

Daniel E. Sheardouse
Clerk of Court

PO Box 11330

Columbia South Carolina 29211

Case# 2015-CP-37-0025

October 18, 2016

Dear, Daniel E. Sheardous

I have enclosed a copy of the PCR judge order Denying Applicant Motion For Reconsideration dated October 7, 2016. The Applicant received the Order Through the SC DC Mail room October 14, 2016. I have also enclosed ~~a~~ The Notice of Appeal Since the PCR judge has made his final ~~decision~~ ruling, all parties has receive the same. Please Make all documents apart of My file to be submitted to the Appellate defense

I Thank you in advance,

RECEIVED

OCT 24 2016

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
HONORABLE R. SCOTT SPROUSE

2015-LP-37-0225

DAN L. Temple, #240638
Appellant.

VS

STATE OF SOUTH CAROLINA
RESPONDENT
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the SCDC Mail room on October 18, 2016 and forwarding a copy to, Senior Assistance Deputy Attorney General, PO Box 11549 Columbia South Carolina 29211-1549

CASE # 2015-CP-37-0025

CERTIFICATE OF SERVICE

I Dan L Temple Certifies that a true copy of the ORDER DENYING Applicant's Motion For Reconsideration Dated October 7, 2016. The Applicant receive the ORDER Through the SCDC Mail room, On October 14, 2016. That he has forwarded, a true copy to, Senior Assistance Deputy Attorney General Johanna C. Valezuela: PO. Box 11549 Columbia SC, 29211. and PCR Counsel

RECEIVED

OCT 24 2016

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Dan L. Temple, SCDC # 240638)
)
)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
)
 Respondent.)


IN THE COURT OF COMMON PLEAS

CASE NO.: 2015-CP-37-0225 .

ORDER DENYING APPLICANT'S MOTION
 FOR RECONSIDERATION

After careful consideration of the filings of Applicant and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Plaintiff's Motion, pursuant to Rule 59, SCRCP, ¹ is DENIED.

AND, IT IS SO ORDERED.


 R. SCOTT SPROUSE
 Judge, Tenth Judicial Circuit

FILED OCONEE COUNTY, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2016 OCT - 7 P 4: 13

Walhalla, South Carolina
 October 7, 2016

A TRUE COPY
 OCT - 7 2016
 CLERK OF COURT - OCONEE COUNTY

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

For Clerk of Court Office Use Only

This judgment was entered on the ~~7th~~ day of Oct, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this ~~7th~~ day of Oct, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Temple - mailed

Valenzuela - mailed

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitefield
CLERK OF COURT

Court Reporter:

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.

FILED OGDNEE COUNTY, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2016 OCT -7 P 4: 13

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

JUDGMENT IN CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 2015CP370225

Dan L. Temple, SCDC # 240638
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by: Court

Attorney for : Plaintiff Defendant
or
 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
- 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:

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

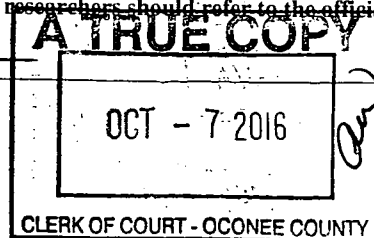
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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.

[Signature]
Circuit Court Judge



2752
Judge Code

10-7-16
Date

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 OCT 7 P 4:17

STATE OF South Carolina

County of Oconee

STATE OF SOUTH Carolina

Dan Laveret v Respondent
Temple

SCDC # 240638

Applicant,

In the Court of Common Pleas
For The Tenth Judicial Circuit

CA NO. 2015-CP-37-0225

Rule 59^e NEW Trials Motion

August 25, 2016 to Alter or Amend judgment

This Matter comes before the Court by way of the applicant PCR filed March 16, 2015 Respondent made its return on May 6, 2016 An Evidentiary hearing was held on June 6, 2016 at the Oconee County Courthouse applicant was appointed by Hugh W. Welborn, Esquire Senior Assistant Deputy Attorney General. Johanna C. Valenzuela represented Respondent.

