Carnie Norris
Q4B223 #227226
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

SOUTH CAROLINA SUPREME COURT
Daniel E. Shearouse, Clerk
Post Office Box 11330
Columbia, South Carolina
29211-1330

RECEIVED
JUN 04 2019
S.C. SUPREME COURT

RE: FILING OF ENCLOSE MOTION TO DISMISS
Case No. #2019-000334
C/A No. #2012-CP-42-04651

Mr. Shearouse,

Please allow this correspondence to address the herein contained. It is my position that, if, this Honorable Court would examine this correspondence and the issue raised in the enclosed motion, it would look upon my stance as being favorable in this Motion To Dismiss.

First of all, let me state my case involves the issue which is surely to arise under a "hybrid representation". I am fully aware of the facts that evolved from such a doctrine, yet, I am placed in a position which allows me no other alternative. Let me explain.

A careful examination of the enclosed Exhibit(s) would clearly demonstrate to this Court that for an abnormal period of time, I diligently attempted to received pleadings, orders, and other materials which related to my PCR case. Finally, in

April - May, 2019, I would receive these documents. I would further discover, after the disclosure, that the State had failed to timely file a post-trial motion within the mandated 10 day period. This in essence made the Rule 59(e) motion invalid because it was filed out of time, and no longer properly before the PCR court. With this in mind, I take the position that the State's time for the filing of the notice of intent to appeal was completely out of time. Its simply where the State received the Order Granting Post-Conviction Relief (PCR) on September 8,2017; it did file the Rule 59(e) until September 25,2017. I am aware that the State has included Rule 60, but that does not salvage the time period nor does the issues raised in the 59(e) comport to the Rule 60 mechanism. So, September 8,2017, is when the time began to run for the filing of the notice of appeal. See Rule 203(b)(1), SCACR, (providing a mandatory thirty (30) day time period). Not even this Court can save the State for this flagrant error in judgment. The PCR Order is the law of the case and the facts and evidence simply cannot be ignored or disputed.

At to the "hybrid representation" issue that may arise ... I am aware of JONES V. STATE, 348 S.C. 13, 558 S.E.2d 517 (200). In JONES, this Court held that counsel could not be used as a [c]onduit to the courts. Jones had attempted to have Appellate counsel file a pro se Writ of Certiorari into this Court. The motion now before this Court is one that is completely different and should be viewed in the following light. Especially where it concerns judicial economics and harmony.

I was not aware that the State's Rue 59(e) has been filed, at a minimu of 6 days out of time. I did not discover this until PCR counsel, finally relinquished a copy of it to me. This was sometime in the month of May 2019. This is also when I

received a copy of the Notice of Appeal. I have been diligent in obtaining the various documents and materials that were relevant to the PCR proceedingas. It seemed every corner I turned something would bar my access. I have just recently been appointed Appellate counsel, Susan B. Hackett, Esquire, Assistant Appellate Defender. She is not aware of this issue and that is for several reasons: (1) she has not received anv files or documents relating to this PCR case that would assist her in discovering this claim; and (2) by her only recently being appointed, this Court has not been put to the expense and economic hardships that come along with having to order transcripts, files, brief preparation, etc. Appeals are very expensive proceedings.

At the time of this discovery, I was between counsels, and it had been obvious by this discovery that PCR counsel had no interest in this matter, or he would have discovered it himself. This is my position in the matter.

I believe that public interests is involved because the Attorney Generals Office should be astute enough to safeguard the rights and privileges of the public, to include inmates too. Plus unnecessary costs go directly against the public interest and this matter should be addressed to preserve the economv of this Court. It is my position that there is great merit to this issue and it would end the strain on this Court's docket and resources.

I have further enclosed a copy of all documents and pleadings associated to this case and am serving them upon Ms. Hackett, Appellate counsel, and Mr. Ruckeḁt, PCR counsel for their inspection.

In JONES, the inmate tried to make or have Appellate counsel to file his pro se Writ of Certiorari. Not the

case here, I am not attempting to circumvent Appellate counsel, but have this Court entertain this matter before it goes any further than it has already went. Please examine the Motion To Dismiss and permit it to proceed before the court for judicial review.

If I may be of any further assistance to this Court, in these Matters, please do not hesitate to contact me. Thank you for this Court's time and attention to these matters.

May 31 ,2019

Respectfully Submitted,

Carnie Norris #227226

Carnie Norris
Q4B223 #227226
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

rds/CN

cc: FILE
CLERK
HACKETT
RUCKER
JAMES

STATE OF SOUTH CAROLINA

In The Supreme Court

Case No. #2019-000334
C/A No. #2012-CP-42-04651

Carnie Norris .... Respondent,

vs.

State of South
Carolina .... Petitioner.

MOTION TO DISMISS PETITIONER'S APPEAL FOR LACK OF APPELLATE AND/OR SUBJECT MATTER JURISDICTION

Carnie Norris
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PROCEDURAL HISTORY

On July 6-7,2009, Carnie Norris #227226 (Respondent) was tried by jury in the Spartanburg County Courthouse, Court of General Sessions, for the offense of Armed Robbery. The Honorable Durham Cole, Circuit Court Judge, presided over the trial. Respondent was found guilty and sentenced to twenty-eight (28) years incarceration.

Respondent filed a timely direct appeal into the South Carolina Court of Appeals. This appeal was briefed by Appellate Counsel in accordance with ANDERS V. CALIFORNIA, 386 U.S. 738 (1967). On April 18,2012, in an unpublished opinion the Court of Appeals dismissed the case. STATE V. NORRIS, No. #2012-UP-226 (filed April 18,2012).

On November 7,2012, Respondent filed an Application seeking Post-Conviction Relief (PCR). The PCR application was initially file, pro se, but subsequently PCR counsel, John Rucker, Esquire, was appointed. On September 13,2014, an evidentiary hearing was held in the Spartanburg County Courthouse. The Honorable Roger Couch, Circuit Court Judge, presided over these matters. On September 6,2017, Judge Couch, executed and filed an Order Granting Post-Conviction Relief (Order). (See attached hereto and incorporated herewith, a true and accurate copy of the Order, dated September 6,2017, marked Exhibit [1]).

On September 8,2017, the State of South Carolina (Petitioner), was served a copy of the Order. On September 25,2017, Petitioner would file a Motion To Alter Or Amend Judgment Pursuant To Rule 59(e), SCRCP. (See attached hereto and

incorporated herewith, a true and accurate copy of the Alter or Amend Motion, dated September 25,2017, marked Exhibit [2]). At no time prior to the events stated was Respondent served either of these Exhibit(s).

On January 16,2018, Respondent served a correspondence upon PCR counsel seeking to be provided or disclosed the final order where the PCR court had granted relief. (See attached hereto and incorporated herewith, a true and accurate copy of the correspondence, dated January 16,2018, marked Exhibit [3]).

