



ALAN WILSON
ATTORNEY GENERAL

April 30, 2012

RECEIVED

MAY - 1 2012

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

S.C. Supreme Court

RE: Richard Jordan, 303333 v. State of South Carolina
2008-CP-40-3397

Dear Mr. Shearouse:

The Return to Petition for Writ of Certiorari in the above appeal is due to be served and filed on today. However, this is to respectfully request a 30-day extension until May 30, 2012 in which to serve and file this Return.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload.

Sincerely,

Robert D. Corney
Assistant Attorney General

RDC:jri

cc: Robert M. Pachak; SC Office of Appellate Defense

The Supreme Court of South Carolina

Richard G. Jordan,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER

Counsel has submitted a petition pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 210 (1988), and moves to be relieved. We deny the petition to be relieved and direct the parties to address the following question:

Did the PCR judge err in finding trial counsel did not have an actual conflict of interest?

Petitioner shall serve and file a petition on this question within thirty (30) days of the date of this order. Thereafter, respondent shall have thirty (30) days to serve and file its return.

IT IS SO ORDERED.


C. J.
FOR THE COURT

Columbia, South Carolina

March 7, 2012

cc: Appellate Defender Robert M. Pachak
Assistant Attorney General Robert Corney

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

FEB - 8 2011

Certiorari to Richland County

S.C. Supreme Court

L. Casey Manning, Circuit Court Judge

RICHARD G. JORDAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

JOHNSON PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether trial counsel was ineffective in failing to disclose a conflict of interest?

STATEMENT

Petitioner was convicted of trafficking in meth and possession with intent to distribute meth after a jury trial held before the Honorable G. Thomas Cooper, Jr. on June 21-23, 2004, in Richland County. Respective sentences of twenty-five (25) years and ten (10) years were imposed. Harry Depew, Esquire was trial counsel.

Petitioner appealed his convictions and his appeal was affirmed by the Court of Appeals on August 2, 2007. State v. Jordan, Op. No. 2007-UP-216.

Petitioner filed an application for post-conviction relief on May 14, 2008. An evidentiary hearing was held on March 30, 2009, and December 8, 2009, before the Honorable L. Casey Manning. Petitioner was present and was represented by Tricia Blanchette, Esquire. Respondent was represented by Brian T. Petrano, Assistant Attorney General. Both petitioner and trial counsel testified at the hearing.

On May 4, 2010, Judge Manning issued an order denying and dismissing petitioner's application for post-conviction relief.

This petition follows.

ARGUMENT

Trial counsel was ineffective in failing to disclose a conflict of interest.

Petitioner testified at the evidentiary hearing that trial counsel represented his co-defendant and she also had pending charges. This was an actual conflict of interest. (App. p. 719, lines 16-20). Petitioner said his girlfriend, Cynthia Summers, went with him when he retained trial counsel to represent him. She was also a suspect at the same time. Trial counsel did not tell him he was also representing his girlfriend. It was not until during trial that petitioner found out about the conflict of interest. (App. p. 721, line 19 – p. 722, line 16). Trial counsel failed to disclose prior to trial that Ms. Summers was a confidential informant that he was working on a current case with her in Lexington County. (App. p. 725, line 16 – p. 726, line 1).

In Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008), this Court wrote:

“The Sixth Amendment right to counsel attaches upon initiation of adversarial judicial proceedings and at all critical stages of a criminal trial.” State v. Sterling, 377 S.C. 475, 479, 661 S.E.2d 99, 101 (2008). “To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affective his attorney’s performance.” Thomas v. State, 346 S.C. 140, 143 551 S.E.2d 254, 256 (2001). “An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant’s.” Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). This Court has further stated that an actual conflict of interest occurs:

When a defense attorney places himself in a situation inherently conducive to divided loyalties... if a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client.

Duncan v. State, 281 S.C. 435, 438. 315 S.E.2d 809, 811 (1984)
(quoting Zuck v. State of Alabama, 588 F.2d 436, 439 (5th Cir.
1979).