Applicant and his trial counsel, E Delane Roseman, Esquire testified at the hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Correction pursuant to order of commitment of the Oconee County of Court Applicant was indicted by the

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January 2013 term of the Oconee County Grand jury for Manufacture, distribution, ect. of Cocaine base, third or subsequent offense (2013-GS-37-0184) and possession of other controlled substance in Schedule I to V, second or subsequent offense (2013-GS-37-0185). R. Delane Rosemond, E.Sq., represented Applicant. On March 18-21, 2013, Applicant proceeded to a trial before the Honorable Alexander S. Macaulay and a jury. He was found guilty of the lesser included offense of possession of crack cocaine; and as indicted for possession of other controlled substance, second or subsequent. Judge Macaulay sentenced Applicant to a term of imprisonment for ten (10) years for possession of crack cocaine; and to a term of imprisonment for one (1) year possession of other controlled substance. These sentence were to be served consecutively.

A timely notice of appeal was filed and perfected on Applicant behalf. Carmen Ganjehsani E.Sq., represented Applicant on Appeal.

The South Carolina Court of Appeal affirmed the applicant conviction. State v Temple Op. NO 215-up-061 (SC Ct. APP Filed February 5, 2015)
The Remittitur was issued on February 23, 2015

On June 6, 2016 The applicant testified at the PCR hearing to the following issues.

1. Ineffective assistance of Counsel

2. Trial counsel failed to inform the trial judge, at the suppression hearing that counsel reviewed the alleged controlled buys video with the applicant, before trial that's alleged in the search warrant affidavit dated July 24, 2012. that led to the search of applicant Motel room 103 and there was not a controlled buy in the video that could ~~not~~ not be established.

b. Trial Counsel was ineffective for not motioning to the court to recuse, Magistrate judge, William F. Derrick From presiding over the preliminary hearing dated October 29, 2012 since he was the same judge, Magistrate who signed off on the search warrant affidavit dated, July 24, 2014 that led to the applicant conviction.

c. At the outset of trial, Trial Counsel filed a motion in limine seeking the suppression of the evidence discovered during the search. Where the affidavit in support of the search warrant was not supported by probable cause and lacked any information as to the informant's reliability.

Trial Counsel ^{failure} ~~was ineffective~~ to properly object to the admission of drug evidence such that the

Suppression was not preserved for appellate review.

ARGUMENTS

ONE.

(a) During pre-trial Motion, defense Counsel Moved to suppress the drugs found in the applicant Motel room 103 where the affidavit in support of the Search warrant was not support by probable cause and lacked any information as to the informant's reliability Tr. 42 II. 7-16: 46 1.7- 47, 1.2. During the pre-trial hearing, the state relied upon State v. Dupree 354. se 676, 583. se 2d 437. (Ct. App. 2003) in support of its argument that the Magistrate had a substantial basis for concluding probable cause existed to issue the search warrant Tr. 47. II, 4-17. In Dupree the court observed that "an informant's controlled

buy of the drugs can constitute Probable cause sufficient for a Magistrate to issue a warrant Id at 687,583 SE 2d at 443. The Court went further to state: If the controlled buy was properly conducted, it alone can provide facts sufficient to establish Probable cause for a search warrant Id at '689,583 SE 2d at 444.

