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RECEIVED

FEB 04 2019

January 30, 2019

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of Court
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

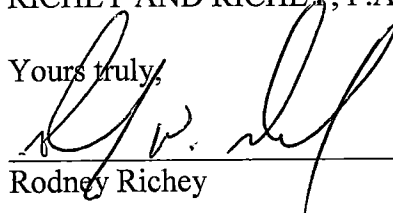
RE: Richard T. Stribling, SCDC# 263959 vs. The State of South Carolina
Case No: 2018-CP-42-0507

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please clock and file the copies and return them to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/
Enclosures
cc: Jordan Cox, Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

HONORABLE J. MARK HAYES, II

2018-CP-42-0507

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S.C. SUPREME COURT

RICHARD T. STRIBLING, SCDC# 263959

APPELLANT,

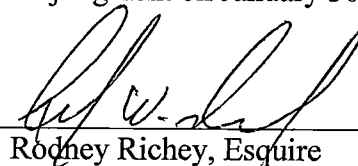
vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Richard T. Stribling appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable J. Mark Hayes, II, Circuit Judge on November 9, 2018 an Order issued on January 29, 2019 and filed on January 29, 2019. The Appellant received notice of the judgment on January 30, 2019.



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Attorney for the Appellant
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Greenville, SC 29603
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Other Counsel of Record:
Jordan A. Cox, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
HONORABLE J. MARK HAYES, II
2018-CP-42-0507

RECEIVED
FEB 04 2019
S.C. SUPREME COURT

RICHARD T. STRIBLING, SCDC# 263959

APPELLANT,

vs.

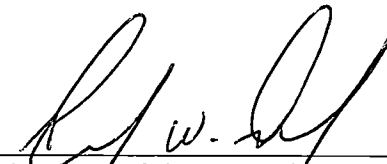
STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on January 30, 2019, addressed to their attorney of record, Jordan Cox, Esquire Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: January 30, 2019



Rodney Richey, Esquire
Attorney for the Appellant
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Greenville, SC 29603
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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Richard T. Stribling, #263959)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2018-CP-42-0507

ORDER OF DISMISSAL

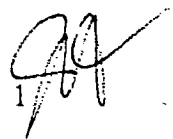
This matter comes before the Court by way of an application for post-conviction relief filed on February 12, 2018, by Mr. Richard T. Stribling (Applicant). Respondent made its Return on or about April 24, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on November 9, 2018, at the Spartanburg County Courthouse in Spartanburg, South Carolina.

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CLERK OF COURT
SPARTANBURG COUNTY

Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by Jordan A. Cox, Esquire, of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on his own behalf. Respondent called Matthew W. Shealy, Esquire, ("Counsel") as a witness at the hearing. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies the application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of confinement of the Spartanburg County Clerk of Court. In December 2015, the Spartanburg County Grand Jury indicted Applicant for possession with criminal sexual conduct with a minor, first degree (2015-GS-42-5243). Matthew W. Shealy, Esquire, represented Applicant. Assistant Solicitors Lindsey H. Overby and Jennifer



A.J. Jordan of the Seventh Circuit Solicitor's Office represented the State.

On July 13, 2017, Applicant proceeded to trial before the Honorable J. Derham Cole in Spartanburg County, South Carolina. Prior to a verdict by the jury, Applicant entered a guilty plea pursuant to North Carolina v. Alford. Following the State's recommendation, Judge Cole sentenced Applicant to fifteen years of incarceration. Applicant did not appeal his guilty plea or sentence.

FACTUAL HISTORY

During February 2015, around Valentine's Day, Applicant was living in Spartanburg County, South Carolina. Applicant's daughter ("Victim") lived in Alabama at the time with her mother. Applicant had not seen Victim for eleven years, but made contact with her through Facebook. Victim visited Applicant in South Carolina during February 2015 and stayed for several weeks. Victim testified at trial that after being with Applicant for two weeks, Applicant sexually assaulted her in a bedroom of her grandfather's house. Victim testified Applicant sexually assaulted her a second time within two days of the first incident.

Victim was able to get away from Applicant and stayed with her aunt in Spartanburg County following the beach trip. After her mother picked her up, Victim told her mother what had occurred with Applicant. Victim's mother went to law enforcement with the allegations against Applicant. Victim received a positive pregnancy test and traveled to Georgia for an abortion procedure.