On February 26,2018, Respondent served a correspondence upon PCR counsel relating to the Order issued by the PCR court. (See attached hereto and incorporated herewith, a true and accurate copy of the correspondence, dated February 26,2018, marked Exhibit [4]).

On May 29, 2018, Respondent served a correspondence upon PCR counsel attempting to discover the status of his case and trying to clear up some form of confusion that had arose with an alleged alter or amend motion. Also, the inquiry was put to PCR counsel concerning a possible bond hearing. (See attached hereto and incorporated herewith, a true and accurate copy of correspondence, dated May 29,2018, marked Exhibit [5]).

On October 22,2018, Respondent served a correspondence upon PCR counsel seeking to have disclosed and served upon him any order relating to the pending post-trial pleading, and requesting a copy of the originally filed Rule 59(e) motion. (See attached hereto and incorporated herewith, a true and accurate copy of the correspondence, dated October 22,2018, marked Exhibit [6]).

On March 11,2019, Respondent served a correspondence upon PCR counsel concerning a verbal communication which occurred around the first week of February 2019, and had been waiting for the requested information concerning his PCR case. (See attached hereto and incorporated herewith, a true and accurate copy of the correspondence, dated March 11,2019, marked Exhibit [7]).

On April 24,2019, Respondent contacted PCR counsel by correspondence relating to the pending purported post-trial motion and plea agreement. (See attached hereto and incorporated herewith, a true and accurate copy of the correspondence, dated April 24,2019, marked Exhibit [8]). A record of the correspondences have been filed with this Motion to demonstrate the diligence utilized by Respondent in attempting to have disclosed and served upon him these two documents.

On April 26,2019, PCR counsel served a copy of the Notice of Appeal upon Respondent. The Notice of Appeal was filed March 4,2019. (See attached hereto and incorporated herewith, a true and accurate copy of the Notice, dated March 4,2019, marked Exhibit [9]).

On May 6,2019, Respondent served a formal correspondence upon the South Carolina Court Administration, concerning the failure of any office or counsel to serve upon him a copy of the Rule 59(e) motion for his records.

On May 14,2019, The South Carolina Court Administration served a response to Respondents correspondence. (See attached hereto and incorporated herewith, a true and accurate copy of the correspondence, dated May 14,2019, marked as Exhibit [10]). Also, on this date, PCR counsel served a correspondence upon Respondent serving him a copy of the Alter or Amend Motion filed by Petitioner's. This was the first copy Respondent had ever seen of

this post-trial motion. (See attached hereto and incorporated herewith, a true and accurate copy of the correspondence, dated May 14,2019, marked Exhibit [11]).

1). Did the untimely filing of a post-trial motion deprive this Court of appellate and/or subject matter jurisdiction to entertain Petitioner's appeal?

A). Timeliness of Post-Trial Motion

The record presently before this Honorable Court clearly demonstrates that there was an untimely filing of a Motion To Alter Or Amend Judgment. The Order granting Post-Conviction Relief (PCR), filed September 6,2017, was a duly authorized and executed Order in which began to run the time for the pursuit and filing of the post-trial motion. See Rule 59(e), of the South Carolina Rules of Civil Procedure, SCRCP.(See Fn. 1).

Fn. 1 - Rule 59(e), SCRCP, Provides: "A motion to alter or amend the judgment shall be served not later than 10 days after the receipt of written order of the entry of the order."

Through and by the Petitioner's own admissions within the post-trial motion, it was stated, as a fact, and filed in the Clerk of Courts Office that Petitioner received the written PCR Order on September 8,2017. Yet, as the Rule 59(e) motion clearly shows, it was not filed until September 25,2017. Even if, arguendo, the Petitioner's would take a stance that the time period did not begin to run until September 9,2017, the day after the day of service, the time for filing the post-trial motion would still be 6 days late. Then taking into consideration, even if they were given the 10 day period for filing, the motion is 6 days out of time. NESS V. ECKERD CORP., 350 S.C. 399, 566 S.E.2d 193 (Ct.App. 2002)(trial judge retains jurisdiction to alter judgment once filed; after 10 days jurisdiction is lost); also ACKERMAN V. V-3 CHEMICAL, INC., 349 S.C. 212, 562 S.E.2d 613 (2002). This in essence means that the post-trial motion was not properly before the PCR court between the dates of September 25.2017 and February 15,2019, when the PCR court filed its written denial. This position is taken because the original PCR Order was filed September 6,2017; the Rule 59(e) filed out of time on September 25,2017. HEINS V. HEINS, 344 S.C. 146, 543 S.E.2d 224 (Ct.App. 2001)(motion was filed more than 10 days, after the initial order, it could not properly have been before the court); PITTMAN V. REPUBLIC LEASING, INC., 351 S.C. 429, 570 S.E.2d 189 (Ct.App. 2002)(trial court lacked subject jurisdiction to award attorney fees ... motion for fees was untimely ... failed to file within 10 days of judgment).

Taking into consideration that "the procedures in civil courts must conform to the Rules of Civil Procedure", NORRIS V. HEYWARD, 312 S.C. 67, 439 S.E.2d 264 (1993), furthermore, rules limiting post-trial motions are rules of

of limitations, not jurisdictional. IN RE BEARD, 359 S.C. 351, 597 S.E.2d 835 (Ct.App. 2004). Looking to the very facts of this issue it is reasonable to find that the Petitioner's have failed to timely file the desired post-trial motion. This would clearly demonstrate the next part of this issue as a means of moving this Court to grant the relief sought within this motion.

Respondent would make one more point before advancing to the next part of this issue. The Petitioner, when drafting their Rule 59(e) motion included Rule 60, SCRCP, to create, it is believed, a "safety net" for failing to timely file the Rule 59(e) within the mandatory 10 day time period prescribed within the rule. It is this Respondent's position that inclusion of Rule 60 does not support nor is it harmonious with the Rule 59(e) pleading contents. This position is taken where the Petitioner's have failed to identify, within their argument, and cited subsection (a) and/or (b) of Rule 60. But, even if they had cited either, or both subsections, Rule 60 is inapplicable to this current circumstance. The reasoning behind that is, Rule Rule 59(e) is not raising a claim of [clerical error] as provided by subsection (a); nor does the position taken raise any form of argument associated with subsection (b)- (1) mistake, inadvertence, surprise or excusable neglect; (2) Newly discovered evidence; (3) fraud, misrepresentation or other misconduct of an adverse party; (4) the judgment is void; and/or (5) the judgment has been satisfied, released, or discharged)). The Petitioner's cannot simply rely on the citation of a Rule like Rule 60 to salvage their failure to timely file the Rule 59(e) motion. This seriously undermines the purpose of post-trial rules due to the fact that, the arguments and position taken within the Rule 59(e) are not properly presented as Rule 60 motions because Rule 60 is a completely distinct and separate vehicle and/or mechanism

than Rule 59(e). This further adds support to these arguments and This Court should weigh their values heavily when reaching a determination in this matter.

