allegations of fraud, misrepresentation, or other misconduct that would entitle him to relief. Fourth, Applicant's Motion makes no mention of the Order being void. Finally, Applicant makes no allegation that supports relief under Rule 60(b)(5), SCRCP. Rule 60(b) does not provide a mechanism to set

aside a *criminal* conviction because it is a rule of *civil* procedure. Therefore, Rule 60(b) is not the proper vehicle to challenge the validity of Applicant's conviction.

In addition, Applicant cannot use Rule 60(b) to re-litigate issues that have already been adjudicated in prior civil actions. All of Applicant's allegations either have been or could have been addressed in his prior PCR action challenging his guilty plea. All arguments, with the exception of his argument that the charges constituted a spree, were raised to the PCR judge and ruled on in the order dismissing Applicant's PCR application. See Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993) (holding a final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action). Since, in his PCR action, Applicant failed to raise the argument that plea counsel should have argued or advised him that his charges could have constituted a spree, the Court did not address the issue in its order, and Applicant cannot now raise the issue as a ground for relief. See id. (holding *res judicata* also bars any issues that could have been raised in the former action).

Accordingly, Applicant has failed to present evidence proving the facts essential to entitle him to relief. Therefore, this Motion should be denied and dismissed. Bowers, 304 S.C. 65, 403 S.E.2d 127.

V.

WHEREFORE, having made its Return to the Motion, Respondent requests that the relief requested in the Motion be denied and that the Motion be dismissed.

Respectfully submitted,

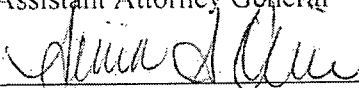
ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

JOHANNA VALENZUELA  
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE  
Assistant Attorney General

BY:

  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

September 1<sup>st</sup> 2016

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Jeffrey Eugene Jeter, #131471, )  
 )  
Applicant, )

C/A No.: 2011-CP-42-1967

**RETURN TO RULE 60(b) MOTION FOR  
RELIEF FROM ORDER OF DISMISSAL**

v. )

State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

This matter comes before the Court by way of Applicant's Motion for Relief From Judgment or Order Pursuant to Rule 60(b), SCRPC, filed February 22, 2016 and June 14, 2016. Respondent would submit the following:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the March 2009 term of the Spartanburg County Grand Jury for five counts of forgery less than \$5,000 (09-GS-42-1413, -1414, -1415, -1416, and -1802), two counts of receiving stolen goods (09-GS-42-1419, and -1420), and obtaining money by false pretenses (09-GS-42-1421). He was subsequently indicted in October 2010 for two counts of petit larceny – 3<sup>rd</sup> or subsequent (10-GS-42-5616, and -5617). He was represented by James A. Cheek, Esquire. On October 28, 2010, Applicant pleaded guilty as indicted. The Honorable Roger L. Couch sentenced Applicant to confinement for concurrent terms of ten years for one count of forgery (09-1802), obtaining money by false pretenses, petit larceny, and both counts of receiving stolen goods. Judge Couch also sentenced Applicant to ten years for the four remaining forgery charges, to be served consecutively to the other sentences and Applicant's probation revocation, for an aggregate

sentence of forty years. Applicant filed a *pro se* Motion for Resentencing. Following a hearing, Judge Couch denied the motion on December 17, 2010. A timely notice of appeal was filed, but the South Carolina Court of Appeals dismissed the appeal on December 2, 2010, for a failure to demonstrate any issues preserved for appellate review. The Remittitur was returned on December 21, 2010.

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1. Ineffective assistance of counsel, in that;
  - a. A conflict of interest existed because Counsel (James Cheek) is associated with the Spartanburg Community Memorial Committee, which was a victim in the case and Clay Allen insured Applicant that James Cheek would not have anything to do with his case,
  - b. Applicant never received a copy of his discovery materials,
  - c. Counsel failed to object to the excessive sentence give by the Court when it exceeded the maximum authorized by law,
  - d. Counsel failed to file a Motion to withdraw guilty plea when the court failed to follow the State's recommendation,
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An evidentiary hearing into the matter was convened on November 9, 2012, at the Spartanburg County Courthouse before the Honorable J. Mark Hayes, II. Applicant was present at the hearing and represented by Jonathan C. Bonds, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Following the hearing, Judge Hayes denied and dismissed Applicant's PCR application by written order filed January 18, 2013.

Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense, filed a Petition for Writ of Certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court of South Carolina denied the petition by written order dated August 21, 2014. The Remittitur was returned to the Circuit Court on September 8, 2014.

## II.

Rule 60(b)(3), SCRCF, provides that the Court may relieve a party from a final judgment based upon “fraud, misrepresentation, or other misconduct of an adverse party[.]” Rule 60(b)(5), SCRCF, provides that the Court may relieve a party from a final judgment where “the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.” In a motion seeking relief pursuant to Rule 60(b), SCRCF, the movant has the burden of presenting evidence, usually provided by affidavits, proving the facts essential to entitle him to relief. Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). Also, relief under Rule 60(b), SCRCF, requires the existence of a meritorious defense. See Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

## III.

As a threshold matter, Respondent submits that Applicant’s motion must be denied because of Applicant’s failure to timely file his motion. South Carolina Rules of Civil Procedure Rule 60(b)(5) states: “The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.” The order upon which the current motion is made was executed on January 16, 2013, by the Honorable J. Mark Hayes, II, and filed January 18, 2013. Applicant was served with the

order on January 22, 2013. The State submits that Applicant's motion was not filed within a reasonable time as mandated by Rule 60(b), SCRCF, nor was it filed within one year of entry of judgment. Applicant's motion was filed three years beyond the entry of the order that is the subject of this motion. Therefore, Applicant's motion is untimely and must be denied and dismissed.

#### IV.

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Respondent submits Applicant makes no specific allegations of any mistake, inadvertence, surprise, or excusable neglect that would entitle him to relief. Second, there are no allegations of any "newly discovered" evidence is or whether the evidence meets the requirements of after-discovered evidence. Third, Applicant makes no specific allegations of fraud, misrepresentation, or other misconduct that would entitle him to relief. Fourth, Applicant's Motion makes no mention of the Order being void. Finally, Applicant makes no allegation that supports relief under Rule 60(b)(5), SCRCF. Rule 60(b) does not provide a mechanism to set

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Accordingly, Applicant has failed to present evidence proving the facts essential to entitle him to relief. Therefore, this Motion should be denied and dismissed. Bowers, 304 S.C. 65, 403 S.E.2d 127.

