THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE ALEX KINLAW, JR.

2019-000458

RECEIVED

JUN 27 2019

S.C. SUPREME COURT

DONNA BOYD,

PETITIONER,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITIONER'S MOTION FOR REMAND FOR SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO S.C. CODE SECTION 17-27-80

This matter is the Petitioner's appeal from the denial of a post-conviction relief application. A hearing held before the Honorable Alex Kinlaw, Jr., on October 26, 2018. The Petitioner noted that before the start of the hearing on October 26, 2018, Mr. Mitchell summoned to meet privately with Judge Kinlaw. After the hearing, Judge Kinlaw decided to remand the case back to the magistrate court for a new trial. **(Exhibit 707, Transcript of Record, P. 107, Lines 10-17, May 10, 2019).** In opposition to Judge Kinlaw's decision, Former Assistant Attorney General Deshawn H. Mitchell requested additional time to brief the following issues raised by Judge Kinlaw and in the Petitioner's PCR application:

(1) The Judge summoned the Petitioner and Contracted Prosecutor George K. Lyall to the Jury Room while the jurors deliberated, **(2)** State's Witness's Conversation with Juror; and **(3)** and the Destruction of the Videotape. Mr. Mitchell asked for a week or until November 5, 2018, to brief the issues. But Judge Kinlaw gave the State twenty **(20)** days and told the Petitioner that she could also submit a brief in response to the three questions outlined. The deadline to submit the brief is November 15, 2018, Thursday.

Mr. Mitchell submitted the Respondent's brief on November 6, 2018. **(Exhibit 1-1A, Deshawn Mitchell, Email and Order of Dismissal, First Proposed Order of Dismissal, November 6, 2018).** On November 15, 2018, the Petitioner called and informed the court that she was ill and requested an extra day or until November 16, 2018, to submit the optional brief. The Petitioner instructed to reach out to Mr. Mitchell and confirm that it was okay to file the brief late since Judge Kinlaw had set a strict deadline.

The Petitioner sent an email to Mr. Mitchell, but it immediately came back undeliverable. **(Exhibit 1B, Undeliverable Email, November 15, 2018).** The Petitioner called Mr. Mitchell's office but was unable to reach him or leave a voicemail. The Petitioner then called the AG Office and asked the whereabouts of Mr. Mitchell. The Petitioner informed that Mr. Mitchell no longer worked for the AG as of November 6, 2018, remarkably, the same date Mr. Mitchell submitted his brief.

Notably, the Petitioner was not cc'd of Mr. Mitchell's departure or his replacement. The Petitioner did not submit a brief by the November 15, 2018, deadline. On November 26, 2018, the Petitioner received an email from Judge Kinlaw's law clerk requesting that she submit her brief. **(Exhibit 1, Judge Kinlaw Law Clerk, Email, November 26, 2018).** The Petitioner responded with an email which the PCR Court substituted for the proposed brief. Further, the Petitioner said that she was denied "Due Process" since the inception of her case, and requested the remand of the Petitioner's matter for a new trial. **(Exhibit 1C, Petitioner's Proposed Brief, Pages 1-11, November 26, 2018).**

Judge Kinlaw denied relief by order dated January 24, 2019. **(Exhibit 2, Order of Dismissal, January 24, 2019).** The order filed January 31, 2019. The Petitioner noticed of the order on February 7, 2019. Notably, Judge Kinlaw sent the Respondent email request for another proposed order of dismissal on January 9, 2019. The Respondent requested to submit the proposed order in twenty **(20)** days. The Petitioner, not cc'd or informed of January 9, 2019, email request for an Order of Dismissal. **(Exhibit 2C, Judge Kinlaw's Email Request for an Order of Dismissal, Page 1-2, January 9, 2019).** On February 3, 2019, the Petitioner discovered Respondent's email with the attached proposed order dated January 22, 2019. **(Exhibit 2C).**

Remarkably, the PCR Court's Order dated January 24, 2019, precisely the same order word for word as Respondent's proposed order of dismissal dated January 22, 2019. Notably, the Respondent's order of dismissal was in editable form, undated and unsigned. **(Exhibit 2D, State's Order of Dismissal, six pages, Second Proposed Order of Dismissal, January 22, 2019).** The order signed by Judge Kinlaw on January 24, 2019, is the same exact order of dismissal submitted by the Respondent on January 22, 2019. Significantly, this order is the second order of dismissal submitted by the State. Judge Kinlaw signed the Respondent's order

of dismissal dated January 22, 2019. Notably, Form 4 missing. On February 14, 2019, the Petitioner filed a Rule 59(e) motion requesting specific findings of fact and conclusions of law as required by section 17-27-80 and Rule 59(e) of the SCRCP. **(Exhibit 3, Petitioner's Rule 59(e) Motion, February 14, 2019).** The PCR court received the motion on February 19, 2019, and summarily denied the Petitioner's Rule 59(e) motion on February 20, 2019. **(Exhibit 3A, Order, February 20, 2019).** The Petitioner received the order denying the motion on February 23, 2019, notably Form 4 missing. **(Exhibit 3A).**

The Petitioner reasserted the Rule 59(e) motion on March 4, 2019, and again, the PCR Court denied the motion without response. On March 17, 2019, the Petitioner submitted a notice of appeal to the South Carolina Supreme Court. The Petitioner informed this Court through the notice of appeal filed on March 21, 2019, that the transcript ordered on March 14, 2019. Also, the Petitioner enclosed two **(2)** postage prepaid envelopes and requested this Court send the clocked documents to the Petitioner. **(Exhibit 4, Notice of Appeal, March 21, 2019).**

Remarkably, the Petitioner did not receive notice from this Court acknowledging receipt of the Petitioner's appeal. However, the Petitioner received an unsolicited letter dated March 25, 2019, from SCCID asking the Petitioner if she wanted representation. SCCID said that if it did not receive the notarized Affidavit of Indigency by April 10, 2019, it would close the file. **(Exhibit 4A, SCCID, March 25,** 2019). The Petitioner sent a letter dated April 4, 2019, declining the representation. **(Exhibit 4B, Petitioner's declination of representation, April 4, 2019).** Remarkably, the Petitioner received another letter dated April 9, 2019, from SCCID. **(Exhibit 4C, Chief Appellate Defender Robert M. Dudek, April 9, 2019).**

The SCCID feigned concern about the Petitioner's self-representation. SCCID wanted to control the Petitioner's appeal in the same manner that it controls the Petitioner's brother's appeal. Also, the State used this fake concern as a ploy to delay the submission of the Petitioner's appeal **(Appellate Case No.2018-000961).** Further, the Petitioner noted that when she filed the notice of appeal, the record showed that the Petitioner's appeal was "pending," which explained why the Court failed to acknowledge receipt of the Petitioner's appeal. **(Exhibit 4D, SCACMS, March 24, 2019).** This Court suspended the Petitioner's appeal allowing SCCID (Dudek) time to persuade the Petitioner to let SCCID represent her.

Notably, the Petitioner did not receive the prepaid postage envelopes with clocked documents. On April 3, 2019, the Petitioner called this Court to inquire about the documents and the notice of appeal. The Petitioner informed this Court that she did not receive a case number for the appeal. The Petitioner told she needed to speak with the case manager (Ashley). The Petitioner left a voicemail for Ashley and requested that she call.

About a minute later, the Petitioner received a call from Ashley. Ms. Ashley asked the case number so she could look up the case, but the Petitioner told Ashely that she did not have a case number and that she had not received the prepaid envelopes with clocked copies. Ms. Ashley said that she didn't know why the Petitioner had not received the documents and assured the Petitioner that she would send them.

The Petitioner received clocked documents in an envelope dated April 3, 2019, but notably, this Court did not return them in the prepaid envelopes provided. Also, the Petitioner noted that the notice acknowledging receipt of the Petitioner's appeal still missing. The Petitioner asserts that this Court willfully failed to acknowledge her appeal and provide a case number. Consequently, there was no date to reference as to when the clock started on the Petitioner's appeal. Petitioner's last correspondence to SCCID (Dudek) dated April 17, 2019. **(Exhibit 4E, Letter to Dudek, April 17, 2019).**

Notably, in the letter dated March 25, 2019, SCCID said that it would close its file if the Petitioner did not submit the notarized Affidavit of Indigency by April 10, 2019. But Mr. Dudek made two more attempts to intimidate and persuade the Petitioner to allow SCCID to take over the Petitioner's representation. Notably, Mr. Dudek claimed that the Petitioner's file closed on April 19, 2019. **(Exhibit 5, Chief Appellate Defender Robert M. Dudek, April 19, 2019).**

Remarkably, on **April 22, 2019**, this Court dismissed the Petitioner's matter alleging that the Petitioner failed to provide this Court with a copy of the correspondence with the court reporter showing that the transcript timely ordered from the court reporter (including agreement regarding payment for the transcript) as required by Rule 243(b) and 207(a)(1) of the South Carolina Appellate Rules (SCACR)**(EXHIBIT 5A, ORDER, APRIL 22, 2019).**

Notably, this Court did not send a deficiency letter to the Petitioner before it dismissed the Petitioner's case on April 22, 2019. However, remarkably, after the dismissal of the Petitioner's case, the Petitioner received a letter dated **April 23, 2019**, acknowledging receipt of her appeal and providing a case number for her appeal filed March 21, 2019. Notably, the Petitioner received acknowledgment of notice of appeal one **(1) month after the Petitioner filed her notice of appeal. (EXHIBIT 5B, THE SUPREME COURT OF SOUTH CAROLINA, ACKNOWLEDGEMENT OF RECEIPT, APRIL 23, 2019).**

The Petitioner submitted a motion to reinstate, which was filed by this Court on May 2, 2019. As of date, this Court has failed to respond to the Petitioner's Motion. **(Exhibit 6, MOTION TO REINSTATE, May 2, 2019).** The Petitioner is concerned about this Court's failure and inordinate delay to decide the Petitioner's matter. The Petitioner asserts that the PCR court erred where it failed to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented as required by S.C. Code Ann. § 17-27-80.

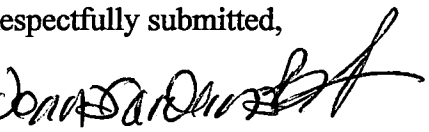
Remarkably, it was the State's second proposed order denying post-conviction relief dated January 22, 2019, which Judge Kinlaw signed and filed on January 31, 2019. On February 14, 2019, the Petitioner submitted a timely motion to amend under Rule 59(e), arguing that the Order of Dismissal did not contain specific findings of fact and conclusions of law regarding each of the claims presented at the evidentiary hearing, as required by S.C. Code Ann. § 17-27-80. The Petitioner asserts that the testimony in the Order of Dismissal is first and foremost fraudulent. Moreover, it is not an objective, true, and accurate recitation of the testimony presented during the evidentiary hearing.

Upon review of Supreme Court decisions, the Petitioner noted this Court's prior admonishments in Pruett and similar cases citing that when Rule 59(e) invoked, the court must make specific findings of fact and conclusions of law in respect to each issue presented as required by S.C. Code Ann. § 17-27-80. The Petitioner noted in the transcript of the PCR hearing; the PCR court remanded the matter to the magistrate court for a new trial. **(EXHIBIT 707, TRANSCRIPT OF RECORD, PAGE 107, LINES 10-17, MAY 10, 2019).**

However, the PCR court said in response to the Petitioner's motion for Rule 59(e) that it did not remand the matter for retrial. Therefore the Petitioner asks this Court to clarify this issue and address the other issues raised in the evidentiary hearing and the Petitioner's application.

Wherefore, Petitioner prays that this Court remand this matter to the PCR court so the PCR court may enter an amended order under Section 17-27-80.

