

March 13, 2019

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

RECEIVED

MAR 14 2019

S.C. SUPREME COURT

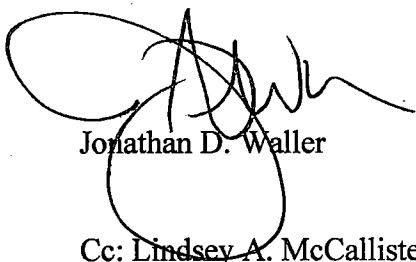
Re: Michael D. Maddox vs. State of South Carolina  
C/A No: 2015-CP-21-1087

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Maddox in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,



Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA  
In The Supreme Court

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RECEIVED

MAR 14 2019

APPEAL FROM FLORENCE COUNTY  
George M. McFaddin, Jr., Circuit Court Judge

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S.C. SUPREME COURT

2015-CP-21-1087

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Michael D. Maddox, # 360685,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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NOTICE OF APPEAL

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Michael D. Maddox, # 360685, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed March 7, 2019, issued by the Honorable George M. McFaddin, Jr., Presiding Judge, Twelfth Judicial Circuit.



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Jonathan D. Waller  
Waller Law Group  
SC Bar No.: 76290  
1116 Blanding Street  
Suite 2B  
Columbia, SC 29201  
803-520-7278 (phone)  
jonathan@wallergroupsc.com  
ATTORNEY FOR PETITIONER

March 13, 2019

Other Counsel of Record:  
Lindsey A. McCallister, Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3319

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM FLORENCE COUNTY  
George M. McFaddin, Jr., Circuit Court Judge

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2015-CP-21-1087

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MAR 14 2019  
S.C. SUPREME COURT

Michael D. Maddox, # 360685,

Appellant,

v.

STATE OF SOUTH CAROLINA,

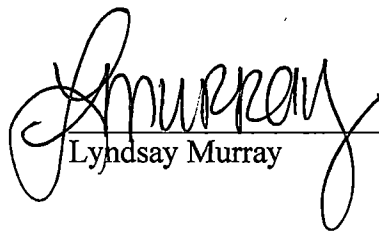
Respondent.

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Lindsey A. McCallister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.

  
Lyndsay Murray

March \_\_, 2019

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

FILED

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2015CP2101087

Michael D Maddox 2019 MAR -8 AM 10: 00 South Carolina State Of

PLAINTIFF(S) DORIS POULOS O'HARA CCCP & GS DEFENDANT(S)  
FLORENCE COUNTY, SC Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

Submitted by: DISPOSITION TYPE (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.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), 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: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- 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; (formal order to follow)  Statement of Judgment by the Court:  
**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

3/8/2019

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on March 7, 2019, and a copy mailed first class or placed in the appropriate attorney's box on March 8, 2019, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED, A TRUE COPY  
Clerk of Court C.P. & G.S.  
FLORENCE COUNTY, S.C.  
*[Signature]*

Jonathan D Waller 1116 Blanding Street Suite 2B  
Columbia, SC 29201

Samuel Leonard Key Rembert C. Dennis Building 1000  
Assembly Street Columbia, SC 29201

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

---

**ATTORNEY(S) FOR THE DEFENDANT(S)**

*Doris P. O'Hara*

---

**Court Reporter**

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**Doris Poulos O'Hara - Clerk of Court**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )  
Michael D. Maddox, #360685, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS )  
TWELFTH JUDICIAL CIRCUIT )  
C.A. No. 2015-CP-21-1087 )  
ORDER OF DISMISSAL )

2019 MAR -7 AM 11:16  
DORIS POULOS O'HARA  
CCCP & GS  
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Michael D. Maddox (Applicant) on April 13, 2015. Respondent made its Return on November 1, 2016. An evidentiary hearing into the matter was convened on April 6, 2018, at the Florence County Courthouse before the undersigned. Jonathan Waller, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Daniel Jordan (Counsel), Esquire, Applicant's plea counsel, was also called to testify. This Court also had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, Respondent's Return, and the plea transcript.

