

  
**MINOR**  
LAW OFFICES

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March 18, 2019

**RECEIVED**

MAR 21 2019

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

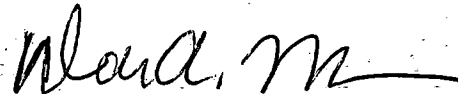
S.C. SUPREME COURT

**RE: Jarvis Hughes, #280975 v. State of South Carolina**  
**2018-CP-46-01114**

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. By way of this letter I am copying the Office of Appellate of Defense, as I was appointed to represent Mr. Hughes.

Best regards,



Donae A. Minor, Esq.  
Attorney at Law

cc: Jarvis Hughes (#280975)  
Janell H. Gregory, Asst. Attorney General  
York County Clerk of Court (Civil)  
Office of Appellate Offense

STATE OF SOUTH CAROLINA  
In The Supreme Court

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MAR 21 2019

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Thomas A. Russo, Circuit Court Judge

Case No. 2018-CP-46-01114

Jarvis Hughes, #280975, ..... Petitioner,


v.

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

NOTICE OF APPEAL

Applicant, Jarvis Hughes, appeals the order of the Honorable Thomas A. ,  
Russo, dated February 22, 2019, and filed March 7, 2019.

March 18, 2019

  
DONAE A. MINOR, ESQUIRE  
Minor Law Office, LLC  
1750 SC Highway 160 West,  
Ste. 101-259  
Phone: 803-504-0971  
SC Bar No. 102550  
ATTORNEY FOR APPLICANT

Opposing Counsel:  
Janell H. Gregory, Asst. Attorney General  
S.C. Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549

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MAR 21 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable Thomas A. Russo, Circuit Court Judge

Case No. 2018-CP-46-01114

Jarvis Hughes, #280975, ..... Petitioner,

v.

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


PROOF OF SERVICE

I, Ella Williams, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Janell H. Gregory, Asst. Attorney General  
S.C. Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

March 18, 2019

  
DONAE A. MINOR, ESQUIRE  
Minor Law Office, LLC  
1750 SC Highway 160 West,  
Ste. 101-259  
Phone: 803-504-0971

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2018CP4601114

Jarvis Hughes	280975	South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

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 OF DISMISSAL

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.

S/Thomas A Russo  
 Circuit Court Judge

2141  
 Judge Code

2-22-2019  
 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 7, 2019**, to attorneys of record or to parties (when appearing pro se) as follows:

Jarvis Hughes McCormick Correctional Institute 386  
Redemption Way McCormick, SC 29899

Janell H Gregory Attorney General's Office P.O.Box 11549  
Columbia, SC 29211

Donae Alecia Minor 1750 Highway 160 W STE 101 #259  
Fort Mill, SC 29708

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

*David Hamilton*

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Court Reporter

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David Hamilton - Clerk of Court

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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), SCRCP.**

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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 YORK )

IN THE COURT OF COMMON PLEAS  
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Jarvis Hughes, #280975, )  
Applicant, )

2018-CP-46-01114

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )

FILED-RECEIVED  
2019 MAR -7 AM 11:26  
DAVID HAMILTON  
C.C.C.P. CLERK  
YORK COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed on April 12, 2018, by Jarvis Hughes (Applicant) and amended on December 10, 2018. The State (Respondent) filed a Return on July 16, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on January 28, 2019, at the Moss Justice Center. Applicant was present at the hearing and represented by Donae A. Minor, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General’s Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Assistant Public Defender Melissa Inzerillo of the Sixteenth Circuit Public Defender’s Office (Counsel), also testified. 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 this application.

**I. PROCEDURAL HISTORY**

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court’s order of commitment. During the November 2015 term, the York County Grand Jury indicted Applicant for distribution of crack cocaine, third offense (2015-GS-46-3456). Counsel represented Applicant. Assistant Solicitor Matthew Shelton of the Sixteenth Circuit Solicitor’s Office prosecuted the case.

Applicant proceeded to trial before the Honorable John C. Hayes, III. The jury found Applicant guilty as indicted. On June 21, 2016, Judge Hayes sentenced Applicant to imprisonment for twenty years, along with credit for time served of 306 days.

Applicant filed a timely notice of appeal. Taylor D. Gilliam, Esquire, of the Office of Appellate Defense submitted a brief and motion to be relieved pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals granted counsel's motion to be relieved and dismissed the appeal on February 7, 2018. The remittitur was returned to the circuit court on February 23, 2018.

## **II. SUMMARY OF FACTS**

On June 12, 2015, Applicant sold crack cocaine at the Bestway Inn on Riverview Road to a confidential informant (CI). (Trial Tr. 105.) The drug transaction between Applicant and the CI occurred during a multi-jurisdictional "Drug Unit" operation. (Trial Tr. 105.) The CI was a paid informant and was provided \$50 by the Drug Unit to purchase the crack cocaine from Applicant. (Trial Tr. 139, 144 – 145.) The CI received \$60 for participating in the operation. (Trial Tr. 169.) During the operation, the confidential informant was outfitted with a camera and a wire that allowed law enforcement involved in the operation to view and hear Applicant and the informant. (Trial Tr. 106.) The CI was searched prior to meeting with Applicant to purchase the crack cocaine. (Trial Tr. 203.) The CI was searched again upon his return to law enforcement. (Trial Tr. 158-159.) Upon the CI's return, law enforcement recovered crack cocaine from the CI. (Trial Tr. 158.)