V.

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Respectfully submitted,

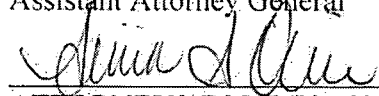
ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

JOHANNA VALENZUELA  
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE  
Assistant Attorney General

BY:



ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

September 1<sup>st</sup>, 2016

THE STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

CLERK OF COURT  
SPARTANBURG COURT

%

2016 FEB 22 PM 10:46

JEFFERY EUGENE JETER # 131471

M. HOPE BLACKLEY

PETITIONER

v.

{ FEDERAL RULES OF APPELLATE PROCEDURE }

THE STATE OF SOUTH CAROLINA

{ SCRPC RULE 60 (B) (5) }

RESPONDENT

{ FRAUD UPON THE COURT }

{ RELIEF FROM JUDGMENT OR ORDER }

A.) CLERICAL MISTAKES IN JUDGMENTS, ORDERS, OR OTHER PARTS OF THE RECORD AND ERRORS THEREIN ARISING FROM OVERSIGHT OR OMISSION MAY BE CORRECTED BY THE COURT AT ANY TIME, OF ITS OWN INITIATIVE OR ON THE MOTION OF ANY PARTY AND AFTER SUCH NOTICE, IF ANY AS THE COURT ORDERS.

THE ENDING OF A TERM OF COURT OR DEPARTURE FROM THE CIRCUIT SHALL NOT OPERATE TO DEPRIVE THE TRIAL JUDGE OF JURISDICTION TO CORRECT SUCH MISTAKES.

{ APPRENT V. NEW JERSEY }

{ SUPREME COURT OF UNITED STATES } 120 S. CT. 2345 (JUNE 24, 2000)

IT IS UNCONSTITUTIONAL FOR LEGISLATURE TO REMOVE FROM THE JURY THE ASSESSMENT OF FACTS; . . . OTHER THAN THE FACT, . . . OR PRIOR CONVICTION, THAT INCREASE PUNISHMENT, . . . SUCH FACTS MUST BE ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT

U. S. C. A. CONST. AMEND (14)

MISTAKES; . . . . INADVERTANCE; . . . . EXCUSABLE NEGLIGENCE; FRAUD ETC.

FEDERAL RULE 60 (B) (1) & (3)

{ FRAUD MISREPRESENTATION OR OTHER MISCONDUCT OF AN ADVERSE PARTY }

{ PRESENTATION OF THE ISSUE }

THE TRIAL COURT UNCONSTITUTIONALLY ENHANCED THE PETITIONER'S SENTENCE UPON THE FOLLOWING OFFENSES

. . . . WITHOUT IT BEING A PRIOR OFFENSE IN THE RECORD TO SUPPORT IT.

09-1419 RECEIVING STOLEN GOODS UNDER \$1,000

09-1420 RECEIVING STOLEN GOODS \$1,000 to 5,000

09-1421 OBTAINING PROPERTY BY FALSE PRETENSES

THE TRIAL COURT FURTHER UNCONSTITUTIONALLY ENHANCED PETITIONER'S SENTENCE FOR PRIOR FORGERY CONVICTION THAT WAS (10) TEN OR MORE YEARS OLD

09-1802, 09-1414, 09-1413 09-1415

PETTY LARCENY 10-5616

" " 10-5617

{ BLAKEY V. WASHINGTON } 125 S. CT. 2531

THESE FACTS ALONE ARE INSUFFICIENT BECAUSE A REASON OFFERED TO JUSTIFY AN EXCEPTIONAL SENTENCE CAN BE CONSIDERED ONLY IF IT TAKES INTO ACCOUNT FACTORS OTHER THAN THAT WHICH ARE USED IN COMPUTERS THE STANDARD RANGE FOR SENTENCES FOR THAT OFFENSE.

THE PETITIONER RESPECTFULLY SUBMITS THESE ENHANCEMENTS WERE UNCONSTITUTIONAL AND RESULTED IN A COMPLETE MISARRIAGE OF JUSTICE AND DEPRIVED THE PETITIONER OF

HIS CLUE PROCESS RIGHT AND PRAYS UNTO THIS HONORABLE COURT  
FOR WHAT IT DEEMS PROPER AND JUST.

FILED  
CLERK OF COURT  
SPARTANBURG, SOUTH CAROLINA  
2016 FEB 22 PM 4:15  
M. HOPE BLACKLEY

RESPECTFULLY SUBMITTED

DATED 2/18/2016 POLY *[Signature]* 131471

JEFFERY EUGENE JETER\*

MSCORMICK #1 F-2-B-

386 REDEMPTION WAY

MSCORMICK, SOUTH CAROLINA

39899

SWORN OR AFFIRMED BEFORE ME

THIS 18th day of February 2016  
*[Signature]* Michael Camare

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES July 09, 2026

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
Jeffrey Eugene Jeter, #131471, )  
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Applicant, )  
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vs. )  
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IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

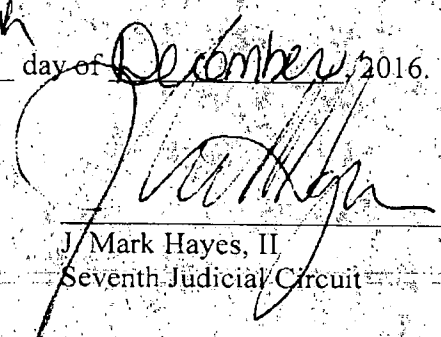
2011-CP-42-1967

**ORDER**

This matter comes before the Court by way of Applicant's *pro se* document titled "Motion to Alter/Amend and Reconsider Judgment Pursuant to: Rule(s) 52(b) and 59(e), SCRCiv.P." The Respondent made its Return to this Motion on December 6, 2016.

The Order Denying Applicant's 60(b), SCRCv.P. Motion in this matter was signed by me on October 31, 2016. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's response and objections, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order Denying Applicant's 60(b), SCRCv.P. Motion, which was signed and then filed October 31, 2016, shall stand as it was written.

AND IT IS SO ORDERED this 12<sup>th</sup> day of December, 2016.