Trial Counsel did argue that there was no indication in the search warrant that the informant receive drugs from applicant in a properly conducted buy Tr. 48, 1.13-49 1.10 The Trial Court disagreed and denied the applicant motion to suppress the drug evidence Tr. 57, 11 2-3

Trial Counsel failure to inform the trial judge at the suppression hearing, that Counsel reviewed the alleged controlled buy that's listed on the dates July 17, 2012 and July 23, 2012 in the search warrant a Affidavit dated July 24, 2012 before trial

and there was NO controlled buy from the video that could be established to support the search warrant AFFIDAVIT. Trial counsel denied the applicant the right to inform the trial judge of all the facts surrounding the "alleged" video of the controlled buy that clearly showed, that there wasn't a controlled buy that was properly conducted. applicant was prejudice by counsel lack of effectiveness at trial had counsel informed the trial court of this information, the applicant believe the Motion to suppress on March 18, 2013 would have been granted. and the out come would have been different the applicant 4th amendment right was violated.

ARGUMENT

two

(b) On October 29, 2012 The applicant went before Magistrate judge William F. Derrick, for his preliminary hearing. for distribution of Crack Cocaine to an undercover operative, on two occasions on July 17, 2012 and distribution of Crack Cocaine to an undercover operative on July 23, 2012. All above states listed in the Search warrant affidavit, dated July 24, 2012.

The applicant also, went before Magistrate, judge William F. Derrick on October 29, 2012 for possession with intent to distribute Crack Cocaine and possession of other controlled substance. Schedule I-V. from the illegal search of his Motel room 103 dated July 25, 2012.

The applicant "alleged" Trial counsel was ineffective, because he should have asked that Magistrate judge William F. Derrick to recuse himself. Since he was the Magistrate judge who issued the search warrant, by the Magistrate judge presiding over the preliminary hearing prejudice the applicant. The Magistrate had first hand knowledge of the alleged facts pertaining to the search warrant affidavit, he couldn't have been detached, ^{are} nor impartial by the Magistrate judge recusing

himself from presiding over the Preliminary hearing. and allow another Magistrate judge to preside over the hearing. could have increased the applicant chance of having all, or some of his charges dismissed.

C. Trial Counsel Failure to Object to the admission of the drug evidence at trial and preserve the issue for appellate review, prejudice the appellate, the South Carolina Court of appeals affirmed the applicant conviction, and was not able to rule on the motion to suppress the drug evidence. also Counsel failure to object led the jury to believe that all the drugs was the applicant, when his codefendant was charge jointly for the drugs. and testified for the state, had Counsel. Made 2 timely objection the applicant would have receive 2 different outcome. his 4th amendment was violated.

The applicant has had the opportunity to review the court order of dismissal dated August 12, 2016. The applicant alleges, the order of dismissal doesn't address the issues, applicant testified to at the PCR hearing. The Order of Dismissal has side step the applicant testimony. The PCR transcript will reflect the issues raised at the hearing. Also please take notice, that the record will reflect that PCR Counsel.

Hugh W. Welborn appointed to represent the applicant at the PCR hearing dated June 6, 2016. However Counsel was ineffective at the hearing. Counsel failed to research and investigate issues and raised all available grounds for relief under rule 71.1.d. The applicant must be seen to be without Counsel at the PCR hearing.

In CONCLUSION

The applicant respectfully ask this Court to address each issues that the applicant testified to at the PCR hearing accordance to title 17-27-80 and make a specific finding of fact on each issue raised at the PCR hearing. see also pruitt v. state cite as 423 se 2d

127 (sc. 1992) Petitioner shall be entitled to file an amended application if necessary and the order shall address all issues properly raised at the hearing. McCray v state 305 SC 329, 408 SE 2d 241 (1991) SC. Code Ann 17-27-80 (1991)

Don Sample
#240638

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August 30, 2016

CASE # 2015-CP-37-0225

PROOF OF SERVICE

I Dan Lavert Temple, certify that I have served
2 copy to Attorney Hugh W. Welborn. P.O. Box 173
Anderson. SC 29622. and Senior Assistance Deputy
Attorney General Johanna C. Valezuela. P.O. Box 11549
Columbia SC 29211. 2 copy of the 59^e Motion,
New Trials to Alter or Amend judgement. to provide
any additional arguement. that the applicant hasn't
Mention at the PCR hearing dated June 6, 2016