2). Lack of Appellate and/or Subject Matter Jurisdiction

Rule 203(b)(1), of the South Carolina Appellate Court Rules, SCACR, provides in pertinent part: "A notice of appeal shall be served on all Respondents within thirty (30) days, after the receipt of written notice of entry of the order or judgment. When a timely ... motion to alter or amend judgment (Rule 52 and 59, SCRCP) ... has been made, the time for appeal for parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion."

The stance taken in the first part of this motion demonstrates the PCR Order granting relief was filed September 6,2017; was received by Petitioner on September 8,2017; and a Rule 59(e) motion was filed September 25,2017. The post-trial motion was filed completely out of time and caused the mandated thirty (30) day time period for filing a notice of intent to appeal to begin to run on September 8,2017, when Petitioner first received the original PCR Order. Since the Rule 59(e) was not filed within the mandatory 10 day time period, it

made the Rule 59(e) outside its time limitations, and therefore, the court had no authority or jurisdiction in which to act upon it, even sua sponte, as a means to salvage the motion. HEINS V. HEINS, 344 S.C. 146, 543 S.E.2d 244 (Ct.App. 2001)(Under rule governing motions to reconsider the court does have the the authority to alter judgment, sua sponte, once the judgment is more than 10 days old). The untimely filing of this Petitioner's Rule 59(e) motion on September 25,2017, caused their notice of intent to appeal, filed March 4,2019, to be outside the jurisdiction of this Court's ability to entertain this appeal. TAYLOR V. CONDON, 58 Fed.Appx. 983, WL 316017 (2003); MEARS V. MEARS, 287 S.C. 168, 337 S.E.2d 206 (1985).

In MEARS, this Court held that the service of a notice of intent to appeal is a jurisdictional requirement and the court has no authority in which to extend or expand the time in which the notice of intent to appeal must be served. STROUP V. DUKE POWER CO., 216 S.C. 79, 56 S.E.2d 745 (1949); WADE V. GORE, 154 S.C. 262, 151 S.E.D470 (1930); RENNEKER V. WARREN, 20 S.C. 581 (1884).

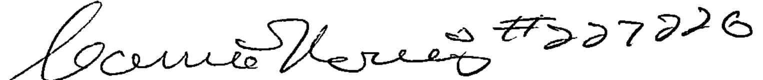
Petitioner has failed to timely file the Rule 59(e) motion, where it is clock stamped on September 25,2017; this failure on their part has caused the thirty (30) day time period for compliance with Rule 203(b)(1), SCACR, to be exceeded and this Court has no jurisdiction to entertain Petitioner's appeal. This fatal error on the part of Petitioner was overlooked by PCR counsel. Respondent would respectfully demand that the appeal filed by Petitioner's be dismissed for lack of appellate and/or subject matter jurisdiction.

CONCLUSION

WHEREFORE, Respondent prays this Court grant the relief sought herein as dismissal of Petitioner's appeal for lack of appellate and/or subject matter jurisdiction due to the untimely filing of the post-trial motion.

May 31, 2019

Respectfully Submitted,



Carnie Norris
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29669

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Case No. #2019-000334
Case No. #2012-CP-42-04651

Carnie Norris .... Respondent,

vs.

State of South
Carolina .... Petitioner.

CERTIFICATE OF SERVICE

I certify that I have served the: (1) Motion To Dismiss Petitioner's Appela For Lack Of Appellate and/or Subject Matter Jurisdiction; (2) Exhibit(s) [1] thru [11]; and (3) Certificate Of Service, upon Petitioner's counsel of record by depositing a copy of the same in the United States Mail, First Class postage affixed thereon, addressed as follows:

CERTIFICATE OF SERVICE ADDENDUM SHEET
Carnie Norris #227226
May 31 ,2019

SOUTH CAROLINA ATTORNEY GENERALS OFFICE
Johnny Ellis James,Jr., Esquire
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, South Carolina
29211-1549;

SOUTH CAROLINA SUPREME COURT
Daniel E. Shearouse, Clerk
Post Office Box 11330
Columbia, South Carolina
29211-1330;

SOUTH CAROLINA OFFICE OF INDIGENT DEFENSE
Susan B. Hackett, Esquire
Assistant Appellate Defender
1330 Lady Street, Suite #401
Post Office Box 1589
Columbia, South Carolina
29201-3332; and

THE RUCKER LAW FIRM
John Rucker, Esquire
128 Millpart Circle, Suite #200
Greenville, South Carolina
29607.

CERTIFICATE OF SERVICE ADDENDUM SHEET
Carnie Norris #227226
May 31 ,2019

May 31 ,2019

Respectfully Submitted,

Carnie Norris #227226

Carnie Norris
Q4B223 #227226
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG Carnie Norris, Inmate Number #227226, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT 2012-CP-42-4651 **ORDER GRANTING POST CONVICTION RELIEF**

2017 SEP -6 AM 10:31
M. HOPE BLACKLEY
CLERK OF COURT SPARTANBURG

This matter came before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 7, 2012. Applicant also has filed three amendments to the original application; two of the amendments were filed *pro se* before he was appointed counsel and one was filed subsequent to the appointment of counsel. The Respondent made its Return on February 14, 2014. An evidentiary hearing was held on September 15, 2014 at the Spartanburg County Courthouse. The Application was present at the hearing and was represented by Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial attorney, Beverly Jones, Esquire. The Court also had before it the trial transcript, the relevant records of the Spartanburg County Clerk of Court, the PCR application and amendments, the return of the State of South Carolina, the exhibits of the Applicant, and the appellate records.

PROCEDURAL HISTORY

The Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. The Applicant was indicted at the at the September 2008 term of the Court of General Sessions for Spartanburg County for armed robbery (2008-GS-42-5631). He was represented by Beverly Jones, Esquire. The Applicant and a Co-defendant were tried before a jury on July 6th and 7th and the trial was presided over by the Honorable J. Derham Cole. The Applicant and the Co-defendant were found guilty of armed robbery. Judge Cole sentenced the Applicant to confinement in the South Carolina Department of Corrections for a term of twenty eight (28) years.

The Applicant filed a timely Notice of Appeal and the appeal was perfected. Appellate Counsel filed an Anders v. California, 386 U.S. 738 (1967), and after review, the South Carolina Court of Appeals dismissed the appeal. State v. Norris, No. 2012-UP-226 (filed April 18, 2012). The Remittitur was issued on June 19, 2012. This Application for Post Conviction relief was filed timely. The Applicant raised numerous claims for Ineffective Assistance of Counsel through his application and amendments.