Respectfully submitted,



Donna Boyd
Pro Se

June 24, 2019

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE ALEX KINLAW, JR.
2019-000458

DONNA BOYD,
PETITIONER,
against
STATE OF SOUTH CAROLINA,
RESPONDENT.

CERTIFICATE OF SERVICE

The Petitioner at this moment certifies that a true copy of the Petitioner's Motion for Remand and Conclusion of Law Pursuant to S.C. Code Section 17-27-80 has been served upon opposing counsel by mailing two (2) copies in the United States mail, certified mail:

Taylor Z. Smith, Esquire
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for Respondent

June 24, 2019

Columbia to -- to -- to appeal if I did that. As a matter of fact, they'd get to Columbia before I could get to Laurens if I did that -- if I did that in here. And, you know, so I'm not accepting that -- that rational.

So having said all of that, having said all of that, I've got some issues on both sides of the fence. And -- and I'm not the kind of Judge that's just going to hide -- duck and hide and tell you what I'm going to do. I'm going to tell you exactly what I'm going to do.

I'm going to send this matter right back to the magistrate court. I'm going to remand it back there, have it retried, and -- and go through the process. I -- I just think that's the right thing to do. I really think that's the right thing to do.

And if the State has a problem with that ruling, you know what you got -- you know what you can do. But I think -- I think fairness is ultimate on both sides. And you can't tell me that this case doesn't -- first, it reeks of some irresponsibility on behalf of Ms. Boyd. She didn't -- there's some things she could have done better.

It reeks of some unfairness on -- on -- on the side of the -- the -- the -- and I'm not -- and you notice I'm careful not to use the word prosecutorial misconduct. And I know that was alleged in her application.

But what I'm -- what I'm really hanging my hat on,

Exhibit 707

From: Kinlaw, Alex Law Clerk (Shedricka Anderson)
akinlawlc@sccourts.org
Subject: RE: Brief of Respondent for Donna Boyd v. State of South Carolina 2018-CP-23-7725
Date: Nov 26, 2018, 11:03:57 AM
To: DeShawn Mitchell DMitchell@scag.gov
Cc: Megan Jameson MJameson@scag.gov,
Donna Boyd dcarolineis@yahoo.com

Left AG on 11/6/18

Replaced DeShawn Mitchell

failed to Notify petitioner

Good morning Ms. Boyd,

I hope this email finds you doing well. I have yet to receive your proposed brief as requested by Judge Kinlaw.

Best regards,

Shedricka Anderson
Law Clerk to Judge Alex Kinlaw, Jr.
13th Circuit Court Judge
305 East North Street Suite 213
Greenville, SC 29601
864-467-8046
864-467-8035 (fax)
akinlawlc@sccourts.org

Exhibit 1

From: DeShawn Mitchell <DMitchell@scag.gov>
Sent: Tuesday, November 6, 2018 4:39 PM
To: Kinlaw, Alex Law Clerk (Shedricka Anderson) <akinlawlc@sccourts.org>
Cc: Megan Jameson <MJameson@scag.gov>; Donna Boyd <dcarolineis@yahoo.com>
Subject: Brief of Respondent for Donna Boyd v. State of South Carolina 2018-CP-23-7725

Good Afternoon Ms. Anderson,

I hope this email finds you well. I have attached a word version of the State's Brief of Respondent in the case of Donna Boyd v. State of South Carolina. Please let me know if I can provide any additional information on this matter.

Additionally, I have copied Ms. Boyd on this email.

Best,

States Proposed Order of Dismissal
Submitted November 6, 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT

Donna Boyd,

Applicant,

v.

State of South Carolina,

Respondent.

2018-CP-23-7725

BRIEF OF RESPONDENT

Ex. 19

First Proposed Order of Dismissal

This matter is before this Court by way of an application for post-conviction relief filed on December 4, 2017.

I. Procedural History

Donna Boyd (Applicant) was charged with filing a false police report in Greenville County November 16, 2012. On June 25, 2014, she proceeded to trial *pro se* before the Honorable Dean E. Ford, magistrate judge, and a jury. At the conclusion of trial, the jury returned a guilty verdict and on July 7, 2014, Applicant filed a notice of appeal to the Greenville County Court of Common Plea. A hearing regarding Applicant's appeal was convened on August 12, 2014; however, Applicant did not appear. On August 14, 2014, the Honorable D. Garrison Hill issued an order dismissing Applicant's appeal for failure to prosecute. Following the dismissal, on August 27, 2014, Applicant filed a *pro se* notice of appeal. Applicant then filed a *pro se* initial brief and designation of matter; however, she subsequently retained J. Falkner Wilkes, Esquire, to represent her in this appeal. By Order filed May 21, 2015, South Carolina Court of Appeals granted Mr. Wilkes' motion to "allow counsel to engage in the representation of the Appellant" who has previously proceeded *pro se* and granted his request to withdraw Applicant's *pro se* initial brief and accept an amended initial brief and designation of matter. Mr. Wilkes subsequently filed a brief in support of Applicant's appeal and the Respondent (the State) filed a brief in response. On June 15, 2016, the Court of Appeals affirmed the circuit court's dismissal of Applicant's appeal as well as her conviction in an unpublished opinion. State v. Boyd, Op. No. 2016-UP-299 (S.C. Ct. App. Filed June 15, 2016). Applicant submitted a timely Petition for Rehearing and by Order filed August 18, 2016, the Petition was denied. On September 16, 2016, Applicant submitted a Petition for a Writ of Certiorari to the South Carolina Supreme Court. Respondent submitted its Return to Petition for Writ of Certiorari on October 13, 2016. On May 30, 2017, the Supreme Court denied Applicant's Petition for Writ of Certiorari.

II. Current Post-Conviction Relief Action

On December 4, 2017, Applicant filed an application for post-conviction relief. An evidentiary hearing into the matter was convened on October 26, 2018, at the Greenville County Courthouse in Greenville, South Carolina before the Honorable Alex Kinlaw, Jr.. Applicant was present and represented herself pro se. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office. At the hearing, Applicant testified on her own behalf. George K. Lyall, Esquire who prosecuted the case also testified. At the conclusion of the hearing, Respondent was permitted to brief three issues regarding Applicant's application. First, the issue of the trial judge answering a jury question in front of the jurors in the jury deliberation room with Applicant and the prosecutor present. Secondly, the issue of a witness's conversation with an alternate jury. Lastly, whether the destruction of a video

prejudiced Applicant's case. These issues are discussed in-depth below.

III. Judge in Jury Room

Applicant presented testimony at the evidentiary hearing that after her trial was concluded and was sent to the jury for their deliberations, the jury had a question regarding the definition of probable cause. Applicant testified that the trial judge then proceeded to take the prosecutor and herself into the jury room in the presence of the jury and explain to them his answer. Mr. Lyall, the prosecutor in the case, testified to this effect and recalled that the trial judge wanted Applicant and himself to hear what the jury question was and what the trial judge's response was to the question. Mr. Lyall testified the trial judge told the jury his response to their question and did not engage in any other questions.

In State v. Elmore, our supreme court held that it was per se reversible error for the trial judge to enter the jury room. State v. Elmore 279 S.C. 417, 308 S.E.2d 781. Elmore is easily distinguishable from the instant case because it was a death penalty case reviewed under the discarded doctrine in favorem vitae standard of review and concerned a trial judge purposely entering the jury room during deliberations to answer a jury question The Supreme Court ruled in Elmore that, although there was no prejudice, the presence of the judge in the jury room ran "counter to the requirement that in a death case the defendant be present at all stages of trial." Id. at 279 S.C. at 422, 308 S.E.2d at 785. Here, the Applicant who was representing herself pro se was present as was the State when the trial judge answered the jury's question.

Furthermore, in Dubois v. Carter, our Supreme Court held that the Appellant failed to show that an abuse of discretion on the part of the judge. Dubois v. Carter, 132 S.C. 176, 129 S.E 137 (1925). In Carter, the trial judge went into the jury room but only to hand the jury a part of the record after it was requested by the foreman and this request was overheard by the attorneys for the plaintiff and the defendant. Id. at 129 S.E. 137.

Here, the trial judge answered the question of the jury in the presence of the State and the pro se Applicant just as the normal procedure of answering a jury question in the court room in the presence of a jury. Furthermore, Applicant cannot demonstrate sufficient prejudice as all the actors in the trial were present when the trial judge answered the jury's questions and the trial judge did not proceed to engage the jury in any further conversation or attempt to answer any other question. Respondent suggests that the lack of prejudice to Applicant and harmlessness of the judge's presence in the jury room should be considered in this case. Because of this, Respondent would submit Applicant has failed to carry her burden regarding this allegation.

IV. Witness's Conversation with Alternate Juror

Applicant presented testimony at the evidentiary hearing that one of the witnesses, Jack Crump, who was also the person Applicant alleged assaulted her, improperly talked to an alternate juror before the juror was excused from service. Mr. Lyall testified that there was one alternate juror on the jury panel. He testified the witness talked to the alternate juror while the jury was in actual deliberation. Mr. Lyall testified the alternate juror never sat with the jury and did not go back to the jury room when deliberation began. He testified the conversation between the alternate juror and the witness was brought to the attention of the trial judge. Mr. Lyall testified the trial judge put the witness under oath and asked him if he knew the alternate juror and the witness responded that he did not but was just interested in what she thought about the case.

"A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature." State v. Cameron, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct. App. 1993) (citing State v. Johnson, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990); State v. Wasson, 299 S.C. 508, 511, 386 S.E.2d 255, 256 (1989); State v. Salters, 273 S.C. 501, 504, 257 S.E.2d 502, 504 (1979)). Moreover, "[i]t is the duty of the trial judge to see that a jury of unbiased, fair and impartial persons is impaneled. State v. Powers, 331 S.C. 37, 43, 501 S.E.2d 116, 119 (1998) (citing State v. Matthews, 291 S.C. 339, 353 S.E.2d 444 (1986); State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990)).

However, "unless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict." Kelly, 331 S.C. at 141, 502 S.E.2d at 104. Significantly, in South Carolina, prejudice will not be presumed from improper influences on the jury. State v. Grovenstein, 335 S.C. 347, 351, 517 S.E.2d 216, 218 (1999) ("the Court of Appeals erred in

Exhibit 1A

adopting a "presumption of prejudice" standard. *Id.* Instead, prejudice must be shown by the defendant in order to warrant the grant of a mistrial or the disqualification of any jurors. *Id.*

Here, the jury's verdict was free of any misconduct. The testimony at the evidentiary hearing shows that the alternate juror never entered the jury room during deliberations and never sat with the actual jury. Applicant has failed to demonstrate that she suffered any prejudice from the verdict of the jury. Because of this, Respondent would submit Applicant has failed to carry her burden regarding this allegation.

V. Destruction of Video

Applicant presented testimony at the evidentiary hearing that she filed a complaint with police after she was assaulted by a process server who served her with documents. She testified she believed there was video of the encounter she had with the process server. Applicant testified after filing the report she was ultimately charged with filing a false police report as she was told by an officer that he reviewed the video of the incident and the allegations she made were not true. She testified prior to the start of trial she was informed by Mr. Lyall that the video of the incident between her and the process server was destroyed.

Mr. Lyall testified when he got Applicant's file to prepare for trial he saw there was a reference to a video of the incident in the file. He testified he contacted Deputy Holloman, the investigating officer, to inquire about the video. Mr. Lyall testified Deputy Holloman informed him that when the original case of assault and battery was opened based on Applicant's complaint, the video was matched and paired with that file. He testified Deputy Holloman further explained that when Applicant's charge for filing a false police report was opened, the assault and battery case was closed out and the video did not transfer over to the new case. Mr. Lyall testified Deputy Holloman informed him the video was discarded and destroyed administratively based on policy and procedure of the police department.