  
J. Mark Hayes, II  
Seventh Judicial Circuit

Spartanburg, South Carolina

2016 DEC 13 AM 9:50

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Spartanburg County  
Court of Common Pleas

J. Mark Hayes, III, Presiding

---

Jeffrey E. Jeter

)

C/A No.2011-CP-42-1967

Appellant,

)

-vs-

)

NOTICE OF APPEAL

State of South Carolina

)

Respondent,

)

---


)

NOTICE IS HEREBY GIVEN, above captioned Appellant, Jeffrey E. Jeter appeals the Order of dismissal that was entered in the above captioned on October 31, 2016. Appellant filed a Rule 52(b) & 59(e), SCRCF motion that was denied December 13, 2016 by the Honorable J. Mark Hayes, III, circuit court judge.

A copy of [both] Orders are attached hereto.

Respectfully Submitted,

/s/

  
Jeffrey E. Jeter

Appellant, pro-se

STATE OF SOUTH CAROLINA

IN THE SUPREME COURTS

Appeal from Spartanburg County  
Court of Common Pleas  
C/A No.2011-CP-42-1967  
J. Mark Hayes, III, Presiding

Jeffrey E. Jeter -- Appellant,

-vs-

State of South Carolina -- Respondent,

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Notice of Appeal on the Respondent, Mr. Donald J. Zelenka, Assistant Attorney General, P.O. Box 11549, Columbia, SC. 29211. This being done by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail this \_\_\_ day of January 2017.

Sworn to and Subscribed Before Me      Respectfully Submitted,

this 9th day of January 2017.

/s/ Jeffrey E. Jeter 1314714  
Jeffrey E. Jeter  
Appellant, pro-se

Nancy C. Merchant  
NOTARY PUBLIC

MY COMM. EXPIRES 1-23-2022

cc/file  
cc/Daniel Shearouse, Clerk  
cc/Donald J. Zelenka

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
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Jeffrey Eugene Jeter, #131471, )  
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Applicant, )  
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v. )  
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State of South Carolina, )  
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Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2011-CP-42-1967

RETURN TO APPLICANT'S  
MOTION TO ALTER OR AMEND  
ORDER DENYING 60(B) MOTION

This matter comes before the Court by way of the Applicant's *pro se* Motion to Alter or Amend pursuant to Rule 59(e), and Rule 52(b), SCRPC, in which he asks the Court to alter or amend its Order dismissing his Rule 60(b), SCRPC Motion. The Respondent (the State) would submit the following:

I.

The Respondent submits that the Order Denying Applicant's Rule 60(b), SCRPC Motion of the Honorable J. Mark Hayes, II, dated October 31, 2016, contains the findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003), and Rule 52(a) SCRPC. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

II.

Respondent submits Applicant's Motion to Alter or Amend Judgment should be denied. Applicant is not requesting either an alteration or amendment to the order. Rather, Applicant is asking the Court to reverse its decision. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court).

Furthermore, the arguments Applicant sets forth in his motion to alter or amend are either the same as those presented in his 60(b) Motion and have already been reviewed and ruled upon by this Court in its Order of Dismissal of Applicant's Post-Conviction Relief Application and the Order Denying Applicant's 60(b), SCRPC Motion.

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

CAITLIN B. HASTINGS  
Assistant Attorney General

BY:

  
ATTORNEYS FOR RESPONDENT

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December 7<sup>th</sup>, 2016.

STATE OF SOUTH CAROLINA )  
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JEFFREY EUGENE JETER, #131471, )  
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vs )  
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Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS


2011-CP-42-1967

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Applicant's Motion to Alter or Amend Order Denying 60(b) Motion** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Jeffrey Eugene Jeter, #131471  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, SC 29669**

DATED this 7<sup>th</sup> day of December, 2016.

  
Ashley Haworth, Legal Assistant  
For Respondent

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

C/A No. 2011-CP-42-1967

Jeffrey E. Jeter -- Petitioner,

-vs-

State of South Carolina -- Respondent,

2016 NOV 30 AM 8:56  
M. HOPE BLACKLEY

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Motion to alter/amend and reconsider on Assistant Attorney General, Alicia A. Olive, P.O. Box 11549, Columbia, SC. 29211, by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. mail this 23 day of November 2016.

Respectfully Submitted,

Sworn to and Subscribed before me  
this 23<sup>rd</sup> day of November, 2016

/s/ Jeffrey E. Jeter  
Jeffrey E. Jeter

Petitioner, pro-se

Nancy C. Merchant  
NOTARY PUBLIC

My Comm. Expires 1-23-2021

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

C/A No. 2011-GS-42-1967

Jeffrey E. Jeter -- Petitioner,

-vs-

State of South Carolina -- Respondent,

2016 NOV 29 PM 4:26  
M. HOPE BLACKLEY

MOTION TO ALTER/AMEND AND  
RECONSIDER JUDGMENT PURSUANT TO:  
RULE(S) 52(b) and 59(e), SCRCiv.P.

Jeffrey E. Jeter  
SCDC# 131471  
Perry Corr. Inst.  
430 Oaklawn Rd.  
Pelzer, SC. 29669

Petitioner, pro-se

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF SPARTANBURG ) SEVENTH JUDICIAL CIRCUIT

---

Jeffrey E. Jeter ) C/A NO.2011-42-1967  
Petitioner, )  
-vs- )  
State of South Carolina ) MOTION TO ALTER/AMEND AND  
Respondent, ) RECONSIDER JUDGMENT PURSUANT  
 ) TO: RULE(S) 52(b); 59(e), SCRCIV.P  
 )

---

INTRODUCTION

COMES NOW, above captioned Applicant Jeffrey E. Jetter, (hereafter "Petitioner"), respectfully moving this Court to alter/amend and reconsider judgment that was entered in the above captioned case number October 31, 2016 pursuant to Rule(s) 52(b) and 59 (e) of the South Carolina Rules of Civil Procedure. Petitioner received the Order November 18, 2016 via institutional legal mail. See attached copy of envelope.

In support of this request the Petitioner would respectfully show unto this Court the following:

(1). Petitioner was indicted during the March term of the Spartanburg County Grand Jury for five (5) counts of forgery less \$5,000 (09-GS-42-1413; 1414; 1415; 1416 and 1802).

(2). Petitioner was subsequently indicted in October 2010 for two (2) counts of petit larceny -- 3rd or subsequent (2010-GS-42-5016, and 5617).