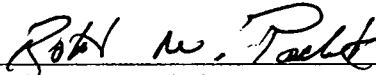
379 S.C. at 101, 665 S.E.2d at 168

Trial counsel in this case had an actual conflict of interest and prejudice does not need to be shown in such an instance.

CONCLUSION

Petitioner's writ should be granted.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of February, 2011.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
L. CASEY MANNING, CIRCUIT COURT JUDGE

RICHARD G. JORDAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

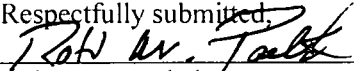
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Richard G. Jordan states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on December 8, 2009. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Richard G. Jordan.

Respectfully submitted,

Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 8th day of February, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

L. Casey Manning, Circuit Court Judge

RICHARD G. JORDAN,

PETITIONER,

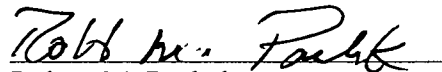
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

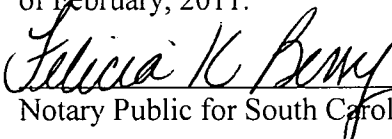
CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Brian Petrano, Esquire this 8th day of February, 2011.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day
of February, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
L. Casey Manning, Circuit Court Judge

RECEIVED
FEB 23 2011
S.C. Supreme Court

RICHARD G. JORDAN,

PETITIONER,

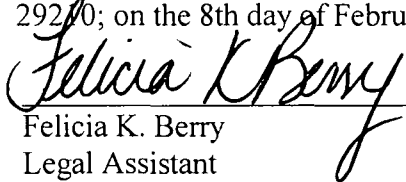
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

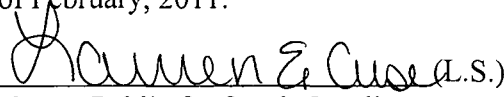
CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Richard G. Jordan #303333 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29200; on the 8th day of February, 2011.



Felicia K. Berry
Legal Assistant

SWORN TO BEFORE ME this 8th day
of February, 2011.



(Notary Public for South Carolina)

My Commission Expires: August 23, 2014.



ALAN WILSON
ATTORNEY GENERAL

February 9, 2011

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

RECEIVED

FEB 10 2011

S.C. Supreme Court

Re: Richard G. Jordan, 303333 v. State
2008-CP-40-3397

Dear Mr. Shearouse:

We are in receipt of the Johnson Petition for Writ of Certiorari. Respondent waives the filing of a formal Return in light of the position taken by Petitioner's counsel in this matter. Thus, it is our position that there is probative evidence in the record to support the ruling of the lower court. Such evidence meets the standard of review in these proceedings. Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984).

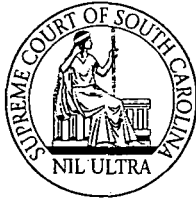
By filing this informal Return, we understand that we are not waiving our right to brief any issue should this Court grant certiorari. By copy of this letter, I am serving opposing counsel with a copy of our informal Return.

Sincerely,

Brian T. Petrano
Assistant Attorney General

BTP/jri

cc: Robert M. Pachak, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 9, 2011

Richard G. Jordan #303333
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Jordan, Richard G. v. The State

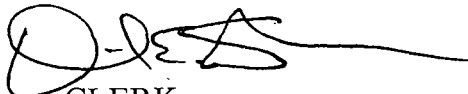
Dear Mr. Jordan:

Your counsel has submitted a Petition for Writ of Certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition & Appendix on February 9, 2011.

You may, within forty-five (45) days of the date of this letter, file with this Court a pro se response to the Petition filed by your counsel. In this response, you may raise and argue any issues you believe the Court should consider in this appeal. Upon receipt of your pro se response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

If you do decide to file a pro se response, the response must be either typewritten or legibly hand printed, and must have at least a one inch margin on all sides. Further, you will need to only submit one copy of your response, and this copy should **not** be stapled or bound in any manner.

