

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM THE COUNTY OF HORRY

Court of Common Pleas

The Honorable Circuit Court Judge, Brooks P. Goldsmith

RECEIVED
OCT 24 2018
S.C. SUPREME COURT

Case No. 2015-CP-26-7980

HECTOR J. CASES VAZQUEZ, SCDC # 363120..... Petitioner,

v.

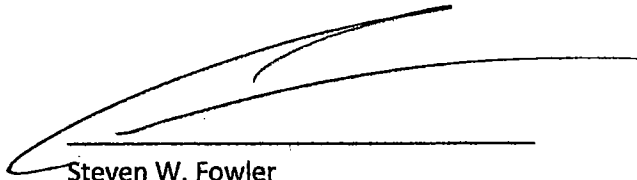
State of South Carolina,Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable Judge Brooks P. Goldsmith'S Order filed denying post conviction relief to the Petitioner.

The Order was received by the undersigned counsel on October 18, 2018. A copy of the said Order on appeal is attached to this Notice.

This is the 21nd day of October, 2018.



Steven W. Fowler
Fowler Law Firm
730 Main Street, Unit 237
North Myrtle Beach, SC 29582
Telephone: 843-663-0006
Fax: 843-280-0003
myfowlerlaw@gmail.com
SC Bar #69683

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM THE COUNTY OF HORRY

Court of Common Pleas

The Honorable Circuit Court Judge, Brooks P. Goldsmith

Case No. 2015-CP-26-7980

HECTOR J. CASES VAZQUEZ, SCDC # 363120..... Petitioner,

v.

State of South Carolina, Respondent

PROOF OF SERVICE

I, Steven W. Fowler, court- appointed attorney for Petitioner, certify that I have today served within Notice of Appeal and Copy of the Order signed by the presiding Judge upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the following:

- 1) Assistant Attorney General, PO Box 11549, Columbia, SC 29211 and
- 2) Clerk of the South Carolina Supreme Court , 1231 Gervais St, Columbia, SC 29201
- 3) SCCID Appellate Defense, PO Box 11433, Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served on this below named date.

This is the 21th day of October, 2018.



Steven W. Fowler
Fowler Law Firm
730 Main Street, Unit 237
North Myrtle Beach, SC 29582
Telephone: 843-663-0006
Fax: 843-280-0003
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SC Bar #69683



ALAN WILSON
ATTORNEY GENERAL

October 18, 2018

Steven W. Fowler, Esquire
Fowler Law Firm
730 Main Street, Unit 237
North Myrtle Beach, SC 29582

**Re: Hector J. Cases Vazquez v. State of South Carolina
2015-CP-26-7980**

Dear Mr. Fowler:

Enclosed please find a copy of the **Order of Dismissal** for the above-captioned post-conviction relief application; signed by the Honorable Brooks P. Goldsmith, Presiding Judge for the Fifteenth Judicial Circuit.

Sincerely,

Johnny E. James Jr.
Assistant Attorney General

JEJ/mm
Enclosure

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

HECTOR J. CASES VAZQUEZ, #363120,

Applicant,

v.

STATE OF SOUTH CAROLINA,

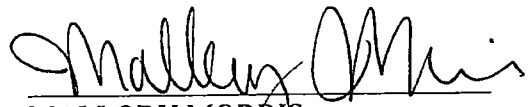
Respondent.

CERTIFICATE OF SERVICE

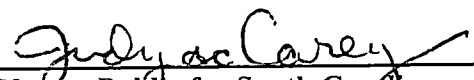
The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Steven W. Fowler, Esquire
Fowler Law Firm
730 Main Street, Unit 237
North Myrtle Beach, SC 29582

This 18th day of October, 2018.


MALLORY MORRIS
LEGAL ASSISTANT FOR RESPONDENT

SWORN to before me this 18th day of October, 2018.


