

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

ROBIN GRAY REESE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000141

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DAVID SPENCER
Senior Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

INDEX

INDEX	i
TRANSCRIPT OF TRIAL (February 28 – March 2, 2012) ¹	1
<u>DIRECT APPEAL DOCUMENTS</u>	
FINAL BRIEF OF APPELLANT	1186
FINAL BRIEF OF RESPONDENT	1210
COURT OF APPEALS OPINION (Op. No. 2014-UP-300).....	1258
REMITTITUR	1260
<u>POST-CONVICTION RELIEF DOCUMENTS</u>	
APPLICATION FOR POST-CONVICTION RELIEF	1261
STATE’S RETURN.....	1268
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING (August 30, 2016)	1273
APPLICANT’S PROPOSED ORDER GRANTING POST-CONVICTION RELIEF.....	1339
ORDER OF DISMISSAL.....	1353
MOTION TO AMEND PURSUANT TO RULE 59(e)	1364
STATE’S RETURN TO MOTION	1367
ORDER DENYING MOTION.....	1370
<u>APPELLATE DOCUMENTS</u>	
PETITION FOR WRIT OF CERTIORARI	1372
RESPONDENT’S MOTION FOR REMAND.....	1399

¹ Pages 629, 725, and 1090 from the trial transcript are missing and were not included in the Record on Appeal for Petitioner or her co-defendant in their direct appeal cases. Petitioner’s Counsel contacted the court reporters involved with the trial but neither of them had retained a copy of the 2012 trial transcript.

RETURN TO MOTION FOR REMAND1403

REPLY TO RETURN TO MOTION FOR REMAND1412

ORDER REMANDING CASE1417

REMAND DOCUMENTS

APPLICANT’S PROPOSED ORDER GRANTING POST-CONVICTION RELIEF.....1420

RESPONDENT’S PROPOSED ORDER1441

AMENDED ORDER OF DISMISSAL.....1468

EMAIL TO COUNSEL CONTAINING SIGNED AND CLOCKED AMENDED
ORDER OF DISMISSAL.....1491

RULE 59(e) MOTION.....1493

ORDER DENYING APPLICANT’S MOTION TO ALTER OR AMEND THE
AMENDED ORDER OF DISMISSAL.....1500

INDICTMENTS1505

incarceration. This Court denied the PCR Application and Applicant's subsequent motion for reconsideration.

Applicant appealed the denial of her PCR Application to the Supreme Court of South Carolina ("the Supreme Court"). Soon after, this Court – pursuant to the Supreme Court's October 18, 2018 Order vacating this Court's Order of Dismissal – issued a revised Order. The Amended Order of Dismissal was filed on November 19, 2018, and was mailed to counsel of record on the same date.

On December 7, 2018, Applicant mailed a copy of the instant Motion to Alter or Amend to the Court and to counsel for the State. On December 13, 2018, the motion was filed with the Richland County Clerk of Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Applicant's Motion is Not Timely

The South Carolina Rules of Civil Procedure state, "A motion to alter or amend the judgment *shall* be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. "The established case law is that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." *In re Beard*, 359 S.C. 351, 358, 597 S.E.2d 835, 838 (Ct. App. 2004) (citing *Pittman v. Republic Leasing Co.*, 351 S.C. 429, 432, 570 S.E.2d 187, 189; *Ness v. Eckerd Corp.*, 350 S.C. 399, 402, 566 S.E.2d 193, 195 (Ct. App. 2002)). "Although trial judges retain jurisdiction to alter judgements on their own initiative for ten days if a Rule 59(e), SCRCP, motion is filed, after ten days that jurisdiction is lost." *Ness*, 350 S.C. at 402, 566 S.E.2d at 195.

The Court issued its Amended Order of Dismissal in this case on November 19, 2018, and the Richland County Clerk of Court mailed a copy to counsel on the same day.⁴ However, Applicant did not file the instant motion until December 13, 2018, twenty-nine days later. Even accepting Applicant's contention that the Amended Order of Dismissal was not received until November 27, the December 13 filing is still not timely. Therefore, this Court lacks jurisdiction to alter its November 19 judgment; and Applicant's motion must be denied.

II. Applicant's Substantive Argument -- Shackles

Even assuming that this Court has jurisdiction to alter its judgment, Applicant's motion would be denied.