In a criminal case, the State does not have an absolute duty to preserve potentially useful evidence, and a defendant must demonstrate either: 1) the State destroyed evidence in bad faith; or 2) the evidence's exculpatory value was readily apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other means. State v. Moses. 390 S.C. 502, 702 S.E.2d 395, 404 (Ct. App. 2010) (citing State v. Mabe. 306 S.C. 355, 412 S.E.2d 386 [1991]). The bad faith requirement limits the extent of the State's obligation to preserve evidence to reasonable bounds, and confines it to cases in which the police conduct indicates the evidence could form a basis for exonerating the defendant. Arizona v. Youngblood, 488 U.S. 51, 58 (1988); Moses, 702 S.E.2d at 403.

Here, Applicant cannot demonstrate that the State destroyed the evidence in bad faith. More importantly, the Applicant had evidence of comparable value at her disposal. All of the actors who had a role in the case were available to testify and the jury could consider their testimony. Applicant was present at the trial as she represented herself, the process server was present, and so were the officers who viewed the video after Applicant filed her police report. Based on the available parties, Applicant had evidence of comparable value to prove her case. Because of this, Respondent would submit Applicant has failed to carry her burden regarding this allegation.

Conclusion

In conclusion, Respondent submits that Applicant's application should be denied and dismissed as she has failed to meet her burden on the aforementioned allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

BY: _____

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

_____, 2018

Exhibit 1A

From: <postmaster@scag.gov>
postmaster@scag.gov
Subject: Undeliverable: Fw: Brief of Respondent for Donna Boyd v. State of South Carolina 2018-CP-23-7725
Date: Nov 15, 2018, 1:45:08 PM
To: <dcarolineis@yahoo.com>
dcarolineis@yahoo.com

Delivery has failed to these recipients or groups:

DMitchell@scag.gov (DMitchell@scag.gov)
The email address you entered couldn't be found. Please check the recipient's email address and try to resend the message. If the problem continues, please contact your email admin.

Exhibit 12

Diagnostic information for administrators:

Generating server: Mail3.scag.gov

DMitchell@scag.gov
Remote Server returned '550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient not found by SMTP address lookup'

Original message headers:

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Received: from Mail1.scag.gov (10.10.10.33) by Mail3.scag.gov (10.10.10.35)
 with Microsoft SMTP Server (version=TLS1_2,
 cipher=TLS_ECDHE_RSA_WITH_AES_128_CBC_SHA256_P256) id 15.1.1034.26; Thu, 15
 Nov 2018 13:45:05 -0500
Received: from spam.scag.gov (10.10.10.54) by Mail1.scag.gov (10.10.10.33)
 with Microsoft SMTP Server (version=TLS1_2,
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 Frontend Transport; Thu, 15 Nov 2018 13:45:05 -0500
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9IeFjhUGxJw--
Received: from sonic.gate.mail.ne1.yahoo.com by sonic303.consmr.mail.gq1.yahoo.com with HTTP; Thu, 15 Nov 2018 18:45:02 +0000
Date: Thu, 15 Nov 2018 18:44:43 +0000
From: Donna Boyd <dcarolineis@yahoo.com>
To: "DMitchell@scag.gov" <DMitchell@scag.gov>
Message-ID: <21472324.1334108.1542307483573@mail.yahoo.com>
In-Reply-To: <57208104-63DA-4449-BD16-774A1260F78D@yahoo.com>
References: <7b074993c9154dd48d5803efcd0b71c5@scag.gov> <57208104-63DA-4449-BD16-774A1260F78D@yahoo.com>
Subject: Fw: Brief of Respondent for Donna Boyd v. State of South Carolina
 2018-CP-23-7725
MIME-Version: 1.0
Content-Type: multipart/alternative;
	boundary="----=_Part_1334107_156810987.1542307483571"
X-Mailer: WebService/1.1.12729 YMailNorrin Mozilla/5.0 (Windows NT 10.0; WOW64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/70.0.3538.102 Safari/537.36
Content-Length: 5389
Return-Path: dcarolineis@yahoo.com

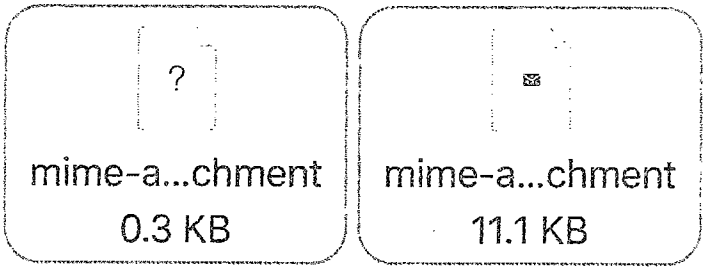

Exhibit B

From: Kinlaw, Alex Law Clerk (Shedricka Anderson)
akinlawlc@sccourts.org
Subject: Re: Brief of Applicant
Date: Nov 26, 2018, 6:44:36 PM
To: Donna Boyd dcarolineis@yahoo.com,
MJameson@scag.gov, Kinlaw, Alex Secretary
(Shannon N. Thurman)
akinlawsc@sccourts.org

Ms. Boyd,

Thank you so much for the clarification. I will provide to Judge Kinlaw both briefs.

Best regards,

Shedricka Anderson
Law Clerk to Judge Alex Kinlaw, Jr.
13th Circuit Court Judge
305 East North Street Suite 213
Greenville, SC 29601
864-467-8046
864-467-8035 (fax)
akinlawlc@sccourts.org<mailto:akinlawlc@sccourts.org>

On Nov 26, 2018, at 6:28 PM, Donna Boyd <dcarolineis@yahoo.com<mailto:dcarolineis@yahoo.com>> wrote:

Greetings Ms. Anderson,

I apologize for any misunderstanding. The purpose of the "Email" is to serve as a 'proposed brief' and to inform this Honorable Court that the State has the recording of the Magistrate Hearing held on June 25, 2014, and had this recording since August 2014. The Applicant contends why continue to waste the court's time, other resources, and aggravate her medical illness when there is a recording that unequivocally shows what was said and what happened in Judge Ford's courtroom on June 25, 2014? I have listened to this recording several times and it reeks of "Due Process" violations. It also contradicts the State's position and the testimony provided by hired prosecutor George K. Lyall on October 26, 2018. And to no surprise to the Applicant, George K. Lyall perjured himself on October 26, 2018. I will provide this recording to the court.

Kind regards,

Ms. Donna Boyd

On Monday, November 26, 2018, 4:58:08 PM EST, Kinlaw, Alex Law Clerk (Shedricka Anderson) <akinlawlc@sccourts.org<mailto:akinlawlc@sccourts.org>> wrote:

Ms. Boyd,

I have received your response. I am unclear if this is just an email detailing what happened or your proposed brief. I have CC'd Assistant Attorney General Jameson on this email since Assistant Attorney General Mitchell is no longer with the Attorney General's office.

Best regards,

Shedricka Anderson
Law Clerk to Judge Alex Kinlaw, Jr.
13th Circuit Court Judge
305 East North Street Suite 213

Greenville, SC 29601
864-467-8046
864-467-8035 (fax)
akinlawlc@sccourts.org<mailto:akinlawlc@sccourts.org>
<mailto:akinlawlc@sccourts.org<mailto:akinlawlc@sccourts.org>>

On Nov 26, 2018, at 4:24 PM, Donna Boyd
<dcarolineis@yahoo.com<mailto:dcarolineis@yahoo.com>
<mailto:dcarolineis@yahoo.com<mailto:dcarolineis@yahoo.com>>> wrote:

Dear Ms. Anderson,

I hope this message finds you well. On November 15, 2018, due to illness, I called the Honorable Judge Kinlaw's office and requested an extension. I was informed by Ms. Thurmond that Judge Kinlaw was out of the office for the week. Ms. Thurmond instructed me to contact Mr. Mitchell about the request. Also, if Mr. Mitchell had any issues with this request to please respond promptly, so I could inform the court. I called Mr. Mitchell about the matter, but

unfortunately unable to reach him or leave a voicemail. I sent two emails to Mr. Mitchell and both came back undeliverable. I called Mr. Mitchell's office again and informed that Mr. Mitchell no longer worked for the State's Attorney. I also received a call from Ms. Jameson on November 15, informing me of the same.

I planned to submit a brief but realized that the State has the recording of the magistrate hearing held on June 25, 2014. Why belabor a point if there is a "Recording?" On June 8, 2018, I went to the State's Attorney's Office to speak with Mr. Mitchell about my case. I was told that he was in a meeting and I waited in the lobby to speak with him. Almost two hours later, I was told that Mr. Mitchell was out to lunch. I requested a call and did speak with Mr.Mitchell on June 8. I noted in the State's Motion for Extension of Time dated March 28, 2018, the State asserted that it requested the "Transcript" by letter dated February 6, 2018. (State had three months to procure Transcript). However, as of that date, the Respondent had not received the transcript. The State requested an additional 30 days to file its Return, alleging that additional time was necessary for the complete evaluation of the

Applicant's allegations and determination of potentially available defenses for the Respondent.

Notably, Judge Robin B. Stilwell granted the State's request on April 4, 2018. The same Judge that brought my brother Mr. Billy Roy Boyd into his "private chambers" on December 9, 2011, and threatened Mr. Boyd with paid counsel present that he would represent himself on December 12, 2011. The State granted an additional 30 days to procure the Transcript. The State's response excluding holidays due on May 16, 2018. However, as of date, the State failed to confirm whether it received the "Transcript" that the State claimed necessary for the complete evaluation of the Applicant's claims and potential defenses for the State.

However, the Applicant received the RETURN dated May 2, 2018, and notably, the "Transcript" that the State was purportedly waiting for was not included in the State's Return. Also, the Applicant noted that there was no mention of the "Transcript" that the State claimed it needed to file its RETURN. So, if review of the Transcript was necessary for evaluation of the Applicant's claims and potential defenses for the Respondent, how could the State

completely evaluate the Applicant's claims without the record of the magistrate hearing held on June 25, 2014? Further, how could the State formulate available defenses to the Applicant's claims without reference to the June 25, 2014, Transcript?

The Applicant asserts that the State's feigned efforts to procure the "Transcript" was just another ploy by the State to delay its Return. Also, this ploy gave the appearance that a "Transcript" was available. Where is the Transcript? There can not be a legal proceeding without A RECORD! The Applicant noted that the State made several specious claims. However, these claims are valid only if they are supported in the "Transcript." There is no Transcript! At least that is the LIE that Judge Dean Ford told in his UNDATED LETTER (EXHIBIT 19A, 20) But, despite not having a record of the trial, strangely, Judge Ford able to provide a very detailed albeit false summation of the sham trial in his Magistrate Return dated July 23, 2014. The Applicant noted that the envelope which contained the "Undated" letter from Judge Ford also suspiciously dated July 23, 2014.

The Applicant included this evidence in her PCR application. So, the State had notice that its attempts to get the "Transcript" were in vain. Apparently, the State has LIED so much that it has forgot all the previous Lies told. However, the Applicant taped the almost seven (7) hour magistrate hearing held on June 25, 2014, and former Deputy Counsel Sally Elliott provided a copy by the Office of Disciplinary Counsel. And subsequently requested that "recording" be stricken from the record. (Exhibit). The Applicant surmised that the recording was not favorable to the State.