2017 SEP -6 AM 10: 31
M. HOPE BLACKLEY
CLERK
SPARTANBURG COUNTY

ALLEGATIONS

The Applicant alleged through his application and amendments the following ineffective assistance of counsel claims:

1. Ineffective assistance of counsel, in that:

a. Counsel failed to put the state's case through adversarial testing,

b. Counsel labored under a conflict of interest,

c. Counsel failed to challenge the outside influence by the bailiff,

d. Counsel abandoned her professional duties of loyalties to the applicant,

e. Counsel failed to motion for arrest of judgment,

f. Counsel failed to object to trial court's erroneous jury charge and supplemental jury charge,

g. Counsel agreed to trial court's response to the jury's inquiry,

h. Counsel failed to object to trial court's burden shifting instructions,

i. Counsel failed to object Applicant's Due Process rights being violated.

j. Counsel failed to object to reasonable doubt charge,

k. Counsel failed to object to trial court's constructive amendment of the indictment,

l. Counsel failed to object to the material variance in indictment/due process,

m. "Due process verdict"

n. Counsel partially argued to the jury a theory without any evidence to support it with all evidence clearly contrary to that theory,

o. Counsel failed to request/propose a jury instruction on the theory of defense,

p. Counsel allowed the alleged co-defendant's counsel to deprive the applicant of a fair trial,

q. Counsel failed to object to solicitor's argument, pitting, vouching, blistering,

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M. HOPE BLACKLEY

r. Counsel failed to consult with the applicant about appeal process/post trial,

s. Counsel abandoned her duties of loyalty when she impeached the defendant with a 1995 burglary second and a 1996 common law robbery conviction when it had been established that those particular convictions were inadmissible,

t. Counsel failed to exclude the name and basic nature of the Applicant's prior felony convictions,

u. Counsel used the rules of evidence against the applicant,

v. Trial Counsel was ineffective for failing to object to the joinder of the co-defendant's trials.

w. Trial Counsel was ineffective for failing to move to sever the trials of the defendants.

2. Trial court abuse of discretion, in that;

a. Trial court failed to exclude the name and basic nature of the Applicant's felony convictions,

b. Trial court erred in dismissing Applicant's post trial motion and reconsideration motion as untimely,

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M. HOPE BLACKLEY

3. Ineffective assistance of appellate counsel, in that;

a. Appellate counsel failed to raise applicant's preserved issues on appeal,

b. Appellate counsel failed to comply with the mandates of Anders,

4. Sentence clarification correction, in that;

a. Applicant requests to be awarded 358 days to his present sentence starting from July 16, 2008, to July 9, 2009.

FINDINGS OF FACT AND COUNCLUSIONS OF LAW

This court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has had the opportunity to weigh the testimony of the witnesses, review the transcript, and review and weigh the evidence in this case pursuant to S.C. Code Ann. § 17-27-80 (2003).

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M. HOPE BLACKLEY
CLERK

INEFFECTIVE ASSISTANCE OF COUNSEL

The Applicant alleges he received ineffective assistance of counsel. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052). Additionally, in a PCR action, "[t]he

burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

The Applicant presented evidence through his testimony and exhibits. The State of South Carolina called Ms. Jones in response and she testified that she gave competent advice and represented the Applicant properly both before and during the trial. The Court has reviewed the allegations of the Applicant thoroughly and finds that each of the previously listed allegations fail except for his claim that his counsel failed to render reasonably effective assistance regarding the improper introduction of portions of the applicant's prior record. The Applicant has met his burden of proof regarding his claim that trial counsel was ineffective in failing to prevent the introduction of the Applicant's prior convictions before the jury for reasons described below.

At trial, the prosecution, through the testimony of the alleged victim and witnesses from the scene, alleged the following evidence: Several teenagers, including the alleged victim, were playing Frisbee golf in downtown Spartanburg on July 16th, 2008. The Applicant and the Co-defendant were watching the teenagers and saw an opportunity to rob them. The prosecution alleged that the Applicant approached the teenagers and informed one of them, the alleged victim in this case, that he was a security guard and produced a knife and robbed the alleged victim.

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HOPE BLACKLEY

The police were called, and a responding officer, Bradford James, found the Applicant on top of the alleged victim holding the alleged victim down. Officer James testified that the Applicant and the Co-defendant began walking away from the scene when he arrived. Other officers and the alleged victim testified that the Applicant and the Co-defendant left the scene and crossed the street once they saw the police arriving. The

Applicant and his codefendant consented to a search of their clothing, and the police found items belonging to the alleged victim as well as knife allegedly used in the alleged armed robbery.

The Applicant and the Co-defendant testified on their own behalf. The testimony of the Applicant alleged the following: The Applicant was walking down the street in the evening on the date in question when he noticed individuals on top of the St. Luke's Free Medical Clinic in downtown Spartanburg. The Applicant testified that he went and knocked on the window of the Co-Defendant, who lived nearby, and woke the Co-defendant that something was going on at the clinic and they needed to investigate it. The Applicant testified that he told the Co-Defendant to bring his cell phone and to call the police because he believed that they were witnessing a possible break-in. The Applicant testified that he did not intend to rob the alleged victim, but that he intended to find out who he was. The Applicant testified that the alleged victim produced credit cards and his cell phone, and shortly thereafter the police arrived. The Applicant testified that contrary to the testimony of the prosecution witnesses, he was not standing over the alleged victim, and that he was asked, along with the Co-Defendant, to wait across the street and was eventually escorted across the street by the police. The Applicant testified that he never pulled a knife on the alleged victim, and that the knife found on him pursuant to the consent search was a knife he had previously used to clean fish that day.

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M. HOPE BLACKLEY

It is clear from the transcript that the jury was given two competing stories of what happened that night. It is also clear that the credibility of the witnesses, and particularly the credibility of the Applicant, was crucial for the jury to make a determination of guilt in this case. Both the prosecution and the respective defense

EXHIBIT [1]

counsel sought to attack the credibility of the respective opposing witnesses. The introduction of the Applicant's prior record was a large part of the prosecution's attack on the credibility of the Applicant.

At trial, and after the State rested, the Applicant was asked by the Court if he intended to testify. When he announced he would testify, the State informed the Court that it intended to impeach the Applicant with two prior convictions which occurred within ten years of the trial. Those convictions were common law robbery and burglary, second degree. The Court asked the Applicant's trial counsel if she contended that the two convictions the State intended to use for impeachment were not admissible. The Applicant's trial counsel agreed with the State that the two prior convictions, specifically a 1996 common law robbery, and a 1995 burglary, second degree (nonviolent) were admissible to impeach the Applicant. Additionally, when the Applicant testified, Applicant's trial counsel introduced the convictions on direct examination. Trial counsel's consent to the introduction of the prior convictions, and her introduction of the prior convictions during her direct examination of the Applicant was error. This error was not harmless, and calls into question the outcome of the jury trial. I find that this undermines the confidence of this court in the outcome of the trial as per Cherry + Porter id. RC.

