

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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APPEAL FROM THE COUNTY OF HORRY

Court of Common Pleas

The Honorable Circuit Court Judge, Brooks P. Goldsmith

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Case No. 2015-CP-26-6311

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MIGUEL A. GARCIA SCDC # 339203..... Petitioner,

v.

State of South Carolina, .....Respondent.

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**NOTICE OF APPEAL**

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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 15, 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

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APPEAL FROM THE COUNTY OF HORRY

Court of Common Pleas

The Honorable Circuit Court Judge, Brooks P. Goldsmith

---

Case No. 2015-CP-26-7980

MIGUEL A. GARCIA , SCDC # 339203..... Petitioner,

v.

State of South Carolina, .....Respondent

**PROOF OF SERVICE**

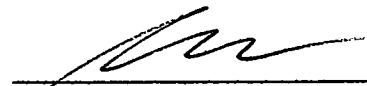
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I, Steven W. Fowler, court- appointed attorney for Petitioner, certify that I have today served within Notice of Appeal and Copy of the Order signed by the presiding Judge upon the Respondent by depositing a copy of it in the United States Mail, postage 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 21st day of October, 2018.



---

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Fowler Law Firm  
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SC Bar #69683



ALAN WILSON  
ATTORNEY GENERAL

October 15, 2018

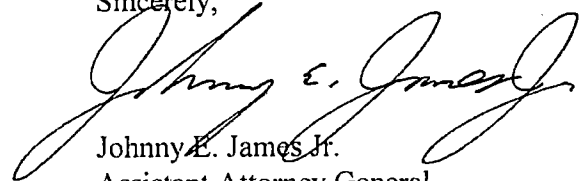
Steven W. Fowler, Esquire  
Fowler Law Firm  
730 Main Street, Unit 237  
North Myrtle Beach, SC 29582

**Re: Miguel A. Garcia, #339203 v. State of South Carolina  
2015-CP-26-6311**

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

\_\_\_\_\_

MIGUEL A. GARCIA, #339203,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

\_\_\_\_\_

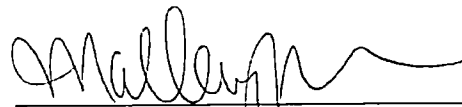
**CERTIFICATE OF SERVICE**

\_\_\_\_\_

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:

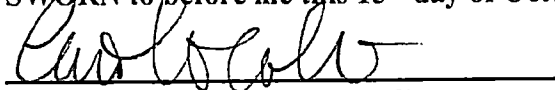
**Steven W. Fowler, Esquire**  
**Fowler Law Firm**  
**730 Main Street, Unit 237**  
**North Myrtle Beach, SC 29582**

This 15<sup>th</sup> day of October, 2018.



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

SWORN to before me this 15<sup>th</sup> day of October, 2018.



Notary Public for South Carolina.

My Commission Expires: 5/20/2025

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
)

Miguel Angel Garcia,  
S.C.D.C. No. 339203,

) Case No.: 2015-CP-26-06311  
)  
)

Applicant,

) **ORDER OF DISMISSAL**  
)  
)

v.

State of South Carolina,

Respondent.

2016 NOV -9 PM 12:54

This matter comes before the Court by way of an application for post-conviction relief filed by Miguel Angel Garcia ("Applicant") on August 25, 2015. Respondent made its return on or about January 29, 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, Thurmond Brooker, 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 March 2014 term of the Horry County Grand Jury for burglary, first degree (2014-GS-26-01276). Thurmond,

Brooker, Esq. represented Applicant, and Thomas G. Terrell, III, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On November 3, 2014, Applicant pled guilty as above indicted.<sup>1</sup> The Honorable John C. Hayes, III, accepted terms negotiated between Applicant and the State and 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:

- I. Ineffective assistance of counsel, in that:
  - a. "Trial counsel prejudice applicant by not conduct[ing a] pre-trial investigation by not bringing to my attention that DNA didn't match my blood during state investigation[;]"
  - b. Counsel failed to research and interview the victim and his statements to law enforcement;
  - c. "Trial counsel prejudice applicant by failing to [file] a timely . . . notice of appeal."

Applicant requests relief as follows:

- "Vacate Conviction and Sentences"

### 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.

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<sup>1</sup> Applicant was additionally indicted for assault and battery, first degree (2014-GS-26-01274); kidnapping (2014-GS-26-01275); and armed robbery (2014-GS-26-01277). These indictments were dismissed *nolle prosequi* as part of his guilty plea.