The Applicant inquired of the extension of time requested by the State to get the "Transcript." Mr. Mitchell said that he requested the transcript and informed by Judge Ford that the "machine was not functioning" so there was no recording of the actual transcript. The Applicant asked how the State could evaluate the Applicant's claims without a record. Mr. Mitchell said it planned to call "WITNESSES" to testify what they remembered. Please bear in mind the magistrate trial held on June 25, 2014, almost four (4) years earlier. Significantly, the Applicant noted that the only "witness" called on October 26, 2018, was hired prosecutor

George K. Lyall. Remarkably, the State's key witness, arresting officer Deputy Matt Holman suspiciously did not appear for the PCR hearing held on October 26, 2018.

Also, the "Three Deputies" employed by the State to testify against the Applicant were dubiously absent for the hearing. The Applicant informed Mr. Mitchell of the recording and told him that the State (Sally Elliott) provided a copy of the recording. Mr. Mitchell seemed surprised Also, said that he did not have a copy and that he would look into it. Also, Mr. Mitchell said that he wasn't with the AG at that time and again said that he would look into it. Also, the Applicant informed Mr. Mitchell that the State (Sally Elliott) had the recording struck from the record.

However, the Applicant noted that on October 26, 2018, Mr. Mitchell said absolutely nothing about the "Transcript" of the hearing held on June 25, 2014. But, instead used hired prosecutor George K. Lyall to continue and maintain the State's fabricated version of what happened on October 30, 2012, November 16, 2012, and June 25, 2014. I will not submit a formal brief, but instead will submit this email and the recording of the June 25, 2014, Magistrate Hearing.

The Applicant has been denied "Due Process" and relentlessly harassed by the courts since moving back to her city of origin in 2007. And this constant unjustified harassment caused the Applicant to develop Lupus, which was the basis for the Applicant fully briefing her case and asking Judge D. Garrison Hill to decide her case without requiring her appearance on August 12, 2014. I did not disclose this personal health issue because I knew that the State would exploit this issue to the hilt. The State's actions are immoral and unconscionable and I will submit a copy of this email and recording to the South Carolina Court Administration to the attention of the Honorable Chief Justice Donald W. Beatty. I respectfully ask that this Honorable Court afford the Applicant "Due Process." The 'Due Process" the Applicant has been denied since the inception of her case. The Applicant respectfully request that this court remand the Applicant's matter for a new trial. If there are any questions or concerns, please do not hesitate to call me at 773.266.2711.

Respectfully submitted,

Ms. Donna Boyd

Exhibit 2

STATE OF SOUTH CAROLINA **COUNTY OF GREENVILLE**	**IN THE COURT OF COMMON PLEAS** **FOR THE THIRTEENTH JUDICIAL CIRCUIT**
Donna Boyd, **Applicant,** **v.** **State of South Carolina,** **Respondent.**	**Case No.: 2017-CP-23-7725** **ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed by Donna Boyd (Applicant) on December 4, 2017, alleging various allegations of prosecutorial misconduct. The State of South Carolina (Respondent) served its return on May 2, 2018, requesting an evidentiary hearing.

An evidentiary hearing was held on October 26, 2018, before this Court at the Greenville County Courthouse. Applicant was present and appeared *pro se*. Respondent was represented by Assistant Attorney General DeShawn H. Mitchell. At the hearing testimony was taken from Applicant and prosecutor George K. Lyall. Following all testimony and argument, this Court offered both parties additional time to submit briefs on three issues: first, the issue of the trial judge answering a jury question in front of the jurors in the jury deliberation room with Applicant and the prosecutor present; second, the issue of a witness's conversation with an alternate jury; and third, the issue of whether the destruction of a video prejudiced Applicant's case. Respondent submitted a brief on November 6, 2018. Applicant did not submit a brief, but did submit a substantive email that she asked be treated as a brief on November 26, 2018.

Exhibit 2

Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

#1

PROCEDURAL HISTORY

The records before this Court establish that on November 16, 2012, Applicant was arrested and charged with filing a false police report of a misdemeanor (Warrant No. 2012A-23-30204055) in Greenville County stemming from an incident on October 30, 2012, wherein Applicant filed a police report that she had been assaulted by Jack Crumpton with Foothills Investigations while he served her with documents and the allegations of assault were later refuted by video evidence. She was originally represented by Michael F. Talley, Esquire, who later moved to be relieved and his requested was granted on April 9, 2014. On June 25, 2014, Applicant proceeded to trial *pro se* before the Honorable Dean E. Ford, magistrate judge, and a jury. The case was prosecuted by George K. Lyall, Esquire. At the conclusion of trial, the jury returned a guilty verdict.

On July 7, 2014, Applicant filed a notice of appeal to the Greenville County Court of Common Plea. A hearing regarding Applicant's appeal was convened on August 12, 2014; however, Applicant did not appear. On August 14, 2014, the Honorable D. Garrison Hill issued an order dismissing Applicant's appeal for failure to prosecute.

Following the dismissal, on August 27, 2014, Applicant filed a *pro se* notice of appeal to the South Carolina Court of Appeals. Applicant then filed a *pro se* initial brief and designation of matter; however, she subsequently retained J. Falkner Wilkes, Esquire, to represent her in this appeal. By Order filed May 21, 2015, South Carolina Court of Appeals granted Mr. Wilkes' motion to "allow counsel to engage in the representation of the Appellant" who has previously proceeded *pro se* and granted his request to withdraw Applicant's *pro se* initial brief and accept an amended initial brief and designation of matter. Mr. Wilkes subsequently filed a brief in support of Applicant's appeal and the State filed a brief in response. On June 15, 2016, the Court of Appeals affirmed the circuit court's dismissal of Applicant's appeal as well as her

conviction in an unpublished opinion. State v. Floyd, Op. No. 2016-UP-299 (S.C. Ct. App. Filed June 15, 2016). Applicant submitted a timely Petition for Rehearing and by Order filed August 18, 2016, the petition was denied.

On September 16, 2016, Applicant submitted a Petition for a Writ of Certiorari to the South Carolina Supreme Court. The State submitted its Return to Petition for Writ of Certiorari on October 13, 2016. On May 30, 2017, the Supreme Court denied Applicant's Petition for Writ of Certiorari. The Remittitur was returned to the circuit court on June 12, 2017.

ALLEGATIONS RAISED IN THE APPLICATION AND AT THE HEARING

In her application for post-conviction relief, Applicant alleged the following claims for relief:

1. Prosecutorial Misconduct
    a. Prosecutorial abuse of discretion/vindictive prosecution
2. No Probable Cause, Failure to Prosecute
    a. No probable cause/one and half year delay to prosecute
3. Brady Violation
    a. State purposely withheld and destroyed evidence

Respondent served a return to this application on May 2, 2018, requesting an evidentiary hearing.

At the evidentiary hearing, Applicant proceeded forward on the following allegations: first, the issue of the trial judge answering a jury question in front of the jurors in the jury deliberation room with Applicant and the prosecutor present; second, the issue of a witness's conversation with an alternate jury; and third, the issue of whether the destruction of a video prejudiced Applicant's case. Applicant testified on her own behalf and Respondent presented testimony from prosecutor Lyall.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses

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presented, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Milledge v. State, 422 S.C. 366, 374, 811 S.E.2d 796, 800 (2018) (citing Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) and Rule 71.1(e), SCRCP)). Applicant has alleged three instances of prosecutorial misconduct: first, the issue of the trial judge answering a jury question in front of the jurors in the jury deliberation room with Applicant and the prosecutor present; second, the issue of a witness's conversation with an alternate jury; and third, the issue of whether the destruction of a video prejudiced Applicant's case. This Court finds Applicant has failed to meet her requisite burden of proof as to any of these allegations. Each allegation is addressed in detail below:

Allegation that Applicant is entitled to relief based on the trial court entering the jury room

Applicant alleges she is entitled to a new trial because the trial court entered the jury room during deliberations to answer a question from the jury. The uncontroverted evidence presented by both Applicant and Respondent at the evidentiary hearing established that during deliberations, the jury sent a note to the trial court seeking clarification regarding probable cause. In response, rather than having the jury return to the courtroom, the trial court had Applicant and the prosecutor accompany him to the jury room, wherein the trial court responded to the jury question in the presence of Applicant and the prosecutor, then the judge and both parties left the room and the jury continued its deliberations. The prosecutor testified the court did not engage in any other discussion with the jury beyond responding to its question on probable cause. Applicant asserts she is entitled to relief based on the trial court entering the jury room.

Our Supreme Court addressed this issue in State v. Elmore, a capital case where Elmore

was sentenced to death following conviction or murder, first-degree criminal sexual conduct, and burglary. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983). In Elmore, the trial judge entered the jury room accompanied by counsel from the Sate and the defense (but without Elmore himself) to answer a jury question during the guilty phase of his capital trial. Id. On appeal, the Supreme Court held, "Although we find no actual prejudice in this instance, we hold this conduct to be reversible error regardless of the presence of counsel. We caution the bench that this procedure is highly improper and also runs counter to the requirement that in a death case the defendant be present at all stages of trial." Id. (Emphasis added) (citing State v. Taylor, 261 S.C. 437, 200 S.E.2d 387 (1973); State v. James, 116 S.C. 243, 107 S.E. 907 (1921)).

In the present case, Applicant, who was the defendant in the action, was present in the jury room, and therefore, the trial judge's conduct does not run afoul of Elmore. Applicant has failed to establish that she was deprived her right to a fair trial by the trial judge entering the jury room to answer the jury's question when she was present for the entirety of the discussion. This allegation is denied and dismissed with prejudice.

Allegation that Applicant is entitled to relief based on a witness's conversation with alternate juror while the jury was deliberating the in the jury room after the alternate was excused

Applicant asserts that she is entitled to a new trial because one of the witnesses from trial, Jack Crumpton, approached and spoke to the alternate juror while the jury was deliberating. This was after the alternate juror had been excused from jury service and while the jury was deliberating in the jury room, away from this encounter. The prosecutor testified the encounter between the alternate and Crumpton was brought to the trial court's attention, and thereafter, the court placed Crumpton under oath and questioned him about the encounter. Crumpton informed the court he had no relationship with the alternate and simply asked her what she thought of the case before the alternate drove away. The prosecutor testified the alternate never sat with the jury

and never entered the jury room for deliberations. Applicant presented no evidence that the juror ever took part in deliberations or that the deliberations where in any way impacted by this encounter between the alternate and Crumpton.

"A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature." State v. Cameron, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct. App. 1993) (citing State v. Johnson, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990); State v. Wasson, 299 S.C. 508, 511, 386 S.E.2d 255, 256 (1989); State v. Salters, 273 S.C. 501, 504, 257 S.E.2d 502, 504 (1979)). Moreover, "[i]t is the duty of the trial judge to see that a jury of unbiased, fair and impartial persons is impaneled. State v. Powers, 331 S.C. 37, 43, 501 S.E.2d 116, 119 (1998) (citing State v. Matthews, 291 S.C. 339, 353 S.E.2d 444 (1986); State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990)).

However, "unless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict." Kelly, 331 S.C. at 141, 502 S.E.2d at 104. Significantly, in South Carolina, prejudice will not be presumed from improper influences on the jury. State v. Grovenstein, 335 S.C. 347, 351, 517 S.E.2d 216, 218 (1999) ("The Court of Appeals erred in adopting a 'presumption of prejudice' standard."). Instead, prejudice must be shown by the defendant in order to warrant the grant of a mistrial or the disqualification of any jurors. Id.

In the present case, Applicant presented no evidence that the deliberations where in any way impacted by this encounter between the alternate and Crumpton. This Court finds Applicant has failed to meet her requisite burden of proof of establishing any conditional violations that would warrant a new trial. This allegation is denied and dismissed with prejudice.