Very truly yours,



CLERK

DES/jj

cc: Appellate Defender Robert M. Pachak
Assistant Attorney General Brian T. Petrano



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

December 13, 2010

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Richard G. Jordan v. State of South Carolina

12/13/2010

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator

RECEIVED

DEC 13 2010

S.C. Supreme Court



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
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Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

July 27, 2010

Ms. Carol M. Thueme
Circuit Court Reporter
P O Box 1981
Irmo, SC 29063

Dear Ms. Thueme:

Our office has been requested to perfect the appeal arising out of:

Richard G. Jordan v. State of South Carolina Case #: 08-CP-40-03397.

County: Richland Date of Trial: December 8, 2009

Presiding Judge: L. Casey Manning

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. Carol M. Thueme
July 27, 2010
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,


Lorie French
Legal Services Coordinator

cc: S.C Supreme Court
Attorney General's Office



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Defender
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate

July 27, 2010

RECEIVED
JUL 27 2010
S.C. SUPREME COURT

Tricia Blanchette, Esquire
P O Box 12725
Columbia, SC 29211

Re: Richard G. Jordan v. State of South Carolina

Dear Ms. Blanchette:

The Chief Appellate Defender has reviewed the Affidavit of Indigency for the above case and has approved for this Office to perfect the appeal for Mr. Jordan.

Please contact me if you should have any questions concerning this matter.

Sincerely,

Loriene French
Legal Services Coordinator

cc: S.C. Supreme Court

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address:
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

July 14, 2010
VIA HAND DELIVERY

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

RECEIVED

JUL 14 2010

S.C. SUPREME COURT

RE: Richard G. Jordan v. State, 2008-CP-40-3397

Dear Sir:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the Respondent.
- (2) A copy of the orders which are to be challenged on appeal.
- (3) This appeal is being filed with the Supreme Court pursuant to Rule 243 (b), SCACR.

By copy of this letter, I am sending a copy of these documents to Appellate Defense along with Mr. Jordan's completed Affidavit of Indigency.

Thank you for your assistance with this matter. Please contact my office with any questions.

Yours truly,

A handwritten signature in black ink, appearing to read "Tricia A. Blanchette".

Tricia A. Blanchette
Attorney at Law

cc: Brian T. Petrano, Assistant Attorney General
Office of Appellate Defense
Richard G. Jordan

Phone: 803-988-0008 Facsimile 803-988-8070

Email: BlanchetteLaw@Gmail.com

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable L. Casey Manning, Circuit Court Judge

Case No.: 2008-CP-40-3397

RECEIVED

JUL 14 2010

S.C. SUPREME COURT

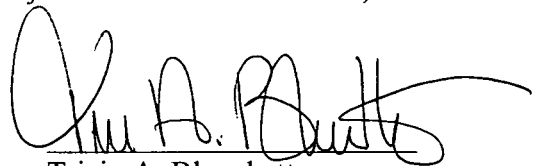
Richard G. Jordan,.....Petitioner,

vs.

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

NOTICE OF APPEAL

Richard G. Jordan, Petitioner, appeals the Order of Dismissal issued by the Honorable L. Casey Manning on May 4, 2010, which was filed on May 5, 2010. The Petitioner, through counsel, received notice of the entry of the Order of Dismissal on May 11, 2010. The Petitioner, through counsel, also appeals the Order issued by the Honorable L. Casey Manning on June 10, 2010 and filed on June 11, 2010. The Petitioner, through counsel, received written notice of entry of this Order on June 17, 2010.



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Attorney for the Petitioner

Other Counsel of Record:

Brian T. Petrano
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable L. Casey Manning, Circuit Court Judge

Case No.: 2008-CP-40-3397

RECEIVED

JUL 14 2010

S.C. SUPREME COURT

Richard G. Jordan,.....Petitioner,

vs.

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

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, PCR counsel, hereby certify that I placed in the United States Mail on this 14th day of July 2010, a copy of the Notice of Appeal, with postage prepaid and the return address clearly shown on said envelope to the Office of the Attorney General at:

Office of the Attorney General
ATT: Brian T. Petrano, Esq.
P.O. Box 11549
Columbia, SC 29211



Tricia A. Blanchette
P.O. Box 12725
Columbia, SC 29211
(803) 988-0008
PCR Counsel

July 14, 2010

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2008CP4003397

Richard Gaston #303333 Jordan

vs.