## **III. ALLEGATIONS RAISED**

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:

- a. Counsel failed to require the court to provide a jury instruction on criminal intent;
- b. Counsel failed to properly investigate Applicant's case including but not limited to:
  - i. Interviewing witnesses;
  - ii. Evaluating the veracity and authenticity of evidence sought to be used against Applicant;
  - iii. Conducting an independent investigation;
- c. Counsel failed to zealously advocate and defend Applicant's best interest during trial including but not limited to:
  - i. Challenging inconsistencies in witness testimony and evidence

An evidentiary hearing was held on January 28, 2019, Applicant informed this Court he intended to proceed on the grounds enumerated in his application and amended application.

**IV. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING**

*Applicant's Testimony*

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he wants a new trial because he is innocent. Applicant testified he met with Counsel three times to discuss the case prior to his trial. Applicant testified Counsel explained the evidence the State had against him and the plea deals being offered by the State. Applicant testified Counsel answered his questions halfway, and he did not believe she investigated his case. Applicant testified he never received the warrant in which he was indicted on, and that he brought this up before the Magistrate. Applicant testified he asked Counsel to investigate the room number where the crime happened, his phone records, and the witnesses involved in the case. Applicant testified he does not believe Counsel did any of the investigation he requested. Applicant testified the State had video of some guy, but the guy on the video was not him. Applicant testified Counsel should have interviewed witnesses regarding his AKAs because he was not known as "Pootie" or "Lucky," which contradicted the State's case. Applicant testified his AKA is "J." Applicant testified Counsel did not visit the motel where the alleged crime occurred. Applicant testified

Counsel never reviewed the motel's video footage to see if it was actually him in the video. Applicant testified Counsel did not investigate a discrepancy in the room number where the crime occurred.

Applicant testified at the trial Investigator Harrelson did not remember who helped him identify Applicant, and he relied on a third party to identify him in this case. Applicant testified he believes the photo line-up should not have been allowed to be used against him because it was in black and white and did not show skin color, age, or height. Applicant testified Counsel should have argued more about the photo line-up.

On cross-examination, Applicant testified he recalled asking the court for leniency. Applicant also testified he recalled explaining to the court that he knew what he did was wrong, but that he could not find a job and had to make money to support his family.

#### *Counsel's Testimony*

Counsel also testified at the post-conviction relief hearing. Counsel testified she inherited Applicant's case from another attorney who left the office. Counsel testified she started from scratch on Applicant's case. Counsel testified she had enough time to prepare Applicant's case for trial. Counsel testified she met with Applicant between six and eight times pre-trial and one time post-trial to discuss any appeal. Counsel testified that her investigator met with Applicant one time. Counsel testified she went over Applicant's charge with him and the elements the State would have to prove at trial. Counsel testified she filed Rule 5 and Brady Motions. Counsel testified she received discovery in this case and reviewed discovery with Applicant. Counsel testified the CI's criminal history, the phone line-up, and the video evidence against Applicant were included in the discovery.

Counsel testified Applicant had a plea offer extended to him prior to her involvement. Counsel testified she reviewed that offer with him and continued negotiations on his behalf with the State. Counsel testified there was an offer for drug court and a lower sentence, which was declined by Applicant. Counsel testified she communicated all plea offers to Applicant and it was his decision to proceed to trial.

Counsel testified the trial strategy was to challenge the identification of Applicant and attack the credibility of the CI. Counsel testified her pre-trial motion challenging the photo-lineup was partially successful in that it prevented Investigator Harrelson from being able to identify Applicant as the suspect during the trial. Counsel testified she also made a motion to have the video redacted because the CI and suspect discuss future drug deals, but the trial court ruled the conversation was part of the res gestae of the case and did not allow the redaction.

Counsel testified she cross-examined all witnesses. Counsel testified she cross-examined the CI regarding his criminal history, his inconsistent statements to law enforcement, and Applicant's AKAs. Counsel testified her goal with the cross-examination was to create doubt regarding the CI's testimony against Applicant.

Counsel testified she moved for a directed verdict at the close of the State's case, but it was denied by the trial court. Counsel testified the judge provided the jury with standard jury instructions. Counsel testified she does not believe a criminal intent charge should have been given to the jury because intent was never at issue at the trial. Counsel testified the issue was identification of the Applicant by the CI, not intent.

On cross-examination, Counsel testified she has handled a lot of cases like Applicant's in her career. Counsel testified she discussed the strengths and weaknesses of Applicant's case with him prior to trial. Counsel testified Applicant was properly indicted on the charge in this case.

Counsel testified she did an independent investigation of Applicant's case. Counsel testified she went to the motel to see who rented the room and found Applicant had not rented any rooms at the motel on the date of the incident. Counsel testified she talked to Applicant about other people who may have been in the room at the time of the incident. Counsel testified Applicant told her he felt like Keyon Brown was in the room, but Counsel could not find a subject by that name during her investigation. Counsel also testified the video showed the CI and the suspect were the only ones in the room at the time of the incident.