In her motion, Applicant contends that the Court erred in finding that Trial Counsel's failure to object to the jury's view of her leg shackles was harmless beyond a reasonable doubt. First, Applicant argues that she was shackled "for four days in front of a Richland County jury." While this may technically be correct, there is no evidence that the shackles were visible or otherwise obvious to the jury for the duration of the trial. Next, Applicant contends that counsel for her co-defendant mentioned the shackles in his opening statement. However, this too is misleading, as the attorney actually alluded to his own client wearing shackles but made no reference to Applicant. Applicant also challenges the reasoning offered by Trial Counsel for his failure to object to mention of the shackles, arguing that, at the time, he could not have been focused on his own opening statement. However, Trial Counsel actually testified that he was

⁴ RICHLAND COUNTY, FIFTH JUDICIAL CIRCUIT, PUBLIX INDEX, <https://publicindex.sccourts.org/Richland/PublicIndex/CaseDetails.aspx?County=40&CourtAgency=40002&Casenum=2014CP4005657&CaseType=V&HKey=727510149779077521191047611380875573835678678274551061228111688119887212011747675011390511105388119> (last visited Jan. 9, 2019).

"preparing [his] own case for her," referring to his concentration on his defense of Applicant – another error in Applicant's reasoning.

It is clear that the routine use of visible shackles during the guilt phase of a jury trial, absent some special need, violates the due process rights of the accused. *See, e.g., Deck v. Missouri*, 544 U.S. 622 (2005). But while shackling is "inherently prejudicial," a due process violation is typically found only "where a court, *without adequate justification*, orders the defendant to wear shackles that will be seen by the jury..." *Id.* at 635 (emphasis added). Further, in order to lay blame for this alleged direct appeal issue at the feet of Trial Counsel, Applicant must satisfy the *Strickland* factors.

In this case, the Court finds no error on the part of Trial Counsel in his failure to object. Instead, it appears that while no objection was made at the specific time that Applicant's shackles were visible, Trial Counsel did, in fact, discuss the issue with the trial court. On the second day of the trial, Trial Counsel discussed with the court the possibility of Applicant remaining on bond. At that time, the court ruled (over Trial Counsel's objection and based on S.C. CODE ANN. §17-15-20(B)) that Applicant would be taken into custody. When discussing the issue at the evidentiary hearing, Trial Counsel testified, "...Judge Cooper made the ruling that they would be in custody, then they would be shackled. So it wasn't my preference." And again during the evidentiary hearing, when Trial Counsel was questioned about his objection to Applicant and her co-defendant being shackled, he states, "I mean, when the judge took them into custody, that was his ruling." Based on the foregoing, this Court cannot find that Trial 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." *See, e.g., Strickland v. Washington*, 466 U.S. 668, 686 (1984)).

performance was deficient.


Even assuming that the first prong of *Strickland* was met, the Court finds that any prejudice to Applicant was minimal because the jury's view of her restraints was extremely limited. As has been previously stated, there was overwhelming evidence of Applicant's guilt. Therefore, it is clear that the jury's quick view of Applicant's leg shackles did not contribute to Applicant having been convicted at trial.

CONCLUSION

IT IS, THEREFORE, ORDERED that the Motion to Alter or Amend the Amended Order of Dismissal is DENIED.

IT IS FURTHER ORDERED that Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED.



JOCELYN T. NEWMAN
Residing Judge

January 9, 2019
Columbia, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT
LYNCHING 1ST DEGREE

At a Court of General Sessions, convened on March 10, 2010, the Grand Jurors of Richland County present upon their oath:

LYNCHING, FIRST DEGREE

CDR: 0313 16-03-0220

Amended by Order
[Signature]

That ROBIN D GRAY REESE did in Richland County on or about February 13, 2010, band together with two or more persons thus constituting a mob for the premeditated purpose and with intent of inflicting violence upon the body of Kenneth Mack, such violence resulting in the death of Kenneth Mack. All in violation of Section 16-03-0220, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

W. Barry Giese
WARREN B. GIESE, SOLICITOR

CERTIFIED TRUE COPY
[Signature]

WITNESSES

(S) Inv. W. Pegram, CPD

ARREST WARRANT NUMBER

K642287

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

MAR 11 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-40-0040

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2010

42

THE STATE
vs.

ROBIN D GRAY REESE

Indictment for

LYNCHING 1ST DEGREE

SC Code: 16-03-0210

CDR Code: 0312

CLASS Felony-Exempt

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment of

Defendant

Witness:

O.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
J. Pegram
C.C.C. PEGRAM
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

✓ (S) PEGRAM - CPD

ARREST WARRANT NUMBER

DP11157

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

Date: **OCT 05 2011**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS4004916

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

✓
OCTOBER TERM 2011

42

THE STATE
vs.

Robin Gray Reese

Indictment for
MURDER

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

1508

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.