Under the South Carolina Rules of Evidence, Rule 609(a)(1) and Rule 609 (a)(2), and State v. Bryant, 369 S.C. 511 (2006), these prior convictions were more likely than not inadmissible. As indicated in Bryant, the Supreme Court has held that a trial judge must conduct a balancing test to determine whether remote convictions are admissible under Rule 609(b) creates a presumption that remote convictions are inadmissible and places the burden on the State to overcome this presumption. When considering whether to admit prior convictions, a trial judge should consider the following factors:

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H. HOPE BLACKLEY
CLERK OF COURT
SPARTANBURG CO.

(1) The impeachment value of the prior crime;

(2) The point in time of the conviction and the witness's subsequent history;

(3) The similarity of the past crime and the charged crime;

(4) The importance of the defendant's testimony; and

(5) The centrality of the credibility issue.

After the trial court conducts the balancing test, the judge must make a determination and articulate, on the record, the specific reasons for his ruling. Specifically, the trial judge must articulate why the probative value of the prior conviction outweighs its prejudicial effect. Under Rule 609(a)(2), SCRE, if a crime is viewed as one involving dishonesty, the court must admit the prior conviction because prior convictions involving dishonesty or false statement must be admitted regardless of their probative value or prejudicial effect. State v. Bryant, 369 S.C. 511 (2006). (internal citations omitted).

The pertinent text of South Carolina Rules of Evidence, Rule 609 is as follows:

2017 SEP -6 AM 10: 31
M. HOPE BLACKLEY

Rule 609. Impeachment by Evidence of a Criminal Conviction

(a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the

EXHIBIT [1]

witness's admitting — a dishonest act or false statement.

(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

The Applicant's trial counsel failed to submit the prosecution's use of the prior convictions to any adversarial testing and failed to move the court to disallow the use of the prior convictions under the Bryant test. The trial judge would have been required to analyze the Bryant factors had the Applicant's trial counsel properly placed the issue regarding the prior convictions before the court. It is probative to review those factors set forth in the Bryant decision and the South Carolina Rules of Evidence Rules 609(a) and 609(b) as they would have been applied in this case.

The first factor is the impeachment value of the prior crime. Under State v. Bryant, "a conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of truthfulness." State v. Bryant, 369 S.C. 511, 633 S.E.2d 152, 156 (2006). The Applicant's two prior convictions, on their face, did not involve crimes of dishonesty. No additional evidence was given by the prosecution when those convictions were proffered that there was anything about the facts surrounding the convictions that showed any dishonesty.

The second factor that the court would have had to consider is the point in time of the conviction and the witness's subsequent history. The two previous convictions dates

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M. HOPE BLACKLEY
CLERK OF COURT SPARTANBURG

EXHIBIT [1]

from 1995 and 1996 and no other evidence was proffered by the prosecution to show any subsequent criminal history. Those conviction dates were well in excess of ten years before this case. These two prior convictions were also unduly prejudicial under South Carolina Rule 609 (B)(2)(b) in that they were not supported by specific facts and circumstances as required by the Rule. The use of those convictions therefore could not substantially outweighs its prejudicial effect.

The third factor the court would have been required to consider is the similarity of the past crime and the charged crime. The prior conviction for common law robbery is similar to the charged crime of armed robbery. Armed robbery includes all the elements of strong arm robbery. Armed robbery is commission of common law robbery while armed with a deadly weapon. State v. Muldrow 348 S.C. 264, 559 S.E.2d 847 (2002).

The fourth and fifth factors the court would have had to consider is the importance of the defendant's testimony; and the centrality of the credibility issue. In this case the defendant's testimony was crucial to his defense against the charge of armed robbery, and therefore, his credibility was central to this case. As discussed earlier, this case had two competing and diametrically opposed narratives, one for the prosecution and one for the defense. The use of the prior convictions harmed undoubtedly the Applicant's ability to have the jury fairly consider his version of events.

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H. HOPE BLACKLEY
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SPARTANBURG

Turning to the determination of whether the Applicant's trial counsel was ineffective, the factors established by Strickland v. Washington must be applied. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective

performance. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052). Additionally, in a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

The Applicant has met his burden of proof by a preponderance of the evidence. Based upon the analysis of the Bryant factors with the facts of this case, there is a reasonable probability that but for counsel's unprofessional errors, the result of the trial would have been different. Trial counsel's errors in failing to oppose the introduction of the prior convictions, and worse, trial counsel's introduction of the prior convictions during the direct examination of the Applicant, create a probability sufficient to undermine confidence in the outcome of the trial.

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H. HOPE BLACKLEY

If trial counsel had opposed the introduction of the two prior convictions, it is more likely than not that the trial judge would have excluded the use of those convictions. Absent the knowledge of these prior convictions, the jury would have been confronted with two competing versions of the event in question. The jury would not be focused on speculation about the Applicant's character, but would have instead have been required to determine whether the prosecution's version of events was sufficient to prove to them that the Applicant committed an armed robbery in this case beyond a reasonable doubt.

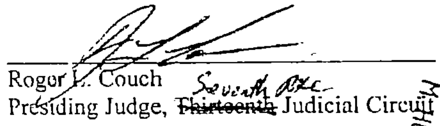
CONCLUSION

Based on the foregoing, the Court finds and concludes that the Applicant has met his burden of proof in this matter and has established a constitutional violation that would require this Court to grant his application. Applicant's trial counsel's performance was unreasonable under prevailing professional norms. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be granted; and
2. That the Applicant's convictions be vacated and his charges remanded for a new trial.

AND IT IS SO ORDERED this 6th day of September, 2017.



Roger L. Couch
Presiding Judge, ~~Thirteenth~~ Seventh Judicial Circuit

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HOPE BLACKLEY
SPARTANBURG

Spartanburg, SC

Date: 9/6/17

EXHIBIT [1]

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9/6/17

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M. HOPE BLACKLEY

EXHIBIT [1]

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Carnie Norris, #227226,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-4651

MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e), SCRCP

Respondent now moves pursuant to Rule 59(e) and Rule 60, SCRCP, and all other applicable rules to alter or amend the judgement.

This matter is before this Court by way of an application for post-conviction relief (PCR). An evidentiary hearing into the matter was convened on September 15, 2014 at the Spartanburg County Courthouse. This Court granted relief by order dated September 6, 2017. Respondent received the filed signed order via the Spartanburg County Clerk of Court on September 8, 2017. The Court granted relief on the basis that:

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(1) "[C]ounsel failed to render reasonably effective assistance regarding the improper introduction of portions of the applicant's prior record."

(Order p. 6).

DISCUSSION

In making this motion, Respondent reserves and incorporates all previous arguments and authority presented to this Court. Respondent would submit that the judgment should be altered or amended based on the following:

<u>Applicability of Rule 609(a) versus Rule 609(b)</u>

Prior to Applicant's trial testimony, the Solicitor indicated that he planned on impeaching Applicant with prior convictions for common law robbery and second degree burglary. (ROA p.