State of South Carolina

Plaintiff

Defendant

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other:
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____

JEANETTE W. McBRIDE
 C. P. & S.S.
 2010 MAY -5 AM 11:49
 RICHLAND COUNTY
 FILED

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

- Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- See attached order;
- Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2010.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this 5th day of May, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Richard Gaston #303333 Jordan
 Tricia A Blanchette
 Richard Gaston #303333 Jordan

State of South Carolina
 Brian T Petrano
 State of South Carolina

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Jordan, Richard G., 00303333,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2008CP4003397

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2010 MAY -5 AM 9:59
JEANETTE W. McBRIDE
C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 14, 2008. The Respondent made its Return on March 12, 2009. An evidentiary hearing into the matter was first convened on March 30, 2009 and continued until another PCR term, i.e. the remainder of the hearing was held on December 8, 2009 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Tricia Blanchette, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Harry Depew also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by Harry Depew, Esquire. On May 11, 2007, after a jury trial with the Honorable G. Thomas Cooper, the Applicant was convicted and sentenced to the following:

Grand Jury Term	Indictment Number	CDR	S.C. Code S.	Potential Sentence	Charged Offense / Offense Description	Sentence Received	Sentence into Custody / Offense
1-04	2004GS407950		0112 44-53-0375(B)(1)	* 15 *	Drugs / PWID Meth - 1st offense	10 CC	No
1-04	2004GS407950		0370 44-53-0375(C)(2)(c)	* 25-30 *	Drugs-Trafficking Meth - 400 g or more V.S. (85%), Ser. (17-25-45(C)(2)(a)	25 CC	No
NOTES: Also received a \$200,000 fine for 2004GS407950.						TOTAL	POSSIBLE

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Jordan, Richard G, Op. No. 2007-UP-216 (S.C. Ct. App. filed August 2, 2007).

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of trial counsel; violation of U.S.C.A. 6th Amend.

(b) _____

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) (1) Trial counsel failed to provide a proper defense by failing to compel the prosecution to comply * continued on attached sheet *

ATTACHMENT TO QUESTION 10. (a) (1)

with the South Carolina Rules of Criminal Procedure, and the South Carolina Rules of Evidence regarding the evidence presented to the jury, specifically, the evidence of: (a) the propane tanks purportedly containing anhydrous ammonia, (b) the 417 grams of an alleged controlled substance, and, (c) the paraphernalia of hoses and jars alleged to have been used in a manufacturing process of an illegal controlled substance. Trial counsel never once sought forensic verification of any of the evidence submitted by the prosecution to infer that Applicant was guilty of manufacturing, possessing, or trafficking in the alleged illegal substance;

(2) trial counsel failed to challenge the prosecution by motion before the Court for PRODUCTION OF DOCUMENTS from the prosecution, showing forensic proof of the evidence submitted;

(3) trial counsels' failure to challenge the prosecution by motion before the Court to compel the prosecution to SHOW, by the required elements, constructive possession of 417 grams of an alleged illegal substance;

(4) trial counsel rendered ineffective representation by: (a) failing to inspect the evidence presented to the jury by the prosecution, (b) failing to inspect the crime scene, (c) failing to read the Police Reports, (d) failing to interview any State witnesses or defense witnesses offered by the Applicant that could have supported Applicants' plea of not guilty;

(5) trial counsel failed to object to the Courts' finding regarding third party guilt, especially when the subject matter of third party guilt was introduced by the prosecution, who at that point legally "opened the door" for discussion of third party guilt before the jury. Trial counsels' failure to object to this finding and move for a ruling prejudiced the Applicants' defense by the fact that the subject matter was not preserved for appeal because of trial counsels' failure to object on the record.