2016 NOV 29 PM 4:26  
M. HOPE BLACKLEY

(3). On October 28, 2010 Petitioner entered a plea of guilty as indicted and Judge Couch sentenced Petitioner to concurrent terms of ten years for **one count of forgery** (09-1802), obtaining money under false pretenses, petit larceny, and both counts of receiving stolen good. Judge Couch also sentenced Petitioner to **10 years for the remaining forgery charges, to be served consecutively** to the other charges and the probation revocation, for an **aggregate sentence of forty years**.

(4). Petitioner agrees with the remaining procedural history set forth in this Court's Order. However, Petitioner submits that after the procedural realms he filed the instant Rule 60(b)(3) SCRCF motion, which provides that the Court may relieve a party from a final judgment based on "fraud, misrepresentation, or misconduct of an adverse party[.]"

(5). Petitioner would submit that in denying Petitioner Rule 60(b)(3) motion, the Court has inadvertently or mistakenly relies on Rule 60(b)(5). Petitioner would respectfully point out to this Court that due to the fact the sentencing court handed down a sentence on the five (5) forgery offenses based on the Court's own enhancement on those charges that renders the judgment [void], and that enhancement was based on the solicitor's misrepresentation during the plea colloquy. Id. infra.

(6). Petitioner was indicted on five (5) counts of forgery less than \$5,000. See attached exhibit (A)(09-GS-1413, App.157-58)(09-GS-42-1414, App.159-60)(09-GS-42-1415, App.161-62),(09-GS-42-1416, App.163-64),(09-GS-42-1802, App.165-66). A stringent review of **exhibit (A)** supports Petitioner's position that he was not indicted for any [3rd or subsequent forgery]and therefore the

Court was without authority of law to "enhance" or "sentence" Petitioner as such.

(7). The "fraud and misrepresentation" transpired through the solicitor's statements to the plea/sentencing judge as was recorded:

Solicitor Kendall: You Honor, before the Court is Mr. Jeffrey Jeter on indictment 09-1802, 09-1414 09-1413. Those are four for forgeries over \$5,000 all third or subsequents.

09-1419, receiving stolen goods under \$1,000.

09-1415, an additional forgery.

09-1420, receiving stolen goods \$1,000 to \$5,000.

obtaining property by false pretenses under indictment 09-1421.

Forgery under \$5,000 on indictment 09-1416.

A petty larceny under indictment of 10-5616.

A petty larceny under indictment 10-5617.

Each of these, Your Honor, are third and subsequent offenses.

App.16, L.10-23

Petitioner would submit that the [only] offenses that were indicted as 3rd and subsequent was the above listed two (2) petty larcenies, as correctly cited in this Court's Order at page 1.

The solicitor above misrepresented to the sentencing court that the four forgeries were over \$5,000, when in fact a stringent review of attached exhibit (A) is replete, Petitioner was not indicted for any forgery offense over \$5,000, nor was he ever indicted by a grand jury for a [third or subsequent] forgery and therefore the sentencing Court was without authority to "enhance" the forgeries as third and subsequent offenses. Id (emphasis).

M. HOPE BLACKLEY

2016 NOV 29 PM 4:26

(8). The solicitor further stated:

Mr. Jeter pleads to five counts of forgery and two counts of petit larceny to run concurrently with each other and with his probation violation for -- additionally that Mr. Jeter plead to one count of obtaining goods by false pretenses, and two counts of receiving stolen goods with a recommendation of a consecutive term of ten years suspended to five years of probation with restitution. The remaining three charges will be dismissed in this incident/

App.17, L.6-14

(9). These underlying facts rebut this Court's order that states: "Applicant makes no specific allegations of fraud, misrepresentation or other misconduct that would entitled him to relief." This Court's Order at 4. also see (7), supra.

(10). Petitioner submits that based on the solicitor's misrepresentation to the sentencing court that Petitioner was indicted for [third and subsequent forgeries over \$5,000] allowed the court to "somehow" openly enhance the forgeries without presentation to a grand jury for such consideration of said offenses.

(11). Petitioner contends the Court lacked authority and jurisdiction to enhance the forgeries and sentence Petitioner as third and subsequent, as Petitioner was never indicted as such. See exhibit(s) (A). Issues related to subject matter jurisdiction can be raised at any time. Carter v. State, 329 S.C. 355, 495 S.E. 2d 773 (1998), accord State v. Funderburk, 259 S.C. 256, 191 S.E. 2d 520 (1972).

(12). In the instant matter the solicitor misrepresented to the court that Petitioner was charged with third and subsequent forgeries over \$5,000, thus constituting fraud as well changing the nature of the offenses for which Petitioner was actually indicted. See exhibit (A).

(13). The sentence pronounced here exceeds the statutory maximum and was contrary to legislative intent, in violation of the Sixth Amendment rights to trial by jury and effective assistance of counsel; the Eighth Amendment prohibition against excessive sentences and cruel and unusual punishment; and the Fourteenth Amendment Due Process Clause.

The sentencing judge exceeding the statutory sentencing scheme for the five forgeries under \$5,000 was in violation of the Eighth Amendment's prohibition against cruel and unusual punishment and excessive sentence, *Solem v. Helm*, 463 U.S. 277 (1983) and the Sixth and Fourteenth Amendment rights to a trial by jury. See *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Blakely v. Washington*, \_\_\_ U.S. \_\_\_, 124 S.Ct. 2531 (2004); and *Cunningham v. California*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 856 (2007).

The relevant statutory maximum for Apprendi purposes is the maximum a judge may impose based solely on the facts reflected in a jury's verdict. The underlying facts must be placed in an indictment and agreed upon by a grand jury. In the instant case the grand jury never indicted Petitioner for a [third or subsequent forgery over \$5,000] as portrayed to the court by the solicitor. See ¶7 and exhibit (A).

Indeed, the Framers' paradigm for criminal justice is the common-law ideal of limited state power accomplished by strict division of authority between legislative and judge.

(14). Petitioner submits the sentencing court was without authority to enhance the five forgeries to forgeries over \$5,000, and sentence Petitioner for the forgeries as [third and subsequent] since the grand jury did not indict Petitioner as such.

(15). Here the court sentenced Petitioner to 10-years for each forgery, i.e. an aggregate 40-years due to the solicitor's misrepresentation and or fraud that Petitioner was charged with forgery over \$5,000 and further as a third and subsequent. See ¶7, supra, when Petitioner was only indicted for forgery under \$5,000, see exhibit (A). The prejudice incurred is forgery under \$5,000 only carries the penalty of 5-years and forgery over \$5,000 carries 10-years. Thus the maximum Petitioner could have received even [if] the judge didn't honor the recommendation is an aggregate 20-years rather than the 40-years Petitioner received.