ALLEGATIONS

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

1. "Ineffective assistance of counsel"
 - a. "Counsel had a conflict of interest."

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SPARTANBURG COUNTY

- b. "Counsels failed to investigate, or perform certain pretrial functions."
 - c. "Counsel failed to properly select a jury."
 - d. "Counsel failed to pursue defenses available to defendant."
 - e. "Counsel failed to use important evidence at trial."
 - f. "Counsel prejudiced the outcome of my case."
2. "I am also being held unlawfully because I was improperly denied a motion to mistrial at trial by Judge Derham Cole."
- a. "Judge Cole who presided over my trial improperly denied a motion to mistrial."

On October 25, 2018, Applicant amended his application for post-conviction relief as follows:


- 1) Trial counsel was ineffective for failing to contest the chain of custody of the DNA Sample relied upon by the State's Expert and;
- 2) By failing to contest the State's evidence regarding the DNA test, results and the method in which the test was performed and;
- 3) By failing to argue the DNA sample was contaminated;
- 4) Trial counsel was ineffective for failing to argue prior false allegations or allegations of sexual abuse by the alleged victim and;
- 5) By failing to argue third party guilt or that the minor had sexual relation with another individual;
- 6) By failing to argue the gestational age of the fetus and;
- 7) By failing to argue and admit prior contact the allege victim had with the defendant through phone record, facebook and;
- 8) The applicant guilty plea was not knowingly and intelligently made.

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 STANFORD COUNTY

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant

At the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he was represented by Counsel following his arrest. Applicant testified it was his decision to proceed to trial after the State offered a twenty-year sentence. Applicant testified that Counsel tried to convince him to plead every day of the week leading up to trial. Applicant wanted Counsel to argue that he was not the source of the pregnancy. Applicant wanted Counsel to argue that the pregnancy was caused from Victim's boyfriend. Applicant wanted Counsel to use text messages

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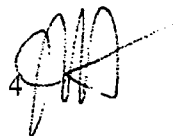
from Victim showing their conversations were not inappropriate. Applicant wanted Counsel to argue against the chain of custody, concerning the fetal tissue evidence.

Applicant testified that Counsel did a good job arguing the chain of custody procedure at trial. Applicant accepted the plea offer from the State after the offer was changed to five years less than originally offered. Applicant testified that he wanted to keep his appellate rights, but understood when Judge Cole explained he could not challenge the evidence at trial when he pleaded guilty. Applicant testified that he was worried he would get thirty years if convicted at trial. Applicant was scared to speak truthfully at the guilty plea proceeding, but understood the questions from Judge Cole.

Counsel

Counsel testified he has practiced law since 2008. Counsel believes the chain of custody issue was a viable defense at trial. Counsel believes Applicant could have won at trial on this issue. After reviewing the evidence, Counsel testified that an expert witness said “[Applicant is in trouble.” Counsel does not recall being told about prior false allegations of sexual misconduct by Victim. Counsel believed that had the case been retried, the State would have corrected the chain of custody issue.

Counsel testified that Victim appeared sympathetic to the jury and made a strong witness for the State. Counsel believes that even if the chain of custody argument was successful, the jury would likely have convicted Applicant based upon Victim’s testimony. Counsel felt well prepared for trial and believes he made a good argument on his motion for a mistrial. Counsel explained to Applicant his chances of winning on appeal from the denial of his motion for a mistrial, as well as what a new trial would mean for Applicant. Counsel did not believe the case was defensible, aside from the chain of custody issue.



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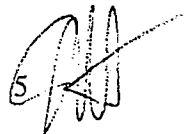
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 at



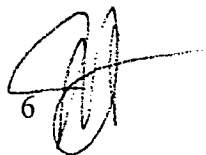
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688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, an 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 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden of proof and has not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant:

"Trial Counsel was ineffective for failing to contest the chain of custody of the DNA sample relied upon by the State's Experts"

Applicant alleges Counsel rendered ineffective assistance of counsel by failing to contest the chain of custody of the DNA sample relied upon by the State's expert witnesses at trial. Applicant has failed to meet his burden of proof. While Applicant seemed sincere at the hearing, his testimony was not credible when placed in contrast with the transcript of the plea hearing. Applicant acknowledged and praised his attorney's work during his trial. The record clearly shows that not only did Counsel argue against the chain of custody evidence, but it appears from the testimony presented during the PCR hearing that due to the efforts of Counsel, enough damage was done to the State's presentation of the DNA evidence that the offer of a fifteen year sentence was made by the State just prior to closing arguments. Prior to that point, the State had only offered an active time sentence of twenty years.