226). Counsel stated on the record that the Solicitor had provided her with documentation of those prior convictions and referenced a 1996 common law robbery and 1995 second degree burglary. (ROA p. 227-8). On direct, Counsel preemptively asked Applicant about both charges, pointing out that the charges were from 1995. (ROA p. 267). Additionally, Counsel pointed out that the Applicant was suffering from a drug problem at the time of the charge and had admitted his involvement in both. (ROA p. 267). On cross examination, the Solicitor asked Applicant if he'd "done robbery before," and if he'd "broke[n] into buildings before." (ROA p. 283). In response, Applicant stated that those incidents were from the past and he hoped the past would not harm him. (ROA p. 283).

This Court found Applicant's prior "conviction dates were well in excess of ten years before this case." (Order p. 11). In its order, this Court found Applicant's two prior convictions were "unduly prejudicial under South Carolina Rule 609 (B)(2)(b) [*sic*] in that they were not supported by specific facts and circumstances as required by the Rule," and that, "the use of those convictions therefore could not substantially outweigh its prejudicial effect." (Order p. 11). Rule 609(b), SCRE, establishes that prior convictions are not admissible "if a period of more than ten years has elapsed since the date of the conviction or **of the release of the witness from the confinement imposed for that conviction, whichever is the later date.**" (Emphasis added).

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Although the conviction dates are past the ten year mark, Applicant was released from confinement imposed for both convictions inside the ten year mark.[1] The 1995 sentence for second degree burglary was 15 years and the 1996 sentence for common law robbery was suspended to nine years plus five years of probation, consecutive to the burglary sentence. Applicant was released on parole in 2004, but then returned to confinement based upon the

[1] See attached Applicant's SCDC records.

parole/probation revocation in 2008 following his arrest on the charges in this case. Therefore, the crimes were not remote in time and would not invoke Rule 609(b). Rather, these crimes were admissible for use in impeaching Applicant under Rule 609(a) and would not raise issues under Rule 609(b).

Rule 609(a) requires that there be a finding by the court "that the probative value of admitting the evidence [of the prior convictions] outweighs the prejudicial effect to the [defendant]." Rule 609(a), SCRE. In contrast to admitting prior convictions under Rule 609(b), Rule 609(a) does not require that the probative value of the conviction **supported by specific facts and circumstances substantially** outweighs the prejudicial effect. Rather, Rule 609(a) only requires the court to determine the probative value of admitting the evidence outweighs its prejudicial effect. The rule assumes there will be **some** prejudicial effect.

There are five factors that should be considered by the trial judge in making the decision to admit prior convictions for impeachment purposes: "(1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness's subsequent history; (3) the similarity of the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue." State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006).

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Deficiency Analysis

As the record reflects, the court failed to make a finding on the record as to the probative versus prejudicial value of the prior convictions and there was no objection to the introduction of the prior convictions. (ROA p. 226-8). Trial counsel testified that had she objected to the prior robbery conviction, Applicant would have still been impeached based on the burglary. This assessment is reasonable and consistent with the factors set forth in Bryant. (1) A prior

conviction for burglary has impeachment value against a defendant's testimony; (2) Applicant was on parole for the burglary when he committed the instant robbery; (3) burglary is not identical or similar to armed robbery; (4) Applicant's testimony was not critical to his defense since his co-defendant testified consistent with Applicant's version of events[2]; and (5) credibility was central to the case thus allowing impeachment using prior convictions was important. It would have been reasonable to assume the burglary conviction would be admissible for impeachment purposes. Although an objection to require the trial court to make the findings required by 609(a) would have established a more thorough record, the result would have been the same in that the burglary would have been admissible to impeach Applicant. Therefore, trial counsel was not deficient in failing to object to the admissibility of the prior burglary conviction.

With regard to Applicant's prior common law robbery conviction: (1) A prior conviction for robbery has impeachment value against a defendant's testimony; (2) Applicant was on probation for the prior common law robbery when he committed the instant armed robbery; (3) while Applicant's prior conviction for common law robbery is similar to armed robbery in that they are both robberies, they are not identical; (4) Applicant's testimony was not critical to his defense since his co-defendant testified consistent with Applicant's version of events; and (5) credibility was central to the case thus allowing impeachment using prior convictions was important. Because it is arguable that the prior common law robbery would have been admitted and because the burglary would have almost certainly been admitted, it was reasonable for trial counsel not to have objected to their use for impeachment purposes.

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HOPE BLACKLEY

Additionally, all articulable arguments which can be inferred from the record as trial strategy can be argued in favor of competence. A strategic or tactical decision does not have to be articulated by counsel on the record, as the passage of time can often wear on the memories of

[2] Trial counsel strongly encouraged Applicant not to testify. (PCR Tr. p. 62-63).

well-reasoned decisions made in the heat of battle of avenues not pursued, objections withheld, or evidence not presented. It is enough that the record show a basis for strategy, not that counsel announce that strategy on the record. See Wood v. Allen, 558 U.S. 290 (2010). (affirming state PCR court's finding that counsel made a strategic decision not to inquire further into a the petitioner's report about his mental deficiencies where the record supported that finding, despite Counsel not articulating the strategy). Notwithstanding the 609(a) test and the Bryant factors to be considered, Applicant's trial counsel elicited the prior convictions during her direct examination of Applicant. This was obviously a strategic decision by trial counsel to elicit unfavorable testimony from Applicant regarding his prior criminal history in an effort to garner the jury's trust and establish credibility. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Strickland, 466 U.S. 668, 693 (1984). Just because the strategy did not actually garner the jury's trust or establish Applicant's credibility does not necessarily mean it was an unreasonable strategy.

However, even if this Court finds that Counsel was deficient for failing to object to the use of those prior convictions, Respondent submits that the Applicant failed to meet his burden of proof as to prejudice.

Prejudice/Harmless Error Analysis

When an ineffectiveness claim is presented the defendant must show that counsel's representation was deficient. Deficient representation amounts to conduct that is not objectively reasonable under the circumstances. Strickland v. Washington, 466 U.S. 668, 688 (1984). In addition, Applicant must show prejudice by establishing that the outcome would have been different **but for** counsel's deficient performance. Strickland, 466 U.S. at 694. (emphasis added). The equivalent in a direct appeal of a criminal conviction is harmless error. If the appellate court

finds an error at trial could not reasonably have affected the result of the trial, then it is deemed harmless. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985).

Respondent submits that Applicant failed to meet his burden of proof of establishing that the alleged deficient conduct of Counsel affected the outcome of his trial. Respondent also submits that Applicant was not prejudiced by any alleged deficient performance because of the overwhelming evidence against him.