**PROCEDURAL HISTORY**

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the October 2013 term of the Florence County Grand Jury for one count of first-degree criminal sexual

CERTIFIED: A TRUE COPY  
*Doris Poulos O'Hara*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

conduct (CSC) with a minor (2013-GS-21-01327). The charges arose from the sexual abuse of Applicant's four-year-old niece. Applicant was babysitting when his sister, the victim's mother, called the house to check on her daughter. Tr. p. 6. The child reported Applicant had kissed her on the lips, so the mother immediately came to pick her up. Tr. pp. 6-7. When asked if anything else had happened, the child described oral sex and vaginal penetration by Applicant. Tr. p. 7. The victim's mother took her immediately to the hospital and notified law enforcement. Tr. pp. 7-8. The victim had a forensic interview and physical exam, and the physical exam showed evidence of oral and vaginal penetration. Tr. p. 8. Daniel Jordan, Esquire, represented him. Applicant pleaded guilty as indicted on July 18, 2014, and was sentenced by the Honorable Michael D. Nettles to twenty-five years' imprisonment. Applicant did not appeal his conviction or sentence.

### ALLEGATIONS

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

1. "Ineffective assistance of counsel (6<sup>th</sup> Amendment)"
  - a. "Counsel failed to file proper motions"
  - b. "Counsel also failed to investigate the facts and laws of my case"
2. "Sufficiency of Indictment, Subject of Matter (sic) Jurisdiction (14<sup>th</sup> & 15<sup>th</sup> Amendments)"
  - a. "State's indictment is insufficient because the statutes of the indictment doesn't fit (sic) with what I was accused of doing"
3. "Involuntary Guilty Plea (6<sup>th</sup> Amendment)"
  - a. "Plea was involuntary based on counsel's ineffective assistance."

At the hearing, PCR counsel indicated Applicant alleges his guilty plea was involuntary due to ineffective assistance of counsel. Specifically, Applicant contends Counsel failed to investigate and gave Applicant improper advice. Counsel for Applicant indicated he did not wish to proceed

on his allegation regarding a lack of subject-matter jurisdiction and an insufficient indictment. Therefore, this Court finds those allegations are waived and abandoned. Those allegations are hereby denied and dismissed with prejudice.

### **SUMMARY OF TESTIMONY**

Applicant testified he was arrested on this CSC charge, and Counsel was appointed to represent him. Applicant testified he did not spend much time with Counsel discussing the case, but Counsel told him he would get the charge dropped to second-degree CSC, which carried a minimum of only ten years. According to Applicant, when he went to put the plea on the record, he thought he was pleading to second-degree CSC for ten years. Applicant testified the first time he heard of a twenty-five year sentence was on the day of the plea. However, on cross-examination, Applicant acknowledged the judge informed him very clearly of the twenty-five year sentence, and Applicant indicated to the judge he understood. See Tr. p. 10.

Applicant further testified he discussed his version of events with Counsel. Applicant also testified he told Counsel there were problems between him and his sister (the mother of the victim) at the time, and his sister had made up the allegation. According to Applicant, he was at school at the time of the incident and had ridden the school bus that day, but Applicant testified Counsel never asked about his whereabouts, and Applicant did not give this information to Counsel. Applicant testified he also did not review the video of the forensic interview, nor was he provided a transcript.

Finally, Applicant testified he and Counsel briefly discussed the possibility of a trial, but Counsel told him a trial was not in his best interest because he could possibly receive a life

sentence. Applicant testified he did not want to risk a life sentence for something he did not do, and he felt Counsel was not prepared for trial. Applicant acknowledged no trial date had been set.

Counsel testified he was appointed to represent Applicant in May 2013. Counsel testified he and Applicant discussed the evidence in this case, which consisted of the mother's statements to law enforcement, the victim's hospital records, and the forensic interview and examination of the victim. According to Counsel, once Applicant was brought back to Florence County from DJJ, Counsel offered to play the video of the forensic examination, but Applicant did not want to see it. Counsel testified Applicant had a copy of the report, and Counsel summarized for him the contents of the video and the disclosures made by the victim.

Counsel testified he and Applicant discussed an alibi defense, and Applicant told Counsel he was at school. However, while the day of the incident was certain, the time of day was not. Further, Counsel testified he spoke to the sister about Applicant's claim of problems between the two of them, and the sister insisted she would not make up an allegation like this. Counsel testified he did not think she would corroborate Applicant's claim at trial.