(16). The effect of the judgment of an unauthorized sentence is thus stated in 21 Am Jur.2d, Criminal Law, Section 535

A judgment by a court in a criminal case must conform strictly to the statute, and any variation from it's provisions, either in character or the extent of punishment inflicted, renders the judgment void. A statute which creates an offense and prescribes a special form of punishment exclu[eds] any different or additional punishment.

See. State v. Moore, 255 S.E.2d at 499 (1979)(internal citations omitted). The judgment in the instant matter is [VOID].

#### CONCLUSION

WHEREFORE, based on the foregoing Petitioner respectfully asks this honorable Court alter/amend and reconsider it's Order that was entered in the above captioned.

Respectfully Submitted,

/s/   
Jeffrey Jeter

Petitioner, pro-se

SEARCHED  
SERIALIZED  
INDEXED  
FILED  
2016 NOV 29 PM 4:26  
M. HOPE BLACKLEY

WITNESSES

Sheriffs Office

*W. H. Callahan*

ARREST WARRANT NUMBER

M180193

ACTION OF GRAND JURY

*True Bill*

*[Signature]*  
Foreperson of Grand Jury

Date: *02 26 09*

SENTENCE MADE

REPORT ENDED

CARD PULLED

INDEXED

CHECKED WARRANTS

FORFEITURE

Date:

ASSESSMENT AND  
NE CARD MADE

VERDICT

**Computer**

**Computer**

DOCK **09-GS-42-1413**

The State of South Carolina

County of Spartanburg

*Trey Gowdy, Solicitor*

COURT OF GENERAL SESSIONS

MAR 30 2009

TERM

THE STATE

vs.

Jeffrey Jeter

Indictment for

FORGERY < \$5,000

SC Code: 16-13-10 (B) (2)

CDR Code: 2427

Class FELUF

MARC KITCHENS

2009 MAR -1 PM 1:59

121

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

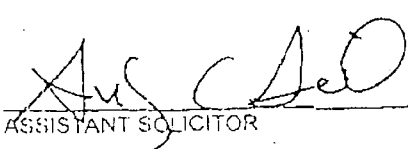
INDICTMENT

At a Court of General Sessions, convened on MAR 26 2009, the  
Grand Jurors of Spartanburg County present upon their oath:

FORGERY < \$5,000

That the defendant, Jeffrey Jeter, did in Spartanburg County on or about April 4, 2008, knowingly and with the intent to defraud: (1) falsely make, forge, counterfeit, cause or procure to be falsely made, forged, or willfully act or assist in the false making, forging or counterfeiting of any writing or instrument of writing; and/or (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing; and/or (3) willingly act or assist in any of the above activities, said writing or instrument of writing being: that the defendant did forge and publish as true a check, number 292747, in the amount of \$350.00 knowing the document to be forged and for the purpose of obtaining value or benefit from the forged document, in violation of §16-13-10(B)(2), THE CODE OF LAWS OF SOUTH CAROLINA (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

WITNESSES

Sheriffs Office

*T. K. [Signature]*

ARREST WARRANT NUMBER

M180192

ACTION OF GRAND JURY

*True Bill*

*[Signature]*

Foreperson of Grand Jury  
Date

*3 26 09*

SENTENCE MADE VERDICT

REPORT ENDED

CARD PULLED

INDEXED

CHECKED WARRANTS

FORWARDED TO SIGNATURE

Date ASSESSMENT AND FINE CARD MADE

TRAFFIC VIOLATIONS COPY

**Computer**  
**Computer**

DOCKET NO.

**09-GS-42-1414**

The State of South Carolina

County of Spartanburg

*Trey Gowdy, Solicitor*

COURT OF GENERAL SESSIONS

MAR 30 2009 TERM

THE STATE

vs.

Jeffrey Jeter

Indictment for

FORGERY < \$5,000

SC Code: 16-13-10 (B) (2)

CDR Code: 2427

Class FELF

MARC KITCHENS  
2009 APR -1 PM 1:49

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

INDICTMENT

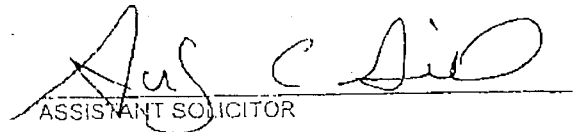
MAR 26 2009

At a Court of General Sessions, convened on \_\_\_\_\_, the  
Grand Jurors of Spartanburg County present upon their oath:

FORGERY < \$5,000

That the defendant, Jeffrey Jeter, did in Spartanburg County on or about April 3, 2008, knowingly and with the intent to defraud: (1) falsely make, forge, counterfeit, cause or procure to be falsely made, forged, or willfully act or assist in the false making; forging or counterfeiting of any writing or instrument of writing; and/or (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing; and/or (3) willingly act or assist in any of the above activities, said writing or instrument of writing being: that the defendant did forge and publish as true a check, number 292745, in the amount of \$275.85 knowing the document to be forged and for the purpose of obtaining value or benefit from the forged document, in violation of §16-13-10(B)(2), THE CODE OF LAWS OF SOUTH CAROLINA (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

WITNESSES

City, PD

*[Handwritten signature]*

ARREST WARRANT NUMBER

M181352

ACTION OF GRAND JURY

*[Handwritten signature]*

Foreperson of Grand Jury  
Date: *3 26 09*

SENTENCE MADE VERDICT

1. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

FOR OFFENSE OF PROBATION

Date: ASSESSMENT AND FINE CARD MADE

7. TRAFFIC VIOLATIONS COPY

**Computer**  
**Computer**

DOCKET NO. **09-GS-42-1415**

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 30 2009

TERM

THE STATE  
vs.