Counsel testified Applicant had multiple pending drug charges. Counsel testified the charge they were proceeding to trial on involved the CI and Applicant in a face to face drug transaction. Counsel testified the other people Applicant mentioned were involved in Applicant's other pending drug charges. Counsel testified she did not see the other names Applicant mentioned being relevant in this case because this case was about the CI doing a face to face drug transaction with Applicant in a motel room. Counsel testified she challenged the CI on Applicant's AKAs, but he stuck to his story during his testimony. Counsel testified she does not have any notes indicating she discussed phone records with Applicant.

#### **V. APPLICABLE LAW**

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (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. 441, 334 S.E.2d 813.

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. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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, 300 S.C. 115.

## **VI. FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, and Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

### **Ineffective Assistance of Counsel**

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed

to prove both deficiency on the part of Counsel and any prejudice therefrom. Furthermore, after observing the witnesses and passing on their credibility, this court finds Counsel's testimony to be credible. By contrast, this Court finds Applicant's testimony lacks credibility.

*Counsel failed to properly investigate Applicant's case*

Applicant alleges Counsel was ineffective for failing to investigate and evaluate the State's evidence against Applicant. "[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)).

This Court finds Counsel's performance did not fall below the standard of professional norms. This Court finds credible Counsel's testimony that she reviewed the State's evidence and discussed the evidence with Applicant. This Court finds credible Counsel's testimony that she did not interview the witnesses Applicant mentioned because they were involved in Applicant's other pending drug cases and not relevant to the case being tried. This Court finds credible Counsel's testimony that she challenged the photo line-up and the identification made by law enforcement and the CI. The Court finds credible Counsel's testimony that her investigation of Applicant's case included a visit to the motel where the incident occurred.

This Court finds Counsel thoroughly investigated the facts and circumstances giving rise to Applicant's charges, as well as possible defenses, and, therefore, Applicant has failed to establish deficiency of Counsel. As Applicant has failed to establish what additional investigation Counsel should have performed as well as what benefit such investigation would have yielded, he has failed to establish prejudice. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

*Counsel failed to zealously advocate for Applicant's best interest*

Applicant alleges Counsel failed to zealously advocate for him during his trial because she did not challenge the inconsistencies in witness testimony and evidence. This Court finds this allegation is without merit.

This Court finds credible Counsel's testimony that her trial strategy was to attack the CI's credibility and challenge the identification of Applicant. This Court finds credible Counsel's testimony that she cross-examined the CI on his inconsistent statements regarding Applicant's AKA, the motel room number where the drug deal occurred, statements he made to law enforcement regarding his personal drug use, and his criminal history. The Court also finds credible Counsel's testimony that she challenged the photo line-up used to identify Applicant. This Court finds credible Counsel's testimony that she was able to successfully challenge Investigator Harrelson's identification of Applicant, which prevented Investigator Harrelson from being able to identify Applicant in court during the trial. This Court finds Applicant has failed to show how Counsel was deficient or any resulting prejudice from her representation. This Court finds this allegation must be denied and dismissed with prejudice.

*Counsel failed to request a jury charge on criminal intent*

Applicant alleges Counsel was ineffective for failing to request a criminal intent jury charge. This Court finds this allegation meritless. This Court finds credible Counsel's testimony that intent was not at issue in this case and the jury instructions provided by the trial court were proper. This Court finds Applicant has failed to prove either deficiency or prejudice with respect to this allegation. Applicant has failed to show there is a reasonable probability the outcome of his trial would have been different had a criminal intent charge been provided to the jury. This Court finds Applicant has failed to meet his burden of proof regarding this allegation. Therefore, this allegation must be denied and dismissed with prejudice.

## **VII. CONCLUSION**

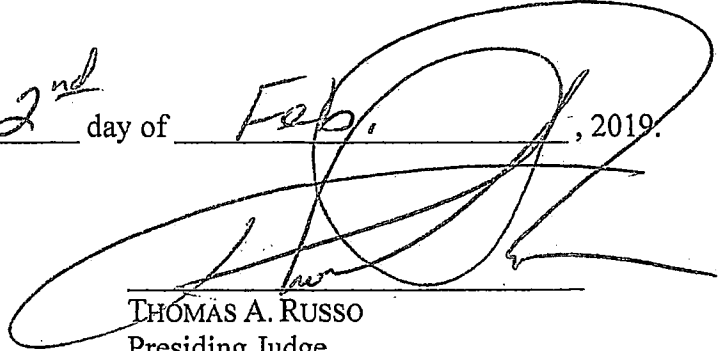
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief 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, post-conviction relief 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 THAT:**

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22<sup>nd</sup> day of Feb., 2019.



THOMAS A. RUSSO  
Presiding Judge  
Sixteenth Judicial Circuit

Florence, South Carolina

**P**

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Clerk, Supreme Court of South Carolina  
PO Box 11330  
Columbia SC 29211-1330

**USPS TRACKING #**