Victim Andrew Bond testified he was pushed to the ground by a man from behind who asked Bond for his ID and told Bond he was under arrest. (ROA p. 115). Bond testified the man reached in to take Bond's wallet and start looking through it. Bond identified the man as Applicant, Carnie Norris. (ROA p. 115). Bond testified that when he asked to see Applicant's badge, Applicant pulled a knife out and held it to Bond's throat. Bond identified the knife that was found on Applicant as the knife used to assault him. (ROA p. 116; p. 123). Bond testified that as the incident went on, Bond tried to get up, but Applicant put the knife to Bond's throat and threatened to kill Bond if he tried to get away. (ROA p. 117). Once the co-defendant arrived on the scene and began rifling through Bond's wallet, Bond testified Applicant continued to tell him to stay down and not move or Applicant would kill him. (ROA p. 119). Bond testified that once his friends began to pull up in their cars and the first police officers arrived, Applicant and his co-defendant handed Bond his empty wallet and cell phone before walking across the street. (ROA p. 120).

Herbert Blankenship, a witness, also testified he saw Applicant grab Bond, put him on the ground, announce he was a security officer and pull out a knife. (ROA p. 145). Blankenship testified that as they approached Applicant and Bond, Applicant pulled the knife out and pointed it at the others and told them to get on the ground. (ROA p. 146, p. 147). Blankenship identified

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M. HOPE BLACKLEY

EXHIBIT [2]

Applicant as the man who held the knife on Bond and the other witnesses. (ROA p. 146). Once Blankenship and the others had security call the police, he testified he drove over to the scene and directed his headlights at the area where Applicant had Bond on the ground. (ROA p. 148). Blankenship also identified the knife found on Applicant. (App. p. 149; p. 161).

Another witness, Daniel Mayfield, testified he saw Applicant approach Bond, put him on the ground, and remove his wallet. (ROA p. 170). Mayfield testified that as he and the others approached Bond and Applicant, Applicant pointed a knife towards the group and told them to get on the ground. (ROA p. 170). Mayfield identified the knife found on Applicant. (ROA p. 170). Mayfield also testified the Applicant identified himself as a security guard before removing Bond's wallet from his pocket and rifling through it. (ROA p. 175-6; p. 183-4).

Officer Brad James testified he received a call about a disturbance with weapons, which is what he was looking for when he arrived on the scene, and not anything related to a break-in as Applicant suggested. (ROA p. 193, p. 205, p. 209). James testified that as he arrived on the scene after receiving a dispatch, he saw two black males standing and a white male lying on the ground. (ROA p. 187). James testified the white male told him the black males were robbing him. (ROA p. 188). James, after receiving consent from Applicant, searched Applicant and found a black-handled kitchen knife. (ROA p. 190). The co-defendant turned over several cards that had been retrieved from Bond's wallet. (ROA p. 190).

2014 SEP 25 AM 9 45

Officer John Guest also testified they received two calls regarding a disturbance with weapons, which they found out later were from the Hangar security guard and one of Bond's friends. (ROA p. 210). Guest testified the co-defendant handed over several of Bond's cards from the wallet after being asked by Guest. (ROA p. 212). Guest also saw James recover the black kitchen knife from Applicant. (ROA p. 212). Guest testified Bond identified the knife as

the one used in the robbery. (ROA p. 213). Guest confirmed dispatch never received a call in regard to a break-in in that area. (ROA p. 213).

In contrast, both Applicant and co-defendant acknowledge going over to the group and rifling through Bond's cards from his wallet. However, both deny a knife being used or present. (ROA p. 258, p. 279). The testimony is not credible when contrasted with the testimony of three witnesses who saw the knife and could identify it and the police officers who testified they responded to a report of a disturbance involving someone being held at knifepoint. Further, the knife was found on Applicant. The witnesses had no way of knowing the Applicant had a knife on him at the time of the 911 calls if they had not seen the knife being held at the neck of their friend, Bond. The evidence against Applicant was, in a word, overwhelming. Additionally, Applicant and his co-defendant's lack of credibility was primarily caused by the stark contrast in their story versus that of various bystanders and law enforcement as well as the peculiarity of Applicant and his co-defendant's version of events – and not by his prior criminal history.

Even if this Court found that there was deficient conduct on behalf of Counsel, Respondent submits that because of the overwhelming evidence of guilt, there was no prejudice. "[N]o prejudice occurs, despite trial counsel's deficient performance, where there is otherwise overwhelming evidence of the defendant's guilt. Smith v. State, 386 S.C. 562, 566, 689 S.E.2d 629, 631 (2010) (citing Rosemond v. Catoe, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009)). The trial testimony from Applicant was ludicrous. Jurors are expected to use common sense for just such testimony as this. They were called upon to assess the credibility of a story that was ridiculous *per se*. Prejudice from trial counsel's failure to require the trial judge to make his Rule 609(a) analysis on the record was not, under these circumstance, a defect in representation that could have realistically affected the outcome.

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M. HOPE BLACKLEY

Additionally, while Applicant's prior conviction for common law robbery is similar to armed robbery in that they are both robberies, they are not identical. The Supreme Court of South Carolina has held although "the admission of identical convictions for impeachment purposes enhances its prejudicial nature, it does not conclusively render the error so prejudicial that it is not subject to a harmless error analysis." State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015). Broadnax was tried for armed robbery. The trial court held a hearing in camera to determine what prior convictions could be used to impeach Broadnax's testimony. The trial court admitted three of Broadnax's four prior armed robbery convictions. The Court held the error to be harmless, despite the convictions admitted were **identical** to those for which Broadnax was on trial. Id. at 478-479. In this case, the prior conviction was **not identical** to the conviction for which Applicant stood trial. Respondent submits the alleged error in admitting Applicant's prior common law robbery conviction was harmless, similar to Broadnax, and therefore, Applicant was not prejudiced by trial counsel's failure to object to it.

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H. HOPE BLACKLEY

CONCLUSION

WHEREFORE, the Respondent respectfully requests the order be amended and the PCR application denied and dismissed with prejudice.

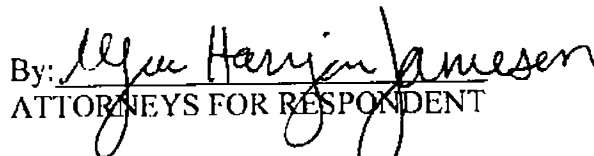
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General



By: ______________________
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

September 19, 2017

2017 SEP 25 AM 9:45
M. HOPE BLACKLEY

Dear Mr. Rucker,

I hope that all is well. When I last talked to you in November during our visit, you assured me that you would send me a copy of the PCR order. Would you please send me a copy.

As for my case, I am confused as to why it has taken so long for me to be resentenced. The state have created an inordinate and inexcusable delay for added punishment. I think that it is unfair as how my case is being handled. I am not blaming you, I ain't killed nobody.

I also can't understand why that information that I gave you have not been investigated yet.