18. State clearly the relief you seek in filing this application.

Reversal of conviction and sentence on indictment 2004-GS-40-7951, and

Remand for new trial

At the evidentiary hearing, Applicant proceeded on the allegations stated in the application for post-conviction relief.

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 further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Applicant testified that after he was arrested and released on bond he went with his girlfriend (Cynthia Summers) to meet with and ultimately retain trial counsel (Mr. Harry Depew). The Applicant claimed that there was never a waiver for the conflict of interest because the Applicant represented the co-defendant. The Applicant claimed that trial counsel did not prepare for the case and that he never showed him the discovery materials despite repeated requests. The Applicant claimed that there was an offer for fifteen (15) years. The Applicant claimed that he was not comfortable that the jury foreman was an attorney but that trial counsel told him that could be a good thing. The Applicant referenced page twelve (12) of the trial transcript and explained that trial counsel claimed to have represented Summers in the past and that she may have been a confidential informant.¹ Despite referencing page 12 of the transcript, the Applicant claims that had he known that Summers used to be a confidential informant he would not have gone to trial and would have pled guilty.² The Applicant testified that there were some 3rd party guilt arguments made during the trial and that trial counsel

¹ Applicant's #1 was introduced – printout from Lexington County Clerk of Court website indicating trial counsel was the attorney of record for Summers (2006GS3200529).

² This Court notes that there is an attempt by the Applicant to allude that Summers was the confidential informant leading to his arrest; however, there is no such evidence that her work as an informant was related to this case.

attempted to ascertain who the tipster was. The Applicant also testified that he thought it was strange when trial counsel smelled the evidence and asked the jury to do the same. The Applicant explained that he did not testify because trial counsel advised him he wanted to retain the right to last argument. The Applicant claimed that he was not aware that the sentence was mandatory.³ The Applicant claimed that he never signed any sort of waiver regarding a purported conflict of interest concerning trial counsel's past representation of Summers. The Applicant was critical of trial counsel claiming that he never pursued a 3rd party guilt claim against Summers.

The Applicant presented testimony from some of his family members who claimed that they thought they overheard Investigator Crane indicate that he really wanted Summers not the Applicant.

Counsel testified that he met with Applicant several times, where he discussed the discovery in the case and the possible defenses for Applicant. Counsel also testified that he was familiar with the area in which the substance of the charge occurred and that he drove out to the area to investigate. Counsel further testified that Applicant retained him on the advice of Applicant's girlfriend at the time, Summers, who was being represented by Counsel on charges unrelated to Applicant's. Counsel testified that Applicant waived Attorney-Client privilege by insisting that Summers be present while Counsel went over discovery and the warrant with Applicant. Counsel testified that Summers was never charged in this case, and therefore was never a co-defendant as Applicant refers to her, and that he and the Applicant discussed potential conflicts of interest, which Applicant at that point waived, though not in writing. Counsel stated

³ This Court notes that the Applicant claimed that he was aware of the mandatory sentence at the trial. (Trial transcript, p. 699).

that Summers was a C.I. on unrelated charges that had nothing to do with Applicant and that Summers told both Applicant and Counsel she was a C.I. Counsel testified that he did have the jury smell the evidence because testimony had been introduced stating that the chemicals were so noxious the neighbors were smelling them from many yards away, and Counsel wanted to refute this testimony by showing the jury that the evidence had little or no odor. “[W]here counsel articulates a valid reason for employing certain strategy; such conduct will not be deemed ineffective assistance of counsel.” Whitehead v. State, 308 S.C. 119, 122 417 S.E.2d 529, 531 (1992). Counsel testified, and the record indicates, that he attempted to argue third party guilt, on the part of Mr. Hutchinson and/or Ms. Summers, but that it ultimately was not accepted by the Court. Counsel testified that he was trying to through mud wherever it would stick. Counsel explained that ultimately his intent was to target Hutchinson for the 3rd party guilty theory. Counsel testified that it may have been an oversight not to request a Denno hearing regarding the Applicant’s statement that he gave when he turned himself in. Counsel explained that he only asked the jury to smell the evidence because it did not have an odor despite law enforcement’s claim that the scene reeked of ammonia. Counsel explained that he advised the Applicant to be cautious about considering testifying because the Solicitor(s) were skilled cross-examiners, and that to do so would mean they could not argue last. Counsel testified that he did go over the mandatory minimum sentence with Applicant and that he filled out and went over the Application of Indigency with Applicant. Counsel explained that he did not think there was enough evidence to consider a lesser included offense instruction for the other charges. Counsel testified that he was not currently practicing law and that he had pled guilty to a crime.