Notary Public for South Carolina.
My Commission Expires: 5/14/2024

2015-CP-26-7980

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
Hector J. Cases Vazquez,)	Case No.: 2015-CP-26-07980
S.C.D.C. No. 363120,)	
)	
Applicant,)	
)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

2016 OCT -9 PM 12:54

This matter comes before the Court by way of an application for post-conviction relief filed by Hector J. Cases Vazquez ("Applicant") on November 5, 2015. Respondent made its return on or about February 4, 2016. The Court convened an evidentiary hearing into the matter on Tuesday, November 15, 2016, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esq. Jessica E. Kinard, Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, W. Thomas Floyd, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the May 2014 term of the Horry County Grand Jury for trafficking in heroin, 28 grams or more (2014-GS-26-

02135). W. Thomas Floyd, Esq. represented Applicant, and David P. Caraker, Jr., Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On February 23, 2015, Applicant pled guilty to the lesser-included offense of trafficking in heroin, between 4 and 14 grams. Pursuant to a range of 15 to 18 years negotiated between the Applicant and the State, the Honorable Michael G. Nettles sentenced Applicant to imprisonment for a term of 15 years. Applicant did not appeal his plea or sentence.

Present Application

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

1. Ineffective assistance of counsel:
 - a. "Failing to challenge substantial Fourth Amendment violation warrantless search and seizure; and failing to protect rights guaranteed him by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution."
 - b. "Ineffective for merely a cursory investigation; coerced Applicant to plead guilty; failure to withdraw plea when spoken agreement came into discord and plea was not knowingly or intelligently entered."
 - i. "Failed to advise Applicant of the minimum and maximum penalties."
 - ii. "Failed to advise / explain certain elementary and essential elements charge(s)."
 - iii. "Failed to explain double pleading . . . or alleging two or more matters in one plea."
 - iv. "Failed to explain conspiracy, and elements or degree of trafficking drugs."
 - v. "Failed to motion for Reconsideration of Sentence."
 - c. "Failing to call into question the veracity of Agent Philips Arrest Warrant Affidavit/move to Annual Warrant; and move to Quash Indictment obtained upon flawed information and tampering with evidence; and prejudicing Defendant by deliberately pleading him to a greater charge while dismissing lesser offense, denied due process and Equal Protection of the Law."

- d. "Failing to object to unconstitutional search and seizure, and fail to protect his Fourth and Fourteenth Amendments rights of the United States Constitution."

At the evidentiary hearing, Applicant proceeded forward on allegations listed under "b" above.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a

defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to Investigate

Applicant alleges Counsel was ineffective for failing to investigate his case, instead conducting only a cursory review. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Upon inquiry by Judge Nettles at the plea proceeding, Applicant affirmed he was satisfied with the performance of his attorney, had no complaints about his performance or the actions of law enforcement, and did not need any additional time to consult with Counsel. (Tr. 9, ll. 12-20). Applicant further denied that he was promised anything, threatened, pressured, or mistreated into pleading guilty. (Tr. 9-10).

At the evidentiary hearing, Applicant asserted that the search executed by law enforcement was unlawful because they never identified themselves at the door before breaching and arresting Applicant and his father. Applicant testified he never discussed the subject with his attorney because they never had a professional meeting. Applicant claimed he made efforts to make appointments to meet with Counsel, but never received any answers and was never visited

by Counsel while he was in jail. Applicant testified he and Counsel never talked about his case, but that Counsel only appeared with plea offers and advice to accept the offers. Applicant claimed he proceeded with pleading guilty in order to alleviate consequences faced by his girlfriend, who was also arrested and charged.

Counsel testified he has practiced criminal law since 1989. Counsel recalled that he did review all discovery with Applicant "at some point." Counsel noted that Applicant failed to appear for meetings at Counsel's office, but that Counsel was able to discuss matters with him at the courthouse on two occasions—when a plea offer was extended and when the offer was rejected on the record. Counsel testified that Applicant never offered his version of what occurred on the day of his arrest. Counsel opined that no defense was available to Applicant and recalled the facts of the case in detail. In particular, Counsel recalled that law enforcement already had a search warrant for Applicant's apartment based on a prior controlled buy through a confidential informant and were conducting surveillance of the location. The understanding was that while Applicant had met with the CI, Applicant's father was the one responsible for securing their supply of heroin. Though law enforcement had planned to conduct another controlled buy, then bust, Applicant's father did not have the supply and left to Florida to replenish. Applicant's father appeared at the apartment with a brown paper bag while on the phone with the CI, at which time law enforcement scrapped the plans for the controlled buy and instead executed the search warrant immediately after Applicant's father had replenished the heroin supply. Roughly 120 grams of heroin was recovered. Counsel did not see any deficiencies in the search warrant or its execution. On cross-examination, Counsel noted that law enforcement had signed off that they delivered the warrant to the person in charge of the premises, and expressed his belief that