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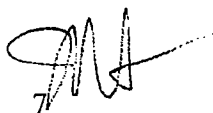
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Counsel appeared credible during his testimony at the evidentiary hearing. Counsel detailed his arguments against a proper chain of custody for the DNA evidence by the State. Although his motion for a mistrial was denied, Counsel testified that the issue would likely have been successful on appeal. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

"By failing to contest the State's evidence regarding the DNA test, results and the method in which the test was performed"

Applicant alleges Counsel was ineffective for failing to contest the State's evidence regarding his DNA test, results and method in which the test was performed. Applicant has failed to show Counsel rendered deficient performance. Applicant testified that he wished Counsel had argued that the results of the DNA testing showed he did not impregnate the victim. Applicant testified he wanted Counsel to argue Victim's boyfriend was involved in the crime, rather than himself. Applicant testified that he wanted Counsel to challenge the method in which the DNA testing was performed at trial.

Counsel's testified credibly as to his defense strategy concerning the DNA test. The record clearly shows Counsel effectively challenged the chain of custody of the DNA evidence, as well as effectively cross-examined the State's expert witnesses as to their methodology. Specifically, Counsel was able to obtain testimony from the State's expert that one of the DNA samples was inconclusive. Counsel testified credibly that by arguing that another person was responsible for the crimes, it would have shifted the burden onto Applicant to prove his claim at trial. Counsel testified that this was not a viable defense, based upon the evidence in the case. "[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,



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632 (2010). Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

“By failing to argue that the DNA sample was contaminated”


Applicant alleges Counsel was ineffective for failing to argue the DNA evidence was contaminated prior to trial. Applicant has failed to show Counsel rendered deficient performance. Applicant testified that he wanted Counsel to argue that the chain of custody for the DNA evidence was mishandled, thus contaminating the evidence. Applicant failed to provide any further testimony or evidence to support this allegation.

Counsel testified credibly at the evidentiary hearing and effectively challenged the chain of custody for the DNA evidence. For the same reasons outlined above, the record clearly shows the DNA evidence was challenged by Counsel at trial. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

“Trial Counsel was ineffective for failing to argue prior false allegations of sexual abuse by the alleged victim”

Applicant alleges Counsel was ineffective for failing to present evidence of previous false allegations of sexual abuse made by Victim. Applicant has failed to show Counsel rendered deficient performance. Applicant provided no further testimony or evidence to support this allegation. Counsel testified that the only viable issue for Applicant’s defense was the chain of custody argument. Counsel testified there was no admissible evidence to support a claim of prior false allegations by the Victim. Based upon Counsel’s credible testimony and the record, Counsel was not deficient in his representation. Applicant has failed to meet his burden of PROOF. This allegation is denied and dismissed with prejudice.

“By failing to argue third-party guilt or that the minor had sexual relation with another individual”



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Applicant alleges Counsel was ineffective for failing to argue that a third-party was at fault or that Victim was involved in a sexual relationship with another individual at the time of the pregnancy. This Court interprets this allegation as the same as Allegation 2 and would make the same findings. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

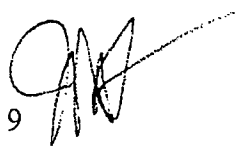
"By failing to argue gestational age of the fetus"

Applicant alleges Counsel was ineffective for failing to argue the gestational age of the fetus. This Court interprets this allegation as failing to challenge the DNA evidence and results at trial. As previously stated, Counsel testified credibly as to his trial strategy and to the DNA evidence issues facing Applicant. Counsel was well-prepared for trial and was able to enact enough damage to the State's presentation of the evidence, the State offered a plea recommendation of five years less than the original offer. Applicant has offered no evidence to show the argument of the gestational age of the fetus would have been a viable defense at trial and Counsel testified credibly that the only viable defense Applicant had was the chain-of-custody issue. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

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DEPARTMENT OF PROBATION & PAROLE

"By failing to argue and admit prior contact the alleged victim had with the defendant through phone records, facebook"

Applicant alleges Counsel was ineffective for failing to argue and admit prior contact with Victim and himself via text messages and Facebook. Applicant alleges he turned over text messages and Facebook messages between himself and Victim to Counsel prior to trial. Applicant testified he wanted Counsel to use these messages during trial to show his communication with Victim was not inappropriate. Applicant has failed to show Counsel rendered ineffective assistance.