Applicant also made the claim that he would have accepted the plea bargain he had been offered if he had known that Summers was the C.I. in his case, however, Counsel's testimony at the hearing indicates that Applicant knew of Summers previous role as a C.I. and the record and testimony indicates that she was not the "tipster" in Applicant's case.

Based on the above referenced testimony, this Court finds that Counsel's performance was within the range of competent representation and was not deficient in any regard. The record indicates that he attempted to elicit the name of the "tipster" in Applicant's case, and that he argued third party guilt for Applicant, and objected to the Court's finding that mere presence and or mere association were inappropriate charges in Applicant's case. Counsel's testimony at the hearing indicated that he investigated and prepared for the case, that he went over the warrant with Applicant and that he gave Applicant his own copy of the discovery. Counsel testified that he made Applicant aware of all potential conflicts of interest and Applicant waived all potential conflicts, though not in writing as required by Rule 407 (1.7) SCACR. However, the Supreme Court of South Carolina has stated that failure to abide by the rules of Professional Conduct have no bearing on the constitutionality of a conviction.

In our view, the Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction. Their purpose is to regulate and guide the legal profession by defining proper ethical conduct, and 'nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.' Rule 407, SCACR.

Langford v. State, 310 S.C. 357, 360, 426 S.E.2d 793, 795 (S.C.,1993).

This Court is not however convinced that there ever was an actual conflict of interest to waive.

While Summers may have been the initial object of the original tip, once surveillance was conducted on the location law enforcement explained throughout the trial that it was the

Applicant who the only one coming and going from the location. (Trial transcript, p. 602). Accordingly, this Court finds that Applicant's allegations of Ineffective Assistance of Counsel and Conflict of Interest are without merit and are hereby dismissed.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

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, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). 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. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

The Applicant's claims regarding 3rd party guilt and mere circumstantial evidence were the issue(s) in his direct appeal. Those claims were rejected by the appellate court and the Applicant failed to satisfy his burden of proof and demonstrate that trial counsel's performance was deficient and that he was prejudiced.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

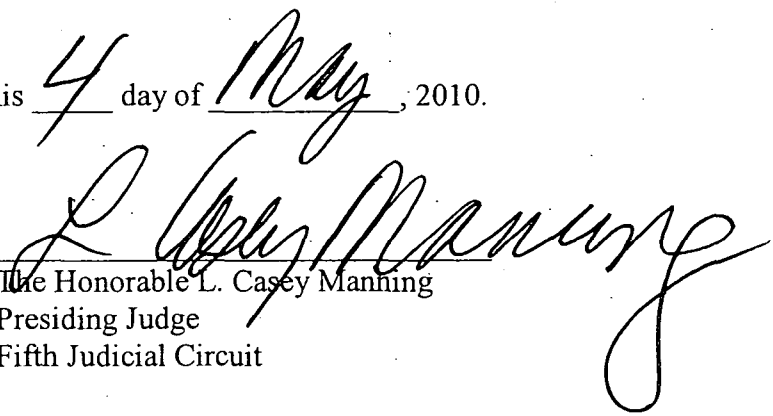
This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (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. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

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 Respondent.

AND IT IS SO ORDERED this 4 day of May, 2010.


The Honorable L. Casey Manning
Presiding Judge
Fifth Judicial Circuit


South Carolina.

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO: 2008CP4003397

IN THE COURT OF COMMON PLEAS

Richard Gaston #303333 Jordan

vs.