I hope and pray that you can get me in court this month during PCR. Would you please let me know whats going on with everything that we have discussed.

My mom number is (864) 583-2169

Respectfully

Dario

1-16-18

EXHIBIT [3]

Dear Mr. Rucker,

With all due respect, would you please send me a copy of ~~the~~ order granting me relief in my PCR matter. I am thanking you in advance for your time and efforts in this matter.

Thanks

C. Harris

2-26-18

EXHIBIT [4]

Dear Mr. [illegible],

I hope that you are doing well after the holiday. As for me, I am confused as to what's going on with my case. I last heard from you March 6, 2018 when you sent a copy of my PCR order. You wrote and told me if I had any questions and concerns, to write you or let you know.

I would like to know when will my case be disposed of and whether I am entitled to a bond? Would you please let me know something. Hopefully I can get in at the next PCR in June. I hope to hear from you soon.

Respectfully

[illegible signature]
5-29-18

EXHIBIT [5]

Dear Mr. Rucker,

It has been several weeks since I last spoke to you about my case. You told me that Judge Couch was going to sign the 59(e) and deny it. Would you please send me a copy of the motion.

I thought that I would have heard from you by now. Do you know when my case will be called? I am thanking you in advance for your time and efforts in this matter.

My mother had a slight heart attack last Wednesday. She is at home now.

Thanks

[signature]

10-22-18

EXHIBIT [6]

Dear Mr. Rucker,

Hope that you are doing well. I hadn't talked to you since the first week in February. I have been waiting on some sort of information about the 59(e), Judge Couch signing and a hearing. You told me to get in touch with you the 1st week in March or you will get in touch with me possibly before then.

why is it taking so long to get the 59(e) Order signed and a hearing. I've been waiting on the 59(e) decision since Sept. 7, 2017 Could you please send me a copy of the 59(e). ~~Hope~~ to hear some good news from you soon.

Thanks

[signature]

3-11-19

EXHIBIT [7]

Dear Mr. Rucker,

I was shocked at the news that you gave to me. I couldn't really understand what you were saying because our conversation was not in private. Would you please write to me and explain what's going on. Why would Barrette withdraw stating that I won't hold up my end of the bargain. I've waited all of 15, 16, 17, 18 ~~for~~ a plea.

Would you please send ~~me~~ (a) copy of the 59(e) motion, order of 59(e) and any correspondences/emails with Barrette. I am thanking you in advance for your time and efforts in this matter.

So as of now, I don't have an attorney of record?

Respectfully

[signature]

4-24-19

EXHIBIT [8]

The Rucker Law Firm, LLC
128 Millport Circle, Suite 200
Greenville, South Carolina 29607
t- 864-271-9925
f- 864-271-9554

April 26, 2019

Carnie Norris, Inmate ## 227226
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

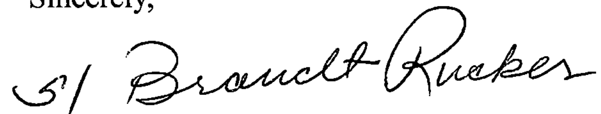
Re: Carnie Norris v. State of South Carolina
C/A No: 2012-CP-42-4651

Dear Carnie:

I hope this letter finds you doing well. Please find enclosed the materials you requested. I believe that we previously sent you a copy, but here is another copy for your records.

If you have questions or concerns, please do not hesitate to contact me.

Sincerely,



Brandt Rucker, Esq.

EXHIBIT [9]

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Case No. 2012-CP-42-04651

FILED
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SPARTANBURG COUNTY
2019 MAR -4 AM 9:49

Carnie Norris,		Respondent,
	v.	
State of South Carolina,		Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable Roger L. Couch's order dated and filed September 6, 2017, granting post-conviction relief to the Respondent. The State filed a motion to reconsider, which was denied by order filed February 15, 2019, and received by the State on February 19, 2019. Copies of the orders on appeal are attached to this notice.

The State is already in possession of the transcript of the proceeding at issue.

[signature page to follow]

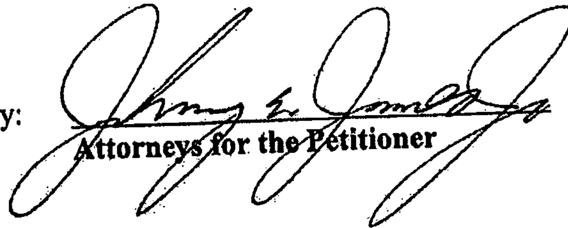
EXHIBIT [40]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General
S.C. Bar #101260

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

By: 
Attorneys for the Petitioner

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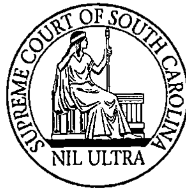
CLERK OF COURT
SPARTANBURG COUNTY
2019 MAR -4 AM 9:49

Columbia, South Carolina

March 1, 2019

Other counsel of record:

J. Brandt Rucker, Esquire
The Rucker Law Firm, LLC
128 Millport Circle, Suite 200
Greenville, South Carolina 29607



South Carolina Court Administration

South Carolina Supreme Court

Columbia, South Carolina

1220 SENATE STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201

May 14, 2019

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
PO Box 3483
Spartanburg, SC 29304-3483

RE: Carnie Norris #227226

Dear Clerk Cox:

Enclosed is a copy of a letter this office received from the above-referenced person. He is attempting to have documents sent to him from your office. We would appreciate your reviewing this matter and providing any appropriate assistance.

By copy of this letter, this office is advising the above-referenced person that, when requesting documents from the Clerk of Court, the Clerk can require a deposit in advance for the copying and research fees involved with document requests, as provided by S.C. Code Ann. §30-4-30(b). Also, when requesting copies of documents, he will need to include a self-addressed, stamped envelope.

Sincerely,
Court Services Section/AR - EMAIL

cc: Carnie Norris #227226
Perry Correctional Institution
Q4B-223
430 Oaklawn Road
Pelzer, SC 29669

EXHIBIT [10]

The Rucker Law Firm, LLC
128 Millport Circle, Suite 200
Greenville, South Carolina 29607
t- 864-271-9925
f- 864-271-9554

May 14, 2019

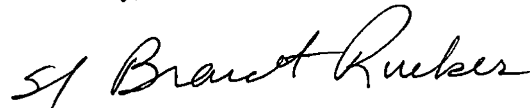
Carnie Norris, Inmate ## 227226
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Carnie Norris v. State of South Carolina
C/A No: 2012-CP-42-4651

Dear Carnie:

I hope this letter finds you doing well. We were notified by the Spartanburg County Clerk's office that you requested a copy of the Motion to Alter or Amend. I believe that we previously sent you a copy, but here is another copy for your records. If you need anything further, or if you have questions or concerns, please do not hesitate to contact me.

Sincerely,



Brandt Rucker, Esq.

EXHIBIT [12]

Pelzer, S.C. 29669

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