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Counsel testified that Applicant's defense was to challenge the handling of the DNA and fetal tissue evidence. Counsel testified that the strategy to not present a case-in-chief was a strategic decision, as was the decision for Applicant not to testify. Applicant has not presented any evidence to show Counsel's decision not to present evidence of past communications between Victim and Applicant fell below the reasonable norms of criminal representation. Applicant has failed to meet his burden of proof.

In the event that Counsel's decision was deficient, Applicant has failed to show he was prejudiced by this alleged deficiency. Applicant did not testify that he would not have pleaded guilty had Counsel presented the text message communications at trial. To the contrary, Applicant pleaded guilty because of the offer of fifteen years made by the State during his trial. Applicant testified that he was afraid if he was convicted, he would receive a thirty year sentence. Applicant has failed to meet his burden of proving prejudice. This allegation is denied and dismissed with prejudice.

"The Applicant's guilty plea was not knowingly and intelligently made"

Applicant alleges that he did not enter his guilty plea knowingly and intelligently. Applicant alleges he never wanted to enter a guilty plea. Applicant has failed to meet his burden of proof.

A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130,137, 654 S.E. 2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State,

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368 S.C. 378, 629 S.E. 2d 353 (2006). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Roddy v. State, 339 S.C. 29 (2000).


The plea transcript clearly reflects Applicant was advised of all of his rights, including the guilty plea's limited right of appeal. Counsel testified credibly at the evidentiary hearing. Counsel testified he advised Applicant that the jury was likely to convict him, but he may have a viable appellate issue for the chain-of-custody evidence, specifically the denial of his motion for a mistrial. Counsel cautioned Applicant that although he could win on this appellate issue, it would result in a new trial where he would likely be convicted based upon the corrected chain-of-custody evidence. Applicant testified that he made the decision to enter his guilty plea, in part, based upon the offer of fifteen years. Applicant testified that he was scared of facing a thirty year sentence if convicted at trial. The plea transcript reflects a thorough colloquy with Applicant and his understandings of the plea proceeding. The record establishes Applicant had a full understanding of the consequences of his plea and the charges against him. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

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CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an

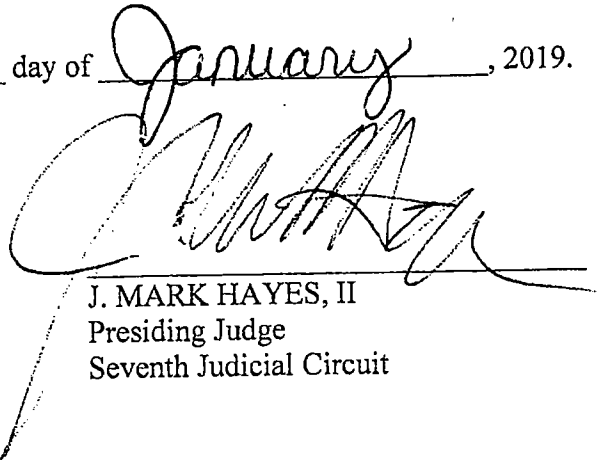
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appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 29th day of January, 2019.

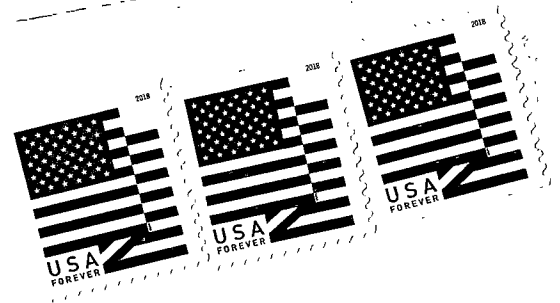


J. MARK HAYES, II
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

2019 JAN 29 PM 2:26
SPARTANBURG COUNTY
SOUTH CAROLINA

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The Honorable Daniel E. Shearouse
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