### 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), SCRPC; 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, 466 U.S. 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, 466 U.S. 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: DNA Evidence***

Applicant alleges Counsel was ineffective for failing to investigate DNA evidence found at the scene of the crime. 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)).

At the evidentiary hearing, Applicant testified that during his interrogation by law enforcement, the detective indicated there was DNA found at the scene that did not match the Victim. Applicant thereafter volunteered a DNA sample, which law enforcement took. Applicant posited it was not his and questioned whose DNA was found. Applicant testified he brought Counsel's attention to the issue, but Counsel never followed upon the subject. Applicant complained Counsel did not communicate with him. Applicant also asserted there was no chain of custody for the DNA evidence in the paperwork he received. Applicant additionally testified he tried to relieve Counsel, but was unable to find another attorney willing and able to take his case and be prepared for the trial already set to occur the following month. Faced with the choice of proceeding with Counsel and proceeding *pro se*, Applicant opted to stick with Counsel, accepted his advice that he would likely be convicted if he went to trial, and took the plea deal based upon Counsel's advice.

Counsel acknowledged a swab was taken of what appeared to be blood at the scene, and a swab was taken from Applicant for comparison, but no comparison was ever made. No report of DNA testing was ever provided in discovery. Counsel recalled telling Applicant that the DNA evidence was irrelevant as the case against him was overwhelming: two witnesses, a GPS tracking device, Applicant's own inculpatory statements, and evidence to show Applicant's working with the two co-defendants. Counsel also testified to Applicant's version of events, namely that Applicant and the co-defendants had been invited to Victim's house for the purpose

of inspecting and possibly purchasing a motorcycle, and that the co-defendants must have robbed Victim after Applicant left. Counsel asserted that even if the DNA was tested and was not Applicant's, it would not acquit him. As such, he advised Applicant to plead guilty.

The Court finds no deficiency on the part of counsel, nor any prejudice to Applicant. First, no testing or reports were introduced at the evidentiary hearing; as such, the Court is left with only speculation as to what, if anything, such testing would have revealed. Second, Counsel articulated clear reasoning as to why he did not pursue further investigation of the DNA evidence—doing so would not have been helpful to the cause of acquitting his client in light of the other evidence against Applicant. Third, because Applicant's testimony provides that he pled based on Counsel's advice, and Counsel testified his advice would not have changed on the DNA evidence even if it were tested and did not match Applicant, the Court finds there would have been no change in outcome had the DNA evidence been tested. For all of these reasons, Applicant cannot meet his burden as to either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

## ***2. Failure to Investigate: Victim's Statements***

Applicant alleges Counsel was ineffective for failing to investigate Victim's desire to change his statement inculcating Applicant. Much of the same law as set forth in Section II.A.1, above, applies here as well.

At the evidentiary hearing, Applicant testified the Victim in the matter was seeking to write an additional statement indicating Applicant was not the perpetrator, recanting his original statements to law enforcement. Applicant asserted Victim did ultimately write a notarized statement to that effect and presented it to Counsel, who did not present the statement to the court. Applicant speculated that Victim originally identified him because Applicant fathered a

child by Victim's girlfriend, and that Victim wished to get Applicant "out of the way." As previously noted, Applicant testified to his reasons for pleading guilty—he relied on Counsel's advice to do so.

Counsel testified Victim gave a statement to law enforcement after they responded to the scene. Victim told law enforcement he recognized one of his attackers as Applicant because they had served time together. Counsel recalled Applicant informed him that Victim, as well as the co-defendants, wished to revise their statements to Applicant's benefit. Counsel noted the co-defendants never so revised their statements. Counsel advised Applicant that contact with Victim would violate conditions of his bond, but Applicant believed he could convince Victim to change his statement. Applicant, Victim, and Victim's girlfriend appeared in Counsel's office one day; after speaking with Victim, Counsel became concerned that he was being asked to do something that might be illegal, so Counsel declined to take Victim's statement. Victim thereafter contacted law enforcement and Applicant was arrested for violating the conditions of his bond. Counsel recalled reviewing discovery with Applicant, including the Victim's statement.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant. First, Applicant did not offer the Victim as a witness, nor any new statement from Victim, such that this Court is left with only speculation as to what, if anything, he would have said to benefit Applicant. Second, Counsel articulated a clear and valid reason to not further pursue a revised statement from Victim—Counsel was justifiably concerned about witness tampering. Third, the evidence presented would appear to discredit any suggestion that Victim would have been cooperative to Applicant's defense—Victim caused Applicant's bond revocation shortly after Counsel declined to take a statement, which is hardly the act of somebody friendly to the