Allegation that Applicant is entitled to relief based on the destruction of the surveillance video of the alleged assault between Applicant and Crumpton

Applicant also asserts she is entitled to a new trial based on the destruction of the videotape showing the encounter between Applicant and Crumpton that led to the charge for filing a false police report. Applicant testified she filed a police report after she was assaulted by Crumpton, a process server who served her with documents. She testified a video of the encounter was captured by surveillance cameras and law enforcement told her they had watched the video in determining whether an assault had occurred and deciding to charge her with filing a false police report. She testified she was informed by the prosecutor before her trial that the videotape had been destroyed and was not available.

The prosecutor testified when he began reviewing the casefile to prepare for trial, he noticed there were references to a surveillance video of the encounter between Applicant and Crumpton, but no video was in the file. He testified he immediately contacted Deputy Holloman, the investigating officer, to inquire about the video. He testified Deputy Holloman informed him that when the original assault case was opened based on Applicant's complaint, the video was paired with that file and stored within that file. He testified Deputy Holloman further explained when Applicant was charged with filing a false police report, a new casefile was opened for this charge and the casefile for the assault complaint was administratively closed. He testified the surveillance video was not transferred to or paired with the new casefile for filing a false police report, likely through inadvertence. He testified Deputy Holloman informed him the video was administratively destroyed in compliance with office protocols and procedures for destruction of closed casefiles.

Accordingly, no video of the encounter between Applicant and Crumpton was preserved or available for use at Applicant's trial. However, Crumpton did testify at trial and Applicant, who was the other party to the encounter, was also available at trial. Furthermore, several law

enforcement officers who watched the surveillance video testified at trial.

The State does not have an absolute duty to preserve potentially useful evidence, and a defendant must demonstrate either: 1) the State destroyed evidence in bad faith; or 2) the evidence's exculpatory value was readily apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other means. State v. Moses, 390 S.C. 502, 520, 702 S.E.2d 395, 404 (Ct. App. 2010) (citing State v. Mabe, 306 S.C. 355, 412 S.E.2d 386 (1991)). The bad faith requirement limits the extent of the State's obligation to preserve evidence to reasonable bounds, and confines it to cases in which the police conduct indicates the evidence could form a basis for exonerating the defendant. Arizona v. Youngblood, 488 U.S. 51, 58 (1988); Moses, 702 S.E.2d at 403.

Youngblood is factually analogous. In Youngblood, clothes from the child-victim in a sexual assault case were not properly refrigerated. Id. at 53. Experts for Arizona and the defendant confirmed semen on the clothes could have been tested if refrigerated properly. Id. at 54. In that case, unlike the present case, identity was an issue.

Youngblood held as follows:

> We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interest of justice most clearly requires it, i.e., those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant. We therefore hold that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of the law.

Id. at 58.

In the instant case, no evidence suggests law enforcement acted in bad faith. See United States v. Agurs, 427 U.S. 97, 109-10 (1976) ("The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does

not establish 'materiality' in the constitutional sense."). Instead, evidence in the record merely indicates negligence at most. State v. Reaves, 414 S.C. 118, 128, 777 S.E.2d 213, 218 (2015) (finding that although the police investigation was severely flawed with several failures to preserve evidence, "the record . . . contains no indication these flaws were the product of more than mere negligence."). The defendant's burden to show bad faith is not relaxed merely because the lost or destroyed evidence is the defendant's "only hope of exoneration" or is "essential to and determinative of the outcome of the case." Illinois v. Fisher, 540 U.S. 544, 548 (2004).

In support of her allegation, Applicant cites Brady v. Maryland, 373 U.S. 83 (1972) in attempt to conflate the concepts from Brady with Youngblood. The United State Supreme Court compared the two cases in Fisher as follows:

> We have held that when the State suppresses or fails to disclose material exculpatory evidence, the good or bad faith of the prosecution is irrelevant: a due process violation occurs whenever such evidence is withheld. See Brady v. Maryland, 373 U.S. 83, 83 S.C. 1194, 10 L.E.2d 215 (1963); United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976). In Youngblood, by contrast, we recognized that the Due Process Clause "requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant." 488 U.S. at 57, 109 S.Ct. 333. We concluded that the failure to preserve this "potentially useful evidence" does not violate due process "*unless a criminal defendant can show bad faith on the part of the police.*" Id., at 58, 109 S.Ct. 333 (emphasis added).

Id. at 547-48 (finding destroyed narcotics in Fisher were like the "potentially useful evidence referred to in Youngblood, not the material exculpatory evidence addressed in Brady and Agurs."). Applicant is not relieved of Youngblood's demand that she demonstrate bad faith by law enforcement, and therefore, her reliance on Brady is misplaced.

Here, Applicant cannot demonstrate that the State destroyed the video evidence in bad faith. More importantly, Applicant had evidence of comparable value at her disposal. All of the

Exhibit 2

 #9

actors who had a role in the case were available to testify and the jury could consider their testimony. Applicant was present at the trial as she represented herself, Crumpton was present, and so were the officers who viewed the video after Applicant filed her police report. Based on the available parties, Applicant had evidence of comparable value to prove her case. Accordingly, Applicant has failed to meet her requisite burden of proof and this allegation is denied and dismissed with prejudice.

CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 24 day of January, 2019.

ALEX KINLAW JR.
Presiding Judge
Thirteenth Judicial Circuit

Greer, South Carolina

Copy mailed to
Atty. general / Donna Boyd
on 1 / 31 / 2019

EXHIBIT N

From: Megan Jameson MJameson@scag.gov
Subject: RE: Donna Boyd 2018-CP-23-7725
Date: Jan 22, 2019, 10:23:53 AM
To: Kinlaw, Alex Law Clerk (Shedricka Anderson) akinlawlc@sccourts.org
Cc: Donna Boyd dcarolineis@yahoo.com, Thirteenthcircuitpcr Thirteenthcircuitpcr@scag.gov, Kelly Oppenheimer KOppenheimer@scag.gov

Ms. Anderson,

Attached please find the proposed order of dismissal, in editable word format, as requested by the Court. Please let me know if I you would prefer I send a hard copy to your chambers as well. I have copied Ms. Boyd on this email.

Former AG Mitchell submitted Order of Dismissal on 11/6/2018

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
Post-Conviction Relief Division
S.C. Attorney General's Office

From: Kinlaw, Alex Law Clerk (Shedricka Anderson) <akinlawlc@sccourts.org>
Sent: Wednesday, January 9, 2019 9:34 AM
To: Megan Jameson <MJameson@scag.gov>
Subject: Donna Boyd 2018-CP-23-7725

Petitioner not cc'd

Good morning Senior Assistant Attorney General Jameson,

I hope this email finds you doing well. Judge Kinlaw is requesting that you submit an Order of Dismissal in accordance with the Brief that Mr. Mitchell previously submitted within 20 days. If this case has been reassigned to another Assistant Attorney General please let me know. Also, please let me know if you have any questions or concerns.

Best regards

Shedricka Anderson
Law Clerk to Judge Alex Kinlaw, Jr.
13th Circuit Court Judge
305 East North Street Suite 213
Greenville, SC 29601

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864-467-8046
864-467-8035 (fax)
akinlawlc@sccourts.org

[W
Donna...).DOCX
38.9 KB]

Exhibit 2C

State's proposed Order of Dismissal submitted January 22, 2019

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT

Donna Boyd,) Case No.: 2017-CP-23-7725

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

6 pages

Exhibit 20

Second PCR Application

This matter comes before this Court by way of an application for post-conviction relief filed by Donna Boyd (Applicant) on December 4, 2017, alleging various allegations of prosecutorial misconduct. The State of South Carolina (Respondent) served its return on May 2, 2018, requesting an evidentiary hearing.

An evidentiary hearing was held on October 26, 2018, before this Court at the Greenville County Courthouse. Applicant was present and appeared *pro se*. Respondent was represented by Assistant Attorney General DeShawn H. Mitchell. At the hearing testimony was taken from Applicant and prosecutor George K. Lyall. Following all testimony and argument, this Court offered both parties additional time to submit briefs on three issues: first, the issue of the trial judge answering a jury question in front of the jurors in the jury deliberation room with Applicant and the prosecutor present; second, the issue of a witness's conversation with an alternate jury; and third, the issue of whether the destruction of a video prejudiced Applicant's case. Respondent submitted a brief on November 6, 2018. Applicant did not submit a brief, but did submit a substantive email that she asked be treated as a brief on November 26, 2018.

Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish that on November 16, 2012, Applicant was arrested and charged with filing a false police report of a misdemeanor (Warrant No. 2012A-23-30204055) in Greenville County stemming from an incident on October 30, 2012, wherein Applicant filed a police report that she had been assaulted by Jack Crumpton with Foothills Investigations while he served her with documents and the allegations of assault were later refuted by video evidence. She was originally represented by Michael F. Talley, Esquire, who later moved to be relieved and his requested was granted on April 9, 2014. On June 25, 2014, Applicant proceeded to trial *pro se* before the Honorable Dean E. Ford, magistrate judge, and a jury. The case was prosecuted by George K. Lyall, Esquire. At the conclusion of trial, the jury returned a guilty verdict.

On July 7, 2014, Applicant filed a notice of appeal to the Greenville County Court of Common Plea. A hearing regarding Applicant's appeal was convened on August 12, 2014; however, Applicant did not appear. On August 14, 2014, the Honorable D. Garrison Hill issued

Following the dismissal, on August 27, 2014, Applicant filed a *pro se* notice of appeal to the South Carolina Court of Appeals. Applicant then filed a *pro se* initial brief and designation of matter; however, she subsequently retained J. Falkner Wilkes, Esquire, to represent her in this appeal. By Order filed May 21, 2015, South Carolina Court of Appeals granted Mr. Wilkes' motion to "allow counsel to engage in the representation of the Appellant" who has previously proceeded *pro se* and granted his request to withdraw Applicant's *pro se* initial brief and accept an amended initial brief and designation of matter. Mr. Wilkes subsequently filed a brief in support of Applicant's appeal and the State filed a brief in response. On June 15, 2016, the Court of Appeals affirmed the circuit court's dismissal of Applicant's appeal as well as her conviction in an unpublished opinion. State v. Boyd, Op. No. 2016-UP-299 (S.C. Ct. App. Filed June 15, 2016). Applicant submitted a timely Petition for Rehearing and by Order filed August 18, 2016, the petition was denied.

On September 16, 2016, Applicant submitted a Petition for a Writ of Certiorari to the South Carolina Supreme Court. The State submitted its Return to Petition for Writ of Certiorari on October 13, 2016. On May 30, 2017, the Supreme Court denied Applicant's Petition for Writ of Certiorari. The Remittitur was returned to the circuit court on June 12, 2017.

ALLEGATIONS RAISED IN THE APPLICATION AND AT THE HEARING

In her application for post-conviction relief, Applicant alleged the following claims for relief:

1. Prosecutorial Misconduct
    a. Prosecutorial abuse of discretion/vindictive prosecution
2. No Probable Cause, Failure to Prosecute
    a. No probable cause/one and half year delay to prosecute
3. Brady Violation
    a. State purposely withheld and destroyed evidence

Respondent served a return to this application on May 2, 2018, requesting an evidentiary hearing.