State of South Carolina

Plaintiff

Defendant

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC;
 - Rule 41, SCRPC;
 - SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other:
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____

RICHLAND COUNTY
 FILED
 2010 JUN 11 AM 9:44
 JEANETTE W. MCBRIDE
 CLERK OF COURT

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

- Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2010.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this 15th day of June, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Tricia A Blanchette

Brian T Petrano

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W McBride

Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)
FIFTH JUDICIAL CIRCUIT)

Richard Jordan, #303333)
Applicant,)

2008-CP-400-3397

v.)

ORDER

State of South Carolina,)
Respondent.)

RICHLAND COUNTY
FILED
2010 JUN 11 PM 2:24
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before the Court by way of the Applicant's motion to alter or amend pursuant to Rule 59, SCRPC. This matter originally came before the Court by way an Application for post-conviction relief (PCR) filed May 14, 2008. The Respondent made its Return on or about March 12, 2009. A hearing was held at the Richland County Courthouse on March 30, 2009. That hearing was continued and was resumed on December 8, 2009. The Applicant was present and represented by Tricia Blanchette, Esquire. The Respondent was represented by Assistant Attorney General Brian T. Petrano. By Order dated May 4, 2010 this Court dismissed the Application.

In this Rule 59(e) motion Applicant avers that this Court failed to summarize the testimony of David F. Jordan (Father) and David R. Jordan (Brother). Both of the men referenced in the preceding sentence testified at the PCR hearing, however their testimony contained no probative evidence that could lead to a conclusion that Applicant's constitutional rights were violated.

The Applicant further alleged in his Rule 59(e) Motion that the Order of Dismissal failed to address several portions of Applicant's testimony from the PCR hearing.

The Applicant alleges the Order did not address Applicant's testimony regarding third party guilt and the change in the law since the trial or the Applicant's testimony in regards to the

motion in limine to exclude evidence of third-party guilt at trial. The Applicant testified at the PCR hearing that he and his attorney had gone over the state of the law regarding third-party guilt in South Carolina. The Applicant further testified that following the State's motion in limine he was permitted to pursue a third-party guilt theory against Ms. Summers and Mr. Hutchinson at trial. The Applicant made no allegations and presented no evidence that had some other theory of third-party guilt been permitted, the result of the trial would have been different. Further, Counsel did make an objection to the motion, and the trial court decided that the motion was not appropriate at that time. Because Counsel made the proper objection, the issue is no longer whether Counsel was ineffective, but rather, whether the trial court made the correct ruling, which is an issue for direct appeal. Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Accordingly, this allegation is hereby denied and dismissed.

The Applicant then alleges that the Order failed to address the Applicant's testimony regarding the search warrant. The Applicant testified that the search warrant executed upon his home on Screaming Eagle Road bore the name of his girlfriend at the time. The Applicant also affirmed on the stand that because the search warrant was admitted by the State at trial, the trial court permitted the third-party guilt theory as to Ms. Summers, finding that the State had "opened the door." The Applicant did not allege that the search warrant was invalid. He merely asserted that his name was not on the search warrant and that he was not the target of the investigation that led to his arrest. Whether or not the Applicant was the original target of the investigation has no effect on the constitutionality of his conviction once he became the subject of the investigation and prosecution. Accordingly, this allegation is hereby denied and dismissed.

The Applicant then alleges that the Order failed to address the Applicant's testimony regarding the admissibility of his statement at trial. At trial, Counsel agreed to the admission of the statement without objection, stating "I believe that there was no doubt of the voluntariness of [the statement];" after being questioned by the trial court as to whether a motion to suppress would be made. (Trial Tr. p. 74 lines 3-18). The Applicant has not alleged that the statement was involuntary, or would have been suppressed. Rather, the Applicant alleged that Counsel was ineffective for failing to make the motion, with no further proof or assertions that the motion would have been won. In order to prove his claim, Applicant must show that there is a reasonable likelihood that he would have prevailed on the motion, and that the exclusion of this evidence would have changed the outcome of the trial. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). The Applicant failed to meet this burden. Accordingly, this claim is hereby denied and dismissed.