Counsel testified he met with Applicant on July 10, 2014, at the Florence County Detention Center, and he and Applicant reviewed the evidence, the elements of first- and second-degree CSC, and the possible penalties. According to Counsel, Applicant asked him to try to negotiate a plea agreement for second-degree CSC with a ten-year sentence, but Counsel was not successful, and the State never agreed to that offer. Counsel further testified the nature of the plea – negotiated for a twenty-five year sentence – was clearly marked on the sentencing sheet, and he discussed with Applicant the other consequences of the conviction, such as day-for-day service of time and the



mandatory minimum sentence. Counsel also testified he and Applicant calculated the time-served credit for which Applicant was eligible. Counsel testified it was Applicant's decision to enter into the guilty plea agreement.

### **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 PCR hearing. This Court has observed the witnesses presented at the hearing, judged their credibility, and weighed 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 (2003).

Applicant alleges he received 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, Applicant 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." 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 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 plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove 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 U.S. at 688 (1984)). 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." Id. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

This Court finds Applicant has failed to prove Counsel's performance was deficient in any way. Counsel met with Applicant and reviewed with him the elements of the crime charged, possible punishments, the evidence and discovery in the case, and Applicant's version of the facts.

1. Failure to investigate

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State,

422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). To establish counsel failed to adequately prepare his case, Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's 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); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Here, Applicant has not presented any evidence or defense theory he was unable to present at trial due to Counsel's alleged ineffective assistance. See, e.g., Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) ("This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. . . .). The Court finds credible Counsel's assertion Counsel reviewed the videotaped statement and offered to play the video for Applicant, but Applicant did not want to see it. Additionally, this Court finds credible Counsel's testimony Applicant's "alibi" was too vague, and in any event, Applicant testified he never asked

Counsel to pursue this defense. The Court finds Counsel investigated the defense Applicant suggested, i.e. a false allegation by Applicant's sister, and it was not corroborated.

2. Improper advice

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985).

As noted above, this Court finds Counsel reviewed Applicant's constitutional rights, the State's evidence, potential defenses, and possible penalties with Applicant prior to the plea. Further, the transcript reflects the plea judge engaged in a detailed recitation of Applicant's constitutional rights, including the right to a jury trial, during the plea colloquy. Tr. p. 9. Further, the plea court clearly informed Applicant the sentence was twenty-five years, "no more and no less." Tr. p. 10. Applicant indicated he wanted to plead guilty, and no one had pressured or threatened him. Tr. p. 10. Applicant also clearly informed the plea court he was satisfied with Counsel's services and felt Counsel had done everything Applicant asked. Tr. pp. 10-11.

Applicant told the plea court he did not need more time to speak with Counsel to make his decision. Tr. p. 11. This Court finds no reason why Applicant should be allowed to depart from the truth of the statements he made under oath during the plea.

Accordingly, this Court finds Applicant has failed to meet his burden of proof as to deficiency or prejudice as to any of his allegations. Therefore, the application for post-conviction relief shall be denied and dismissed with prejudice.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes 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.

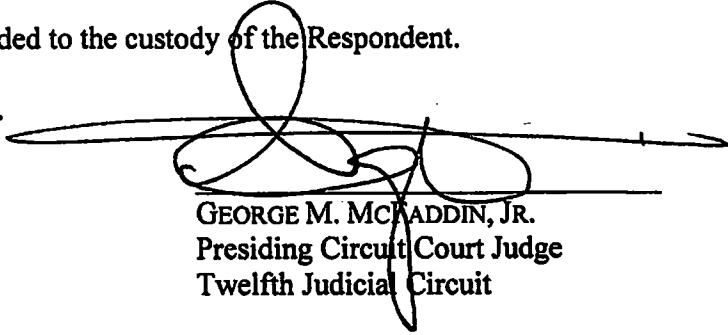
The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right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



**IT IS THEREFORE ORDERED:**

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED.**



GEORGE M. McMADDIN, JR.  
Presiding Circuit Court Judge  
Twelfth Judicial Circuit

March 4, 2019

**FILED**  
2019 MAR -7 AM 11:16  
DORIS POULOS O'HARA  
CCCP & GS  
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY  
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