At the evidentiary hearing, Applicant proceeded forward on the following allegations: first, the issue of the trial judge answering a jury question in front of the jurors in the jury deliberation room with Applicant and the prosecutor present; second, the issue of a witness's conversation with an alternate jury; and third, the issue of whether the destruction of a video prejudiced Applicant's case. Applicant testified on her own behalf and Respondent presented testimony from prosecutor Lyall.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Milledge v. State, 422 S.C. 366, 374, 811 S.E.2d 796, 800 (2018) (citing Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) and Rule 71.1(e), SCRCP)). Applicant has alleged three instances of prosecutorial misconduct: first, the issue of the trial judge answering a jury question in front of the jurors in the jury deliberation room with Applicant and the prosecutor present; second, the issue of a witness's conversation with an alternate jury; and third, the issue of whether the destruction of a video prejudiced Applicant's case. This Court finds Applicant has failed to meet her requisite burden of proof as to any of these allegations. Each allegation is addressed in detail below:

Allegation that Applicant is entitled to relief based on the trial court entering the jury room

(2)

Applicant alleges she is entitled to a new trial because the trial court entered the jury room during deliberations to answer a question from the jury. The uncontroverted evidence presented by both Applicant and Respondent at the evidentiary hearing established that during deliberations, the jury sent a note to the trial court seeking clarification regarding probable cause. In response, rather than having the jury return to the courtroom, the trial court had Applicant and

question in the presence of Applicant and the prosecutor, then the judge and both parties left the room and the jury continued its deliberations. The prosecutor testified the court did not engage in any other discussion with the jury beyond responding to its question on probable cause. Applicant asserts she is entitled to relief based on the trial court entering the jury room.

Our Supreme Court addressed this issue in State v. Elmore, a capital case where Elmore was sentenced to death following conviction or murder, first-degree criminal sexual conduct, and burglary. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983). In Elmore, the trial judge entered the jury room accompanied by counsel from the Sate and the defense (but without Elmore himself) to answer a jury question during the guilty phase of his capital trial. Id. On appeal, the Supreme Court held, "Although we find no actual prejudice in this instance, we hold this conduct to be reversible error regardless of the presence of counsel. We caution the bench that this procedure is highly improper and also runs counter to the requirement that in a death case **the defendant be present at all stages of trial**." Id. (Emphasis added) (citing State v. Taylor, 261 S.C. 437, 200 S.E.2d 387 (1973); State v. James, 116 S.C. 243, 107 S.E. 907 (1921)).

In the present case, Applicant, who was the defendant in the action, was present in the jury room, and therefore, the trial judge's conduct does not run afoul of Elmore. Applicant has failed to establish that she was deprived her right to a fair trial by the trial judge entering the jury room to answer the jury's question when she was present for the entirety of the discussion. This allegation is denied and dismissed with prejudice.

Allegation that Applicant is entitled to relief based on a witness's conversation with alternate juror while the jury was deliberating the in the jury room after the alternate was excused

Applicant asserts that she is entitled to a new trial because one of the witnesses from trial, Jack Crumpton, approached and spoke to the alternate juror while the jury was deliberating. This was after the alternate juror had been excused from jury service and while the jury was deliberating in the jury room, away from this encounter. The prosecutor testified the encounter between the alternate and Crumpton was brought to the trial court's attention, and thereafter, the court placed Crumpton under oath and questioned him about the encounter. Crumpton informed the court he had no relationship with the alternate and simply asked her what she thought of the case before the alternate drove away. The prosecutor testified the alternate never sat with the jury and never entered the jury room for deliberations. Applicant presented no evidence that the juror ever took part in deliberations or that the deliberations where in any way impacted by this encounter between the alternate and Crumpton.

"A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature." State v. Cameron, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct. App. 1993) (citing State v. Johnson, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990); State v. Wasson, 299 S.C. 508, 511, 386 S.E.2d 255, 256 (1989); State v. Salters, 273 S.C. 501, 504, 257 S.E.2d 502, 504 (1979)). Moreover, "[i]t is the duty of the trial judge to see that a jury of unbiased, fair and impartial persons is impaneled. State v. Powers, 331 S.C. 37, 43, 501 S.E.2d 116, 119 (1998) (citing State v. Matthews, 291 S.C. 339, 353 S.E.2d 444 (1986); State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990)).

However, "unless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict." Kelly, 331 S.C. at 141, 502 S.E.2d at 104. Significantly, in South Carolina, prejudice will not be presumed from improper influences on the jury. State v. Grovenstein, 335 S.C. 347, 351, 517 S.E.2d 216, 218 (1999) ("The Court of Appeals erred in adopting a 'presumption of prejudice' standard."). Instead, prejudice must be shown by the defendant in order to warrant the grant of a mistrial or the disqualification of any jurors. Id.

In the present case, Applicant presented no evidence that the deliberations where in any way impacted by this encounter between the alternate and Crumpton. This Court finds Applicant has failed to meet her requisite burden of proof of establishing any conditional violations that would warrant a new trial. This allegation is denied and dismissed with prejudice.

Allegation that Applicant is entitled to relief based on the destruction of the surveillance video of the alleged assault between Applicant and Crumpton

Applicant also asserts she is entitled to a new trial based on the destruction of the videotape showing the encounter between Applicant and Crumpton that led to the charge for filing a false police report. Applicant testified she filed a police report after she was assaulted by Crumpton, a process server who served her with documents. She testified a video of the encounter was captured by surveillance cameras and law enforcement told her they had watched the video in determining whether an assault had occurred and deciding to charge her with filing a false police report. She testified she was informed by the prosecutor before her trial that the videotape had been destroyed and was not available.

Rule 602 — The prosecutor testified when he began reviewing the casefile to prepare for trial, he noticed there were references to a surveillance video of the encounter between Applicant and Crumpton, but no video was in the file. He testified he immediately contacted Deputy Holloman, the investigating officer, to inquire about the video. He testified Deputy Holloman informed him that when the original assault case was opened based on Applicant's complaint, the video was paired with that file and stored within that file. He testified Deputy Holloman further explained when Applicant was charged with filing a false police report, a new casefile was opened for this charge and the casefile for the assault complaint was administratively closed. He testified the surveillance video was not transferred to or paired with the new casefile for filing a false police report, likely through inadvertence. He testified Deputy Holloman informed him the video was administratively destroyed in compliance with office protocols and procedures for destruction of closed casefiles.

No personal knowledge Rule 56 — No signed testimony

Accordingly, no video of the encounter between Applicant and Crumpton was preserved or available for use at Applicant's trial. However, Crumpton did testify at trial and Applicant, who was the other party to the encounter, was also available at trial. Furthermore, several law enforcement officers who watched the surveillance video testified at trial.

The State does not have an absolute duty to preserve potentially useful evidence, and a defendant must demonstrate either: 1) the State destroyed evidence in bad faith; or 2) the evidence's exculpatory value was readily apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other means. State v. Moses, 390 S.C. 502, 520, 702 S.E.2d 395, 404 (Ct. App. 2010) (citing State v. Mabe, 306 S.C. 355, 412 S.E.2d 386 (1991)). The bad faith requirement limits the extent of the State's obligation to preserve evidence to reasonable bounds, and confines it to cases in which the police conduct indicates the evidence could form a basis for exonerating the defendant. Arizona v. Youngblood, 488 U.S. 51, 58 (1988); Moses, 702 S.E.2d at 403.

Youngblood is factually analogous. In Youngblood, clothes from the child-victim in a sexual assault case were not properly refrigerated. Id. at 53. Experts for Arizona and the defendant confirmed semen on the clothes could have been tested if refrigerated properly. Id. at 54. In that case, unlike the present case, identity was an issue.

Youngblood held as follows:

> We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interest of justice most clearly requires it, i.e., those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant. We therefore hold that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of the law.

(A)

Id. at 58.

In the instant case, no evidence suggests law enforcement acted in bad faith. See United

States v. Agurs, 427 U.S. 97, 109-10 (1976) ("The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense."). Instead, evidence in the record merely indicates negligence at most. State v. Reaves, 414 S.C. 118, 128, 777 S.E.2d 213, 218 (2015) (finding that although the police investigation was severely flawed with several failures to preserve evidence, "the record . . . contains no indication these flaws were the product of more than mere negligence."). The defendant's burden to show bad faith is not relaxed merely because the lost or destroyed evidence is the defendant's "only hope of exoneration" or is "essential to and determinative of the outcome of the case." Illinois v. Fisher, 540 U.S. 544, 548 (2004).

In support of her allegation, Applicant cites Brady v. Maryland, 373 U.S. 83 (1972) in attempt to conflate the concepts from Brady with Youngblood. The United State Supreme Court compared the two cases in Fisher as follows:

> We have held that when the State suppresses or fails to disclose material exculpatory evidence, the good or bad faith of the prosecution is irrelevant: a due process violation occurs whenever such evidence is withheld. See Brady v. Maryland, 373 U.S. 83, 83 S.C. 1194, 10 L.E.2d 215 (1963); United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976). In Youngblood, by contrast, we recognized that the Due Process Clause "requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant." 488 U.S. at 57, 109 S.Ct. 333. We concluded that the failure to preserve this "potentially useful evidence" does not violate due process "*unless a criminal defendant can show bad faith on the part of the police.*" Id., at 58, 109 S.Ct. 333 (emphasis added).

Id. at 547-48 (finding destroyed narcotics in Fisher were like the "potentially useful evidence referred to in Youngblood, not the material exculpatory evidence addressed in Brady and Agurs."). Applicant is not relieved of Youngblood's demand that she demonstrate bad faith by law enforcement, and therefore, her reliance on Brady is misplaced.

Here, Applicant cannot demonstrate that the State destroyed the video evidence in bad faith. More importantly, Applicant had evidence of comparable value at her disposal. All of the actors who had a role in the case were available to testify and the jury could consider their testimony. Applicant was present at the trial as she represented herself, Crumpton was present, and so were the officers who viewed the video after Applicant filed her police report. Based on the available parties, Applicant had evidence of comparable value to prove her case. Accordingly, Applicant has failed to meet her requisite burden of proof and this allegation is denied and dismissed with prejudice.

CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this _____ day of _____, 2019.

_____

ALEX KINLAW JR.

Presiding Judge

Thirteenth Judicial Circuit

_____, South Carolina

16

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT
)
Donna Boyd,)
)
Applicant,)
)
vs.)
)
State of South Carolina,) C.A. No.: 2017-CP-23-7725
)
Respondent.)

Exhibit 3

MOTION TO ALTER OR AMEND THE JUDGMENT

Pursuant to Rule 59 (e) of the South Carolina Rules of Civil Procedure, Applicant respectfully moves the Court to alter or amend its Order dated January 24, 2019.

INTRODUCTION

This matter is an Applicant's appeal from the denial of a post-conviction relief application. A hearing held before the Honorable Alex Kinlaw, Jr., on October 26, 2018. After the hearing, Judge Kinlaw decided to send the matter back to the magistrate court for retrial. Respondent requested additional time to submit brief in opposition to the remand, addressing specific issues raised by the Court and Applicant. Respondent requested one week to submit a brief. Judge Kinlaw granted twenty (20) days to Respondent and instructed both parties to address specific issues raised in the hearing.

The deadline for submitting brief November 15, 2018. Respondent submitted brief on November 6, 2019. Applicant informed court that she would not submit brief due to illness on November 15, 2018. Applicant informed that Respondent no longer employed on November 6, 2018. Judge Kinlaw requested

that Applicant submit brief on November 26, 2018. Applicant submitted an email as proposed brief. Applicant requested that case be remanded for new trial. Judge Kinlaw denied relief by order dated January 24, 2019. The order filed January 31, 2019. Applicant received order February 7, 2019.

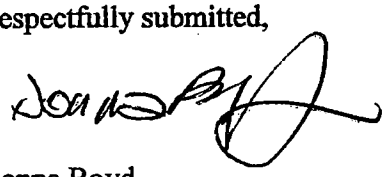
Judge Kinlaw sent Respondent email request for proposed order on January 9, 2019. Applicant not informed of January 9, 2019, email request for the proposed order. Applicant discovered email from Respondent with attached proposed order dated January 22, 2019, on February 3, 2019. Order dated January 24, 2019, precisely the same order as Respondent's proposed order dated January 22, 2019. Respondent prepared the order dated January 24, 2019. Judge Kinlaw signed the Order.