law enforcement would have testified to identifying themselves, based on his experience in trying cases of this kind and character.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant. The Court finds Counsel reviewed the discovery, reviewed the search warrant, and in the proper exercise of his professional judgment and experience determined there were no meritorious challenges to the search warrant executed on Applicant's apartment. Counsel demonstrated a thorough command and familiarity with the underlying facts of the case. Upon opportunity to closely observe and consider the testimony of the witnesses, the Court finds Applicant's claim that law enforcement did not identify itself to be not credible. Even if it were, the Court finds Applicant never communicated his version of the facts to Counsel, such that the factual predicate to the only theory of defense presented by Applicant (liberally construing his testimony to mean that the search warrant was an impermissible no-knock raid) would not have been made known to Counsel. Accordingly, Applicant has failed to meet his burden as to either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

2. Failure to Explain Plea, Elements of Offenses Charged, Sentencing Ranges

Applicant alleges Counsel was ineffective for failing to explain to him the terms of the plea deal, the elements of the offenses charged as compared to the elements of the offense to which he pled, and the minimum and maximum sentencing exposure in each instance.

At the plea proceeding, the State called the case by indicating the charges indicted, as well as the lesser-included offenses to which Applicant and his co-defendant father were pleading. (Tr. 3, ll. 3-12). The State explained Applicant was pleading in exchange for a negotiated sentencing range of 15 to 18 years. (Tr. 3, ll. 14-17). The plea court observed the sentencing range, at which time Counsel affirmed the negotiated range. (Tr. 8-9). As previously

noted, Applicant affirmed he was satisfied with the performance of his attorney, had no complaints about his performance or the actions of law enforcement, and did not need any additional time to consult with Counsel. (Tr. 9, ll. 12-20). The sentencing sheet, signed by Applicant, reads that he was pleading to "Trafficking in Heroin, 4—14 grams, 1st offense."

At the evidentiary hearing, Applicant testified Counsel never talked to him about his case or showed him any paperwork, but only relied on experience and told Applicant he should plead guilty. Applicant expressed that he did not know at the time of his plea whether he was pleading to a first or second offense, and that Counsel never told him anything on the topic. Applicant testified Counsel never would listen, offered no defenses, and didn't mention anything about a trial, but only advised that he should accept the plea offers provided by the State. Applicant asserted Counsel never told him the minimum and maximum penalties for the charge, the essential elements of the charges, or the degree of the charges.

Counsel testified he used an interpreter in speaking with Applicant during the plea rejection, but did not use an interpreter when discussing the first plea offer with Applicant. Counsel observed Applicant understood everything they discussed in both circumstances. Counsel testified he discussed the elements of each charge against Applicant, and originally faced a mandatory minimum sentence of at least 25 years. Counsel affirmed he explained to Applicant his constitutional rights, and that Applicant understood his rights. Counsel recalled Applicant rejected an initial offer to plead guilty in exchange for a sentence between 12 and 15 years. Counsel testified he advised Applicant of the minimum and maximum penalties each charge carried, and that Applicant knew the classifications of each charge. Counsel testified Applicant's main object was ensuring his girlfriend did not go to prison, which Counsel recalled discussing with Applicant. On cross-examination, Counsel asserted Applicant speaks some

English, and that Counsel's impression was that Applicant understood their discussions. Counsel further noted that there was never an issue about the charges potentially being classified as a second offense—they were always a first offense. Counsel explained a number of other charges were dropped as part of the plea, and that Applicant pled as they were preparing to draw a jury for trial.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant. The Court finds Counsel properly explained to Applicant the charges against him, the elements of the offenses charged, the minimum and maximum sentence exposure, and the classifications of each charge. The Court finds Counsel explained the terms of both plea offers, the first of which was rejected by Applicant, and the second of which was ultimately accepted. The Court finds little, if anything, credible in Applicant's testimony. The Court finds Counsel's testimony highly credible. Accordingly, Applicant has failed to meet his burden as to either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

3. Failure to File Motion to Reconsider Sentence

Applicant alleges Counsel was ineffective for failing to file a motion to reconsider the sentence. The Court will not belabor this allegation—Applicant was sentenced to the minimum possible under the terms negotiated between Applicant and the State, such that the Court could not have revised its sentence lower. Applicant has not, and cannot, meet his burden as to either prong of Strickland on this ground, and his request for relief by way of this allegation is **DENIED**.