defense. Fourth, the Court finds Counsel did review the existing Victim statement, along with all other discovery, with Applicant, and did investigate the lead until such time as he properly determined it was improper. Fifth, as noted in the prior section, Counsel advised Applicant to plead guilty due to the overwhelming evidence in the State's case, and Applicant relied upon that advice. There is nothing to show Counsel would have advised differently had he further pursued this line of "investigation." Finally, the Court finds Applicant's testimony largely not credible. For all of these reasons, the Court finds 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 Notice of Appeal***

Applicant alleges Counsel was ineffective in failing to file a notice of appeal after his guilty plea. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted).

Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

At the evidentiary hearing, Applicant testified he verbally indicated to Counsel that he wished for Counsel to file an appeal immediately after signing the plea offer. Counsel denied the claim, and instead testified they never discussed an appeal and Applicant never asked for an appeal. Counsel testified if Applicant had asked for an appeal, he would have filed one.

The Court finds no deficiency on the part of Counsel, or any prejudice to Applicant. Having closely observed the witnesses at the evidentiary hearing, and after considering the evidence presented, the Court finds Counsel's testimony credible and Applicant's testimony not credible. The Court accepts Counsel's version of events, and finds Counsel and Applicant did not discuss the subject of an appeal and that Applicant never requested an appeal. As such, Applicant has failed to meet his burden, and his request for relief by way of this allegation is **DENIED.**

*[Conclusion and signature on following page]*

### III. CONCLUSION

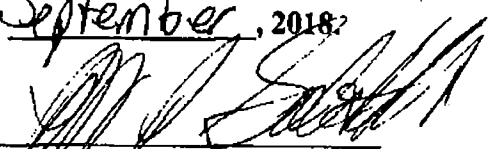
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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), SCRPC 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 28 day of September, 2018.

  
\_\_\_\_\_  
BROOKS P. GOLDSMITH  
Presiding Judge  
Fifteenth Judicial Circuit

  
\_\_\_\_\_, South Carolina

STATE OF SOUTH CAROLINA )

COUNTY OF Horry )

Miguel A. Garcia, #339203 )

Plaintiff )

v. )

State Of South Carolina )

Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
2015-CP-26-6311

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

2019 OCT -9 PM 12:58

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:
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- 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)

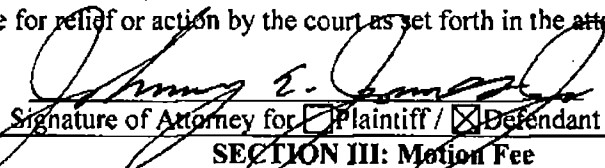
**SECTION I: Hearing Information**

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 25, 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**

Collected by: \_\_\_\_\_

Date Filed: \_\_\_\_\_

- MOTION FEE COLLECTED: \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \_\_\_\_\_



ALAN WILSON  
ATTORNEY GENERAL

October 5, 2018

2018 OCT -9 PM 12:54

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

Re: Miguel Angel Garcia, #339203 v. State of South Carolina  
2015-CP-26-6311

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), SCRCP."

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 25, 2018

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

2018 OCT -9 PM 12:54

**Re: Miguel A. Garcia, #339203 v. State of South Carolina  
2015-CP-26-6311**

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.

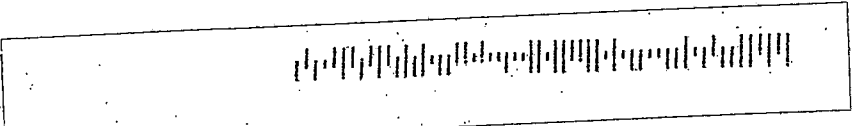
Sincerely,

Johnny E. James Jr.  
Assistant Attorney General

JEJ/mm  
Enclosure

cc: Steven W. Fowler, Esquire

ler I  
Main Street  
237  
SC 29582



Law Firm  
Foster Fight For You



Charlotte PS DC 29582  
TUE 23 OCT 2018 AM

Clerk of the S. C.  
Supreme Court  
1231 Gervais Street  
Columbia SC 29201

1st Class

Large Envelope