The Applicant further alleges that the Order failed to address the Applicant's testimony about the Applicant being unaware that Randy Veronee would testify, and Counsel's alleged failure to investigate Mr. Veronee's testimony. The Applicant, however did not establish that Trial Counsel was unaware that Mr. Veronee would testify against Applicant. Further, Applicant alleged that he had information that would refute Mr. Veronee's testimony, however, Applicant failed to specify just what that evidence was. Trial Counsel testified that he was unaware of any information that could be used to refute Mr. Veronee's testimony. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The Applicant left this Court to speculate just what sort of information Counsel could have used to refute the testimony of Mr. Veronee, or what Counsel would have uncovered by an investigation into Mr. Veronee. Accordingly, this Court finds that

the Applicant has failed to prove prejudice when he did not offer any testimony as to the substance of the information he claimed to possess which would have allowed Trial Counsel to refute this testimony.

The Applicant next alleges that the Order failed to address his testimony regarding the trial court "rushing" the jury, and inability to answer the jury's question. The record reflects that the trial court asked the attorneys if they would be agreeable to inquiring about the status of the verdict, and perhaps dismissing one indictment so that the jury could leave before a bad storm hit. Trial Counsel testified that the lights had flickered from the storm and that the weather was a real concern. The record further reflects, however, that the trial court went out of its way, while speaking to the foreperson, who was in fact an attorney, to stress that the jury was not to be rushed, and that other arrangements could be made if the jury could not reach a verdict before they needed to leave. The record reflects that this conversation took place after 8:00 p.m. This Court finds that there was no impropriety in the trial court advising the foreperson of the options the jury had available considering the late hour and the inclement weather. Accordingly this allegation is denied and dismissed.

Next the Applicant asserts that the Order failed to address his testimony regarding the Affidavit of Indigency. Applicant testified that Trial Counsel had him sign two sheets after asking Applicant some questions and filling in some lines. Applicant went on to testify that the copy he received stated that he owed money to Trial Counsel, but that he had paid Counsel in advance. Applicant failed to establish how this affected the constitutionality of his sentence. The issue of whether or not the Applicant has paid Trial Counsel's fee does not affect the

constitutionality of his conviction, and accordingly is not proper for PCR.¹ Accordingly, this allegation is denied and dismissed.

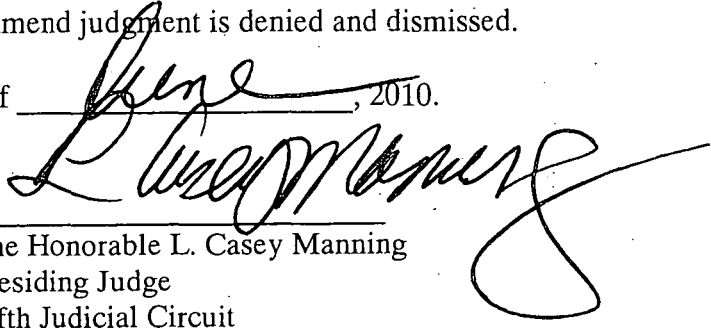
Finally, Applicant in his Rule 59(e) motion alleges that the Order does not address the Applicant's testimony regarding his requests for the drug analysis. Trial Counsel testified that he gave Applicant the discovery and went over the discovery with Applicant. Applicant testified that he received the drug analysis for the first time just a week before the PCR hearing. However, Applicant did not explain what prejudice he experienced from not having a copy of the drug analysis earlier. Applicant has not alleged that having the drug analysis earlier would have produced any other result at trial or would have enticed him to enter a guilty plea.² Accordingly, this Court finds that this allegation must be denied and dismissed.

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of the Applicant's motion and supporting memorandum, 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. The previous order fully comports with the requirements of Rule 52(a), SCRPC.

IT IS THEREFORE ORDERED:

1. That the Applicant's motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 10 day of June, 2010.


The Honorable L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

_____, South Carolina

¹ The Applicant was not credible.

² The Applicant was not credible.