Applicant moves this court under rule 59(e) of the Federal Rules of Civil Procedure to alter or amend the judgment entered on January 31, 2019.

As explained in the accompanying Memorandum, the Court's decision failed to comply with section 17-27-80 and Rule 59(e) of the SCRCP, which required the court to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. The State failed to address any of the issues raised and does not contain specific findings of fact and conclusions of law regarding each of the claims presented at the hearing. For this reason, the Applicant respectfully requests that this motion is granted and that the Court's order and judgment of January 31, 2019, be vacated and that this court make a ruling on the issues and applies the appropriate conclusions of law.

Exhibit 3

Respectfully submitted,



Donna Boyd
P.O. Box 1168
Mauldin, SC 29662

February 14, 2019

Exhibit 3

Format?

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS FOR 13TH JUDICIAL CIRCUIT
DONNA BOYD, APPLICANT VS. STATE OF SOUTH CAROLINA RESPONDENT	2017CP2307725 ORDER DENYING APPLICANT'S RULE 59(e) MOTION ENTERED COMPUTER

'19 FEB 21 PM 2:26
Paul Wickensimer COC GVL SC

Upon my review of Applicant's Motion to Alter or Amend the Judgement of the Court as well as a review of the Court's record and all pertinent notes pertaining to the matter, the Court would respectfully deny Applicant's Motion. The Court would however correct the language set forth in Applicant's Motion indicating that the matter was remanded to the Magistrate Court for retrial. That language is incorrect. Page 107, Transcript Lines 1017 Exhibit 1 WD

Lastly in the The Order of Dismissal filed with the Court on January 31, 2019, Page 10 Number 2 States that the Applicant shall remain in the custody of the State within the South Carolina Department of Corrections. This language is deleted since Applicant is not confined. Exhibit 2, Order Word for Word to the AG's order dated 1/22/2019, Page 5 Exhibit 2D P. 10

Greenville, South Carolina
February 20, 2019

Alex Kinlaw, Jr.
Circuit Court Judge

Copy mailed to
Attorney General / Donna Boyd
on 2 / 21 / 19

March 17, 2019

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

Re: Donna Boyd v. State of South Carolina
Case No: 2017-CP-23-7725

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please clock and file the copies and return them in the enclosed postage paid envelope. Thank you.

Respectfully,

Donna Boyd

DCB/
enclosures

cc: Megan Jameson, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE ALEX KINLAW, JR.

2017-CP-23-7725

DONNA BOYD,

APPELLANT,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

RECEIVED

MAR 21 2019

S.C. SUPREME COURT

Exhibit A

NOTICE OF APPEAL

Donna Boyd appeals the denial of her Post-Conviction Relief. The Post-Conviction Relief Action was heard by the Honorable Alex Kinlaw Jr., Circuit Judge on October 26, 2018, and Order denying the Appellant's Post-Conviction Relief issued on January 24, 2019 and filed on January 31, 2019. The Appellant received notice of the judgment on February 7, 2019. Pursuant to Rule 59 (e) of the South Carolina Rules of Civil Procedure, the Appellant on February 14, 2019, respectfully moved the Court to alter or amend its Order dated January 24, 2019. The Court received the motion on February 19, 2019, and denied the Appellant's Rule 59 (e) motion on February 20, 2019. The Appellant received the order denying the motion on February 23, 2019, notably Form 4 missing. The Appellant reasserted the Rule 59 (e) motion on March 4, 2019. The Court failed to respond to the Rule 59 (e) motion. The transcript of the hearing held on October 26, 2018, requested on March 14, 2019.

Donna Boyd
Pro Se
Post Office Box 1168
Mauldin, South Carolina 29662
(773)266-2711

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 25, 2019

Ms. Donna Boyd
PO Box 1168
Mauldin, SC 29662

Re: Your Case

Dear Ms. Boyd:

This office is in receipt of a notification from the South Carolina Supreme Court that you have filed a Notice of Intention to Appeal. If you are possibly wanting this office to represent you on appeal, **please complete the following questions and answer all questions on the enclosed Affidavit of Indigency, and have it notarized and return it to me no later than April 10, 2019,** or we will be closing our file. If we do not hear from you by this time we must assume that you have retained private counsel to perfect your appeal.

Are you appealing from a trial conviction hearing or from a post-conviction relief hearing?_____

In what county was this hearing held?_____

Presiding Judge's name:_____

List **all hearing dates** related to your case and the purpose of each hearing (include the Judge's name if different from the Judge listed above):

_____

_____

_____

_____

4 April 2019

Chief Appellate Defender Robert M. Dudek,

No thank you for the offer of representation for the following reasons:

The Petitioner has spent tens of thousands of dollars vigorously opposing the heinous and unlawful actions against my brother, Mr. Billy Roy Boyd and myself. Consequently, the Petitioner's representation paid in full.

The Petitioner asserts that the false arrest resulted from strenuously opposing the State's unlawful actions against my brother. On January 25, 2019, the Petitioner delivered documents to Appellate Defender Kathrine H. Hudgins showing that your office (SCCID), State and other malefactors acting at its behest colluded and willfully concealed that there is "No Waiver of Counsel" in the record. Chief Dudek, I am sure that you received these pertinent documents as well.

Notably, SCCID has failed to respond to this significant discovery. Also, the State's Attorney received the same documents on January 25, 2019, concerning Mr. Boyd's case. Over two months later and my brother's so-called appointed counsel and the State to no surprise has not contacted or informed Mr. Boyd that it received the documents and that it is looking into the matter. So, it is evident that your office (SCCID, aka **South Carolina Commission on Indifferent Defense**), South Carolina Court of Appeals neither the State's Attorney Office is working in the interest of justice.

Exhibit AB

Based on my brother's current counsel and previous counsel (You, Hudgins. Pachak and Tripp), I am convinced that no one at the SCCID represents my best interest, my brother's best interest or the best interest of my people. For what valid reason would I allow SCCID to represent me? It has been said, "He who represents himself has a fool for a client." I will take my chances. I contend that I would be better off with Ned the "Wino." Fool me once shame on you; fool me twice shame on me. I will pass on the okey-doke and the offer of representation or (misrepresentation). No thanks to the proposal. I'm good! However, **without further delay inform Court Reporter Hollie Jenkins that she needs to go forward with the transcription of the record. I requested the transcript on March 14, 2019. So, I expect to receive the transcript soon, and if I don't receive it within the next week, I will forward my complaint and this letter.**

Also, the Petitioner faxed a copy of the letter sent to former Assistant Attorney Deshawn H. Mitchell to your attention on October 25, 2018. It is evident that SCCID does not operate independently of the State, which contravenes SCCID's mission and responsibility to those it represents. The SCCID is supposed to work independently of the State since it receives funds from the State to represent the indigent. But, as the evidence unequivocally shows, SCCID is in cahoots with the State.

Mr. Boyd's PCR hearing held on October 24, 2017, and denied on May 15, 2018, ridiculously almost seven months later. Notably, Mr. Boyd filed his PCR application on June 11, 2015. The State has delayed and purposely failed to decide Mr. Boyd's PCR matter for almost four (4) years. Where is the Due Process? Mr. Boyd's appointed counsel served notice of appeal to the South Carolina Supreme Court on May 21, 2018.

And Mr. Boyd received a letter dated August 14, 2018, informing that Robert Pachak submitted a petition for writ of certiorari indicating that Mr. Boyd's appeal is without merit. Significantly, Mr. Pachak argued whether the PCR court erred in ruling that standby counsel at petitioner's trial could not be held ineffective when standby counsel retained to represent petitioner, standby counsel asked to be relieved, and standby counsel sat at the table with petitioner and gave him help throughout the trial.

The Petitioner noted that Mr. Pachak involved in my brother's case at the appellate level, but notably, Appellate Defenders Robert Pachak and Benjamin Tripp failed to argue whether Mr. Boyd's paid counsel was ineffective. But instead purposely chose to raise a less significant issue and had Mr. Boyd's case dismissed under "Anders" even though there is "No Waiver of Counsel" in the record.

Moreover, the Court informed Mr. Boyd that within forty-five (45) days of the date of the letter, he could file with the Court a pro se response to the petition filed by Robert Pachak. Further said that upon receipt of his pro se response or the expiration of forty-five (45) days, the matter would go to the Supreme Court for consideration. However, after the forty-five (45) days expired, without prior notice, Mr. Boyd's case inexplicably transferred to the South Carolina Court of Appeals on October 3, 2018.

If Mr. Boyd's case indeed without merit as alleged by Mr. Pachak, why would the State refuse to send Mr. Boyd's claim to the Supreme Court? If Mr. Boyd's argument is without merit, the Supreme Court will concur with that decision. In other words, allow the judicial process to work, and stop intervening in the process! Remarkably, Appellate Robert Pachak retired on October 1, 2018, immediately after transferring Mr. Boyd's matter to the South Carolina Court of Appeals.

Exhibit A

Significantly, Mr. Billy Roy Boyd's case is still awaiting consideration by the South Carolina Court of Appeals. The State and SCCID continue to maintain this false conviction and LIE when it remanded my brother's case to the court of appeals on October 3, 2018. It should be apparent by now that I will go to whatever lawful extent necessary and will not relent until my brother's conviction vacated, and the State and your office exposed for the devils that you are. It is beyond me how you sleep; arguably, you and your ilk don't have a conscience or a modicum of decency. How long will you and the State willfully maintain this LIE? As the adage goes, the chickens always come home to roost.

I sent this correspondence to the attention of Chief Appellate Defender Robert M. Dudek, South Carolina Commission on Indigent Defense via fax and certified mail on April 4, 2019. Since you all work for the same establishment, please inform your fellow 'good ole boys and gals' across the hall of this letter. I strongly advise the State to use what little time it has left to decide on my brother's case. Offering me representation but have yet to fulfill my brother's representation, you got to be kidding me?! With public defenders like you who needs prosecutors?!

Obadiah 1-4, Psalms 58: 3, Isaiah 14:1-5, Jeremiah 30:16, Joel 3, Revelations 13:9-10. Isaiah 45:17, But Israel(ites) shall be saved in the LORD with an everlasting salvation: ye shall not be ashamed nor confounded "World without end." (Also John 3:16).

Sincerely,

4April 2019

In the relentless pursuit of justice,

EX 167 A

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

Exhibit A

April 9, 2019

Ms. Donna Boyd
PO Box 1168
Mauldin, SC 29662

Re: Your Case

Dear Ms. Boyd:

We understand from your letter that you do not want our office to represent you on your post-conviction relief (PCR) appeal, and for that reason you refused to fill out the affidavit of indigency. Consequently, we cannot screen you for indigency, and we therefore cannot represent you in your PCR appeal.

You should understand that representing yourself on appeal is a very dangerous and a bad idea. You are not a lawyer and the Supreme Court will hold you responsible for following all the rules of court just as if you were an attorney. If you still want to represent yourself on appeal you should write the Supreme Court and let the Court know you have been advised it is a dangerous thing to do, and a bad idea. Nonetheless, you reject that advice and want to represent yourself. Conversely, it would be wise for you to retain counsel for your PCR appeal.

Please understand that there are strict time guidelines for the appeal, so you should act immediately.

Sincerely,

RMD

Robert M. Dudek
Chief Appellate Defender

RMD/ab

cc. Supreme Court
Taylor Smith, Esquire
newly assigned counsel for AG
Petitioner not informed of representation for State
Megan Jameson no longer assigned.