Jeffrey Jeter

Indictment for

FORGERY < \$5,000

SC Code: 16-13-10 (B) (2)

CDR Code: 2427

Class FEL/F

MARC KITCHENS  
2009 APR -1 PM 1:49

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

INDICTMENT

~~At a Court of General Sessions, convened on~~ MAR 26 2009 the  
Grand Jurors of Spartanburg County present upon their oath:

FORGERY < \$5,000

That the defendant, Jeffrey Jeter, did in Spartanburg County on or about June 25, 2008, knowingly and with the intent to defraud: (1) falsely make, forge, counterfeit, cause or procure to be falsely made, forged, or willfully act or assist in the false making, forging or counterfeiting of any writing or instrument of writing; and/or (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing; and/or (3) willingly act or assist in any of the above activities, said writing or instrument of writing being: Check No. 1585, in the amount of \$800.00, on an account belonging to the victim Spartanburg Community Memorial Committee, in violation of §16-13-10(B)(2), THE CODE OF LAWS OF SOUTH CAROLINA (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

WITNESSES

City PD

*[Handwritten signature]*

ARREST WARRANT NUMBER

M181351

ACTION OF GRAND JURY

*True Bill*

*[Handwritten signature]*

Foreperson of Grand Jury  
Date: *3 26 09*

SENTENCE MADE

VERDICT

REPORT ENDED

CARD PULLED

INDEXED

CHECKED WARRANTS

CHECKED SIGNATURE

Foreperson of Petit Jury  
Date: ASSESSMENT AND FINE CARD MADE

TRAFFIC VIOLATIONS COPY

**Computer**  
**Computer**

DOCKET NO.

**09-GS-42-1416**

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 30 2009

TERM

THE STATE

vs.

Jeffrey Jeter

Indictment for

FORGERY < \$5,000

SC Code: 16-13-10 (B) (2)

CDR Code: 2427

Class FELIF

MARC KITCHENS  
2009 APR 1 PM 1:50

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

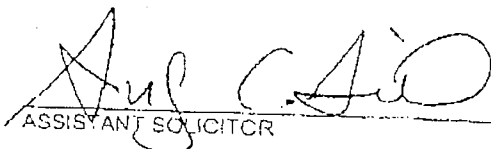
INDICTMENT

At a Court of General Sessions, convened on MAR 26 2009, the  
Grand Jurors of Spartanburg County present upon their oath:

FORGERY < \$5,000

That the defendant, Jeffrey Jeter, did in Spartanburg County on or about June 25, 2008, knowingly and with the intent to defraud: (1) falsely make, forge, counterfeit, cause or procure to be falsely made, forged, or willfully act or assist in the false making, forging or counterfeiting of any writing or instrument of writing; and/or (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing; and/or (3) willingly act or assist in any of the above activities, said writing or instrument of writing being: Check No. 1533, in the amount of \$800.00, on an account belonging to the victim Spartanburg Community Memorial Committee, in violation of §16-13-10(B)(2), THE CODE OF LAWS OF SOUTH CAROLINA (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

WITNESSES

City PD

*[Handwritten signature]*

ARREST WARRANT NUMBER

M111661

ACTION OF GRAND JURY

*True Bill*  
*[Signature]*  
Foreperson of Grand Jury  
Date: *3/26/09*

SENTENCE MADE VERDICT

REPORT FILED

CARD PULLED

INDEXED

CHECKED WARRANTS

FOREPERSON SIGNATURE

Date:

ASSESSMENT AND FINE CARD MADE

TRAFFIC VIOLATIONS COPY

**Computer**  
**Computer**

**09-GS-42-1802**

The State of South Carolina

County of Spartanburg

*Trey Gowdy, Solicitor*

COURT OF GENERAL SESSIONS

MAR 30 2009

TERM

THE STATE

vs.

Jeffrey Jeter

Indictment for

FORGERY < \$5,000

SC Code: 16-13-10 (B) (2)

CDR Code: 2427

Class FELF

APR 1 2009  
SOUTH CAROLINA  
MARC KITCHENS  
09/FR-1 PM 2:53

166  
Spartanburg  
County   
STATE  
V

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )


INDICTMENT

At a Court of General Sessions, convened on MAR 26 2009 the  
Grand Jurors of Spartanburg County present upon their oath:

**FORGERY < \$5,000**

That the defendant, Jeffrey Jeter, did in Spartanburg County on or about September 7, 2008, knowingly and with the intent to defraud: (1) falsely make, forge, counterfeit, cause or procure to be falsely made, forged, or willfully act or assist in the false making, forging or counterfeiting of any writing or instrument of writing; and/or (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing; and/or (3) willingly act or assist in any of the above activities, said writing or instrument of writing being: that the defendant did forge and publish as true a check #2250 in the amount of \$275.31 knowing the document to be forged and for the purpose of obtaining value or benefit from the forged document, in violation of §16-13-10(B)(2), THE CODE OF LAWS OF SOUTH CAROLINA (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF SPARTANBURG ) SEVENTH JUDICIAL CIRCUIT

Jeffrey E. Jeter ) C/A NO.2011-42-1967  
Petitioner, )  
-vs- )  
State of South Carolina ) MOTION TO ALTER/AMEND AND  
Respondent, ) RECONSIDER JUDGMENT PURSUANT  
TO: RULE(S) 52(b); 59(e), SCRCIV.P

INTRODUCTION

COMES NOW, above captioned Applicant Jeffrey E. Jetter se, (hereafter "Petitioner"), respectfully moving this Honorable Court to alter/amend and reconsider judgment that was entered in the above captioned case number October 31, 2016 pursuant to Rule(s) 52(b) and 59 (e) of the South Carolina Rules of Civil Procedure. Petitioner received the Order November 18, 2016 via institutional legal mail. See attached copy of envelope.

In support of this request the Petitioner would respectfully show unto this Court the following:

(1). Petitioner was indicted during the March term of the Spartanburg County Grand Jury for five (5) counts of forgery less \$5,000 (09-GS-42-1413; 1414; 1415; 1416 and 1802).

(2). Petitioner was subsequently indicted in October 2010 for two (2) counts of petit larceny -- 3rd or subsequent (2010-GS-42-5616, and 5617).

2016 NOV 29 PM 4:26  
M. HOPE BLANKLEY

(3). On October 28, 2010 Petitioner entered a plea of guilty as indicted and Judge Couch sentenced Petitioner to concurrent terms of ten years for one count of forgery (09-1802), obtaining money under false pretenses, petit larceny, and both counts of receiving stolen good. Judge Couch also sentenced Petitioner to ~~10 years for the remaining forgery charges, to be served consecutively to the other charges and the probation revocation, for an aggregate sentence of forty years.~~

(4). Petitioner agrees with the remaining procedural history set forth in this Court's Order. However, Petitioner submits that after the procedural realms he filed the instant Rule 60(b)(3) SCRPC motion, which provides that the Court may relieve a party from a final judgment based on "fraud, misrepresentation, or misconduct of an adverse party[.]"