III. CONCLUSION

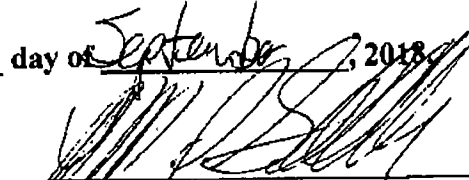
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

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


BROOKS P. GOLDSMITH
Presiding Judge
Fifteenth Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Hector J. Cases Vazquez, #363120

Plaintiff

v.

State Of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2015-CP-26-7980

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Steven W. Fowler, Bar No. 69683
Address:
730 Main St., Unit 237 N. Myrtle Beach, SC 29582
phone: fax:
e-mail: other:

Defendant's Attorney:
Johnny E. James Jr, Bar No. 101260
Address:
Post Office Box 11549 Columbia SC 29211-1549
phone: (803) 734-3737 fax: (803) 734-4113
e-mail: other:

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

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

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

Signature of Attorney for Plaintiff / Defendant

September 26, 2018

Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- MOTION FEE COLLECTED: _____
- CONTESTED - AMOUNT DUE: _____



ALAN WILSON
ATTORNEY GENERAL

October 5, 2018

The Honorable Renee N. Elvis
Clerk of Court, Horry County
Post Office Box 677
Conway, SC 29528-0677

2018 OCT -9 PM 12:54

Re: Hector J. Cases Vazquez v. State of South Carolina
2015-CP-26-7980

Dear Ms. Elvis:

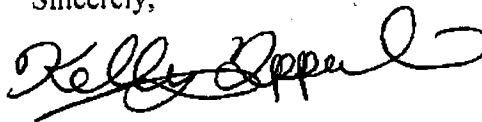
Enclosed please find the original **Order of Dismissal** signed by the Honorable Brooks P. Goldsmith, in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRPC."

In addition, please forward proof of service and a time stamped copy back to our office for our file.

If you have any questions, please do not hesitate to call me at (803) 734-3737.

Sincerely,


for Johnny E. James Jr.
Assistant Attorney General

JEJ/mm

Enclosure



ALAN WILSON
ATTORNEY GENERAL

September 26, 2018

The Honorable Brooks P. Goldsmith
Presiding Judge, 15th Judicial Circuit
PO Box 895
Edisto Island, SC 29438

2018 OCT -9 PM 12:55

**Re: Hector J. Cases Vazquez, #363120 v. State of South Carolina
2015-CP-26-4185**

Dear Judge Goldsmith:

Enclosed please find the proposed **Order of Dismissal** in the above-captioned cases.

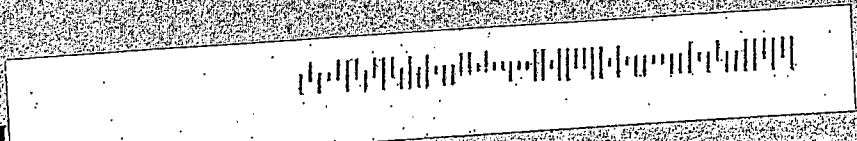
If this Order meets your approval, please sign and return to me in the enclosed envelope, and I will forward to the Horry County Clerk of Court to be filed and served. If you have any questions, please do not hesitate to contact me.

Sincerely,

Johnny E. James Jr.
Assistant Attorney General

JEJ/mm
Enclosure

cc: Steven W. Fowler, Esquire



Herl
Main
237
3, SC 29582

Law Firm
Howard Fights For You



Clerk of the S. C.
Supreme Court
1231 Gervais Street
Columbia SC

1st Class
1000 Gervais