(5). Petitioner would submit that in denying Petitioner's Rule 60(b)(3) motion, the Court has inadvertently or mistakenly relies on Rule 60(b)(5). Petitioner would respectfully point out to this Court that due to the fact the sentencing court handed down a sentence on the five (5) forgery offenses based on the Court's own enhancement on those charges that renders the judgment [void], and that enhancement was based on the solicitor's misrepresentation during the plea colloquy. Id. infra.

(6). Petitioner was indicted on five (5) counts of forgery less than \$5,000. See attached exhibit (A)(09-GS-1413, App.157-58)(09-GS-42-1414, App.159-60)(09-GS-42-1415, App.161-62),(09-GS-42-1416, App.163-64),(09-GS-42-1802, App.165-66). A stringent review of exhibit (A) supports Petitioner's position that he was not indicted for any [3rd or subsequent forgery]and therefore the

Court was without authority of law to "enhance" or "sentence" Petitioner as such.

(7). The "fraud and misrepresentation" transpired through the solicitor's statements to the plea/sentencing judge as was recorded:

Solicitor Kendall: You Honor, before the Court is Mr. Jeffrey Jeter on indictment 09-1802, 09-1414 09-1413. Those are four for forgeries over \$5,000 all third or subsequents.

09-1419, receiving stolen goods under \$1,000.

09-1415, an additional forgery.

09-1420, receiving stolen goods \$1,000 to \$5,000.

obtaining property by false pretenses under indictment 09-1421.

Forgery under \$5,000 on indictment 09-1416.

A petty larceny under indictment of 10-5616.

A petty larceny under indictment 10-5617.

Each of these, Your Honor, are third and subsequent offenses.

App.16, L.10-23

Petitioner would submit that the [only] offenses that were indicted as 3rd and subsequent was the above listed two (2) petty larcenies, as correctly cited in this Court's Order at page 1.

The solicitor above misrepresented to the sentencing court that the four forgeries were over \$5,000, when in fact a stringent review of attached exhibit (A) is replete, Petitioner was not indicted for any forgery offense over \$5,000, nor was he ever indicted by a grand jury for a [third or subsequent] forgery and therefore the sentencing Court was without authority to "enhance" the forgeries as third and subsequent offenses. Id (emphasis).

2016 NOV 29 PM 4:26

M. HOPE BLACKLEY

(8). The solicitor further stated:

Mr. Jeter pleads to five counts of forgery and two counts of petit larceny to run concurrently with each other and with his probation violation for -- additionally that Mr. Jeter plead to one count of obtaining goods by false pretenses, and two counts of receiving stolen goods with a recommendation of a consecutive term of ten years suspended to five years of probation with restitution. The remaining three charges will be dismissed in this incident/

App.17, L.6-14

(9). These underlying facts rebut this Court's order that states: "Applicant makes no specific allegations of fraud, misrepresentation or other misconduct that would entitled him to relief. This Court's Order at 4. also see (7), supra."

(10). Petitioner submits that based on the solicitor's misrepresentation to the sentencing court that Petitioner was indicted for [third and subsequent forgeries over \$5,000] allowed the court to "somehow" openly enhance the forgeries without presentation to a grand jury for such consideration of said offenses.

(11). Petitioner contends the Court lacked authority and jurisdiction to enhance the forgeries and sentence Petitioner as third and subsequent, as Petitioner was never indicted as such. See exhibit(s) (A). Issues related to subject matter jurisdiction can be raised at any time. Carter v. State, 329 S.C. 355, 495 S.E. 2d 773 (1998), accord State v. Funderburk, 259 S.C. 256, 191 S.E. 2d 520 (1972).

(12). In the instant matter the solicitor misrepresented to the court that Petitioner was charged with third and subsequent forgeries over \$5,000, thus constituting fraud as well changing the nature of the offenses for which Petitioner was actually indicted. See exhibit (A).

(13). The sentence pronounced here exceeds the statutory maximum and was contrary to legislative intent, in violation of the Sixth Amendment rights to trial by jury and effective assistance of counsel; the Eighth Amendment prohibition against excessive sentences and cruel and unusual punishment; and the Fourteenth Amendment Due Process Clause.

The sentencing judge exceeding the statutory sentencing scheme for the five forgeries under \$5,000 was in violation of the Eighth Amendment's prohibition against cruel and unusual punishment and excessive sentence, *Solem v. Helm*, 463 U.S. 277 (1983) and the Sixth and Fourteenth Amendment rights to a trial. See *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Blakely v. Washington*, \_\_\_ U.S. \_\_\_, 124 S.Ct. 2531 (2004); and *Cunningham v. California*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 856 (2007).

The relevant statutory maximum for Apprendi purposes is the maximum a judge may impose based solely on the facts reflected in a jury's verdict. The underlying facts must be placed in an indictment and agreed upon by a grand jury. In the instant case the grand jury never indicted Petitioner for a [third or subsequent forgery over \$5,000] as portrayed to the court by the solicitor. See ¶7 and exhibit (A).

Indeed, the Framers' paradigm for criminal justice is the common-law ideal of limited state power accomplished by strict division of authority between legislative and judge.

(14). Petitioner submits the sentencing court was without authority to enhance the five forgeries to forgeries over \$5,000, and sentence Petitioner for the forgeries as [third and subsequent] since the grand jury did not indict Petitioner as such.

(15). Here the court sentenced Petitioner to 10-years for each forgery, i.e. an aggregate 40-years due to the solicitor's misrepresentation and or fraud that Petitioner was charged with forgery over \$5,000 and further as a third and subsequent. See ¶7, ~~supra~~, when Petitioner was only indicted for forgery under \$5,000, see exhibit (A). The prejudice incurred is forgery under \$5,000 only carries the penalty of 5-years and forgery over \$5,000 carries 10-years. Thus the maximum Petitioner could have received even [if] the judge didn't honor the recommendation is an aggregate 20-years rather than the 40-years Petitioner received.

(16). The effect of the judgment of an unauthorized ~~state~~ is thus stated in 21 Am Jur.2d, Criminal Law, Section 535

A judgment by a court in a criminal case must conform strictly to the statute, and any variation from it's provisions, either in character or the extent of punishment inflicted, renders the judgment void. A statute which creates an offense and prescribes a special form of punishment exclu[eds] any different or additional punishment.

See. State v. Moore, 255 S.E.2d at 499 (1979)(internal citations omitted). The judgment in the instant matter is [VOID].

#### CONCLUSION

WHEREFORE, based on the foregoing Petitioner respectfully asks this honorable Court alter/amend and reconsider it's Order that was entered in the above captioned.

Respectfully Submitted,

/s/   
Jeffrey Jeter

Petitioner, pro-se

2016 NOV 29 PM 4:26  
M. HOPE BLACKLEY  
SPARTANBURG

Applicant sets forth in his motion to alter  
and have already been reviewed  
Conviction Relief

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Jeffrey Eugene Jeter, #131471,  
Applicant,

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2011-CP-42-1967

RETURN TO APPLICANT'S  
MOTION TO ALTER OR AMEND  
ORDER DENYING 60(B) MOTION

This matter comes before the Court by way of the Applicant's *pro se* Motion to Alter or Amend pursuant to Rule 59(e), and Rule 52(b), SCRCP, in which he asks the Court to alter or amend its Order dismissing his Rule 60(b), SCRCP Motion. The Respondent (the State) would submit the following:

I.

The Respondent submits that the Order Denying Applicant's Rule 60(b), SCRCP Motion of the Honorable J. Mark Hayes, II, dated October 31, 2016, contains the findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003), and Rule 52(a) SCRCP. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

II.

Respondent submits Applicant's Motion to Alter or Amend Judgment should be denied. Applicant is not requesting either an alteration or amendment to the order. Rather, Applicant is asking the Court to reverse its decision. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1997). The proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon.

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
Jeffrey Eugene Jeter, #131471, )  
 )  
Applicant, )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2011-CP-42-1967

vs. )

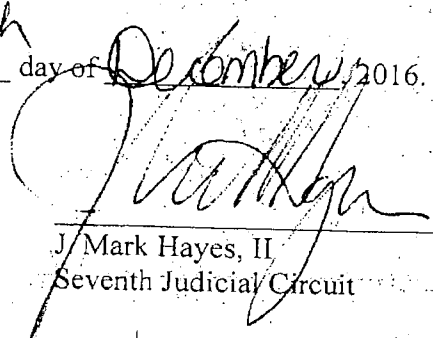
State of South Carolina, )  
 )  
Respondent. )

**ORDER**

This matter comes before the Court by way of Applicant's *pro se* document titled "Motion to Alter/Amend and Reconsider Judgment Pursuant to: Rule(s) 52(b) and 59(e), SCRCiv.P." The Respondent made its Return to this Motion on December 6, 2016.

The Order Denying Applicant's 60(b), SCRCP Motion in this matter was signed by me on October 31, 2016. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's response and objections, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order Denying Applicant's 60(b), SCRCP Motion, which was signed and then filed October 31, 2016, shall stand as it was written.

AND IT IS SO ORDERED this 12<sup>th</sup> day of December, 2016.

  
\_\_\_\_\_  
J. Mark Hayes, II  
Seventh Judicial Circuit

Spartanburg, South Carolina

2016 DEC 13 11 AM 9:50  
ALBERT BLAIR, III  
CLERK OF COURT

Appeal from Spartanburg County  
Court of Common Pleas

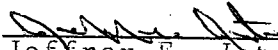
J. Mark Hayes, III, Presiding

Jeffrey E. Jeter ) C/A No.2011-CP-42-1967  
Appellant, )  
-vs- ) NOTICE OF APPEAL  
State of South Carolina )  
Respondent, )  
\_\_\_\_\_ )

NOTICE IS HEREBY GIVEN, above captioned Appellant, Jeffrey E. Jeter appeals the Order of dismissal that was entered in the above captioned on October 31, 2016. Appellant filed a Rule 52(b) & 59(e), SCRCF motion that was denied December 13, 2016 by the Honorable J. Mark Hayes, III, circuit court judge.

A copy of [both] Orders are attached hereto.

Respectfully Submitted,

/s/   
Jeffrey E. Jeter

Appellant, pro-se

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County  
Court of Common Pleas  
C/A No. 2011-CP-42-1967  
J. Mark Hayés, III, Presiding

Jeffrey E. Jeter -- Appellant,

-vs-

State of South Carolina -- Respondent,

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Notice of Appeal on the Respondent, Mr. Donald J. Zelenka, Assistant Attorney General, P.O. Box 11549, Columbia, SC. 29211. This being done by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail this \_\_\_ day of January 2017.

Sworn to and Subscribed Before Me

Respectfully Submitted,

this 9th day of January 2017.

/s/

Jeffrey E. Jeter  
Appellant, pro-se

1814714

Nancy C. Marshall  
NOTARY PUBLIC

MY COMM. EXPIRES 1-23-2022

cc/file  
cc/Daniel Shearouse, Clerk  
cc/Donald J. Zelenka

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

C/A No. 2011-CP-42-1967

Jeffrey E. Jeter -- Petitioner,

-vs-

State of South Carolina -- Respondent,

2016 NOV 30 AM 8:56  
M. HOPE BLACKLEY

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed motion to alter/amend and reconsider on Assistant Attorney General, Alicia A. Olive, P.O. Box 11549, Columbia, SC. 29211, by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. mail this 22 day of November 2016.

Respectfully Submitted,

sworn to and Subscribed before me

/s/ Jeffrey E. Jeter  
Jeffrey E. Jeter

this 23<sup>rd</sup> day of November, 2016

Petitioner, pro-se

Nancy C. Merchant  
NOTARY PUBLIC

My Comm. Expires 1-23-2021

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

C/A No. 2011-GS-42-1967

Jeffrey E. Jeter -- Petitioner,

-vs-

State of South Carolina -- Respondent,

MOTION TO ALTER/AMEND AND  
RECONSIDER JUDGMENT PURSUANT TO:  
RULE(S) 52(b) and 59(e), SCRCiv.P.

Jeffrey E. Jeter  
SCDC# 131471  
Perry Corr. Inst.  
430 Oaklawn Rd.  
Pelzer, SC. 29669

Petitioner, pro-se

2016 NOV 29 PM 4:26  
M. HOPE BLACKLEY

Jeffrey Jeter 131477  
P.C.I. 3-A-124  
430 OAKLAWN Road  
Pelzer S.C.  
29507

RECEIVED

FEB 15 2017

P.C.I. MAILROOM

DANIEL SHEPHERD  
CLERK

S.C. SUP CT.

P.O. Box 11388

Columbia S.C.  
29211