CLERK'S OFFICE
SUPREME COURT
COURT OF APPEALS

South Carolina Appellate Case Management System

C-Track, the browser based CMS for Appellate Courts

Appellate Case No

Cases

- Case Search
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Case Search

Court:		**Case Title:**	Boyd v. State	**Filed Date From:**	
Group:		**Appellate Case No.:**		**Filed Date To:**	
Type:		**Exclude Closed Cases:**	☐		

Searc

1 to 6 of 6 rows are displa

Search Results

Court	Appellate Case No.	Short Title	Group	Type	Subtype	Filed Date	Status
Supreme Court	2019-000458	Donna Boyd v. State	Certiorari - PCR	Common Pleas	Other	03/21/2019	Pending
Court of Appeals	2018-000961	Billy R. Boyd v. State	Certiorari - PCR	Common Pleas	Other	05/25/2018	Ready for Consider
Supreme Court	2017-001514	Antonio T. Boyd v. State	Certiorari - PCR	Common Pleas	Other	07/14/2017	Remittitur
Court of Appeals	2016-000051	Richey Lamont Boyd v. State	Certiorari - PCR	Common Pleas	Other	01/07/2016	Remittitur
Supreme Court	2013-000081	Jackie Boyd v. State	Certiorari - PCR	Common Pleas	Other	01/09/2013	Remittitur
Court of Appeals	2012-213133	Sherman Boyd v. State	Certiorari - PCR	Common Pleas	Other	10/10/2012	Remittitur

1 to 6 of 6 rows are displa

[redacted]

Exhibit D

April 17, 2019

Exhibit A

Mr. Robert M. Dudek
SCCID
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201

Re: 2019-000458

Dear Mr. Dudek:

I did not submit the affidavit of indigency because I don't trust SCCID or any agency that proves that is not working in the best interest of justice, me or my brother, Mr. Billy Roy Boyd. Furthermore, I will not divulge my personal financial information to an agency whose sole purpose for offering representation is to exploit and use this representation to its advantage. Notably, I filed a notice of appeal on March 21, 2019. I asked that the Clerk of Court send a copy of the notice and other documents in the prepaid envelopes provided.

However, I did not receive these documents, and on April 3, 2019, I called the Supreme Court to inquire about these documents and requested that the Court send these documents. Remarkably, I received these documents but noted that the Court again failed to provide the case number for the appeal. But, ironically, immediately after filing the notice of appeal, I noted that SCCID somehow informed of the notice of appeal and sent me a letter dated March 25, 2019, and an affidavit for indigency?

Mr. Boyd has representation, and yet the State has failed to decide his case for almost four **(4) years?** Moreover, Mr. Boyd's writ of certiorari filed with the Supreme Court on **May 21, 2018,** and on **October 3, 2018**, without notice to Mr. Boyd, inexplicably the State transferred Mr. Boyd's case to the South Carolina Court of Appeals. Notably, Mr. Boyd's appeal has been allegedly awaiting consideration for six (6) months. There is no **"Waiver of Counsel"** in the record, so what is the delay? Mr. Billy Roy Boyd SCDC#349065, Unlawfully Detained by the State of South Carolina.

Furthermore, to your point about retaining counsel to represent me, it is impossible to find any lawyer with an ounce of integrity in Greenville and surrounding areas to take on this case because he or she either turns a blind eye to the unlawful actions of fellow lawyers or too afraid to go against the system. To your point that I am not an attorney, you are an attorney but have failed to conduct yourself as an attorney, have not upheld the tenents of your profession or the rule of law. So, I am not exactly sure what 's your point? So, I am forced to represent myself due to these circumstances. Consequently, the Petitioner moves forward with self-representation

because the State has foreclosed her right to due process and her right to counsel under the Sixth Amendment.

P.S. expedite the transcription of the record. I requested the less than three hours transcript on March 14, 2019. Also, I reached out to Ms. Hollie Jenkins on April 3, 2019, to inquire of the status of the transcript. It is apparent that the State is purposely delaying the transcription of the record. Also, is it common practice to notify the Supreme Court that the Petitioner advised of the dangers of self-representation? And to your point that it is a very dangerous and bad idea to represent myself, as evidenced by my brother's case it's even more dangerous and a bad idea to have the State represent you. You feign concern about my self-representation. But your office colluded with the State and concealed that Mr. Boyd's representation was not of his own volition.

It was also very dangerous, and a bad idea by the State to force my brother to represent himself two days before trial, but it didn't stop the State. You got some nerve! As I stated previously, I will take my chances on me; at least I'm not conflicted about my interests or the law. Also, I cc'd Taylor Smith this letter and a copy of the letter dated April 4, 2019, since you failed to do so. Now without further delay, further waste of court resources and taxpayers dollars, decide my brother's case. I am moving forward with this complaint.

Respectfully submitted,

In the relentless pursuit of justice,

DCB

cc: Supreme Court
Taylor Smith, Esquire
cc: South Carolina Court Administration

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1317

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 19, 2019

Ms. Donna Boyd
PO Box 1168
Mauldin, SC 29662

Re: Your Case

Dear Ms. Boyd:

Thank you for your most recent letter. I understand you do not intend to provide my office with a completed affidavit of indigency and that you do not wish our office to represent you on appeal. I wrote you earlier explaining the dangers and disadvantages of self-representation because I thought it was something you should know, and that the Supreme Court would want you to know. We are closing your file with this letter, and we are informing the Supreme Court of that fact by copy of this letter.

Sincerely,

RMD

Robert M. Dudek
Chief Appellate Defender

RMD/mpm

cc: Supreme Court

2015-001575

The Supreme Court of South Carolina

Donna Boyd, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2019-000458
Lower Court Case No. 2017CP2307725

ORDER

Petitioner has failed to provide this Court with a copy of correspondence with the court reporter showing that the transcript has been timely ordered from the court reporter (including agreement regarding payment for the transcript) as required by Rules 243(b) and 207(a)(1) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina
April 22, 2019

cc: Megan Harrigan Jameson, Esquire
Ms. Donna Boyd

Exhibit 5B

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

April 23, 2019

Ms. Donna Boyd
PO Box 1168
Mauldin SC 29662

Re: Donna Boyd v. State
Appellate Case No. 2019-000458

Dear Ms. Boyd:

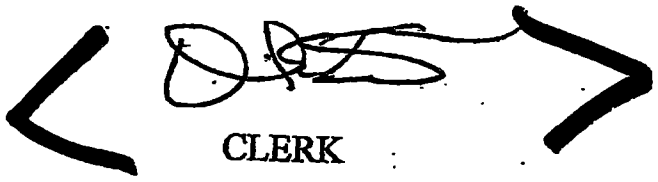
This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review

filings for redaction or to determine if materials should be sealed.

Very truly yours,



CLERK

cc:
Taylor Z. Smith, Esquire

Exhibit 5

Exhibit

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE ALEX KINLAW, JR.

2019-000458

DONNA BOYD,

PETITIONER,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

Exhibit 6

MOTION TO REINSTATE

The Petitioner respectfully submits that the Court's decision, in this case, overlooked or misapprehended points that are essential to the determination of issues, and moves for the reinstatement of this appeal based on the following:

The Petitioner appealed the denial of her Post- Conviction Relief. The Post-Conviction Relief Action heard by Honorable Alex Kinlaw, Jr., Circuit Judge on October 26, 2018, and Order denying the Petitioner's Post-Conviction Relief issued on January 24, 2019, and filed on January 31, 2019. The Petitioner received notice of the judgment on February 7, 2019. Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the Petitioner on February 14, 2019, respectfully moved the PCR court to alter or amend its Order dated January 24, 2019. The PCR court received the motion on February 19, 2019, and summarily denied the Petitioner's Rule 59 (e) motion on February 20, 2019. The Petitioner received the order denying the motion on February 23, 2019, notably Form 4 missing.

The Petitioner reasserted the Rule 59(e) motion on March 4, 2019. The PCR court again failed to address the Rule 59(e) motion. Notably, the State filed a proposed order of dismissal on November 6, 2018. And the Petitioner filed an email response to the State's proposed order to dismiss on November 15, 2018. On January 9, 2019, the PCR court without notice to the

Petitioner requested another order of dismissal from the State. The State submitted the order of dismissal on January 22, 2019.

Notably, the order of dismissal was in editable word format and unsigned. The PCR court signed the State's Order of dismissal on January 24, 2019. The Petitioner informed this Court through the notice of appeal filed on March 21, 2019, that the transcript ordered on March 14, 2019.

Also, the Petitioner enclosed two postage prepaid envelopes and requested that this Court send clocked documents to the Petitioner. Notably, the Petitioner did not receive notice from this Court acknowledging receipt of the notice of appeal. Also, the Petitioner did not receive the prepaid postage envelopes with clocked documents. On **April 3, 2019**, the Petitioner called the Court to inquire about the documents and the notice of appeal. The Petitioner informed this Court that she had not received a case number for the appeal.

The Petitioner told she needed to speak with the case manager (Ashley). The Petitioner left a voicemail for Ashely requesting that she call. About a minute later the Petitioner received a call from Ashley. The Petitioner informed that she did not have a case number and that she had not received the prepaid envelopes with clocked copies. Ms. Ashely said that she didn't know why the Petitioner had not received and assured the Petitioner that these documents would be sent.

The Petitioner received the documents in an envelope dated April 3, but this Court did not return the clocked documents in the postage-paid envelopes provided by the Petitioner. Also, notably, the notice acknowledging receipt of the Petitioner's appeal still missing. The Petitioner asserts that this Court failed to provide a case number and never acknowledged receipt of her appeal. Consequently, there was no date to reference as to when the clock started on the Petitioner's appeal.

However, on **April 22, 2019**, this Court dismissed the Petitioner's appeal alleging that the Petitioner failed to provide this Court with a copy of correspondence with the court reporter showing that the transcript timely ordered from the court reporter (including agreement regarding payment for the transcript) as required by Rules 243(b) and 207(a)(1) of the South Carolina Appellate Rules (SCACR). The Clerk of Court (Daniel Shearouse) has demonstrated a bias against the Petitioner since the inception of her case. **Notably, this Court deliberately failed to notice the Petitioner that her notice of appeal received and assigned a case number.**

The Petitioner reviewed several Supreme Court cases and noted that in all of these cases this Court provided notice to the Petitioner without fail. Further, the Petitioner noted that whenever a deficiency noted this Court warned the Petitioner before it dismissed the Petitioner's case.

However, this Court failed to notice the Petitioner of an alleged defect and without warning summarily dismissed the Petitioner's case alleging that she had not timely ordered the transcript.

The Petitioner informed the clerk of court in her notice of appeal that she requested the transcript on **March 14, 2019**. However, Court Reporter Hollie Jenkins did not acknowledge receipt of this request until the Petitioner emailed Ms. Allen about the status of the record. Also, the Petitioner told the Court through letters dated April 4, 2019, and April 17, 2019, that she requested the transcript and that she was waiting on the transcription of the record.

Also, the Petitioner submits email correspondence between her, Court Reporter Hollie Jenkins and Court Reporter Manager Ms. Desiree Allen showing that she inquired about the court reporter's failure to acknowledge the request and inordinate delay to transcribe the record. The Petitioner asserts that Court Reporter Hollie Jenkins has purposely delayed transcribing the record for more than forty-five **(45) days. (EXHIBIT A, EMAIL, PAGES 1-11).**

It is apparent that the clerk of court purposely delayed and when it saw an opportunity it seized upon that opportunity. Case in point, the clerk of court, failed to provide notice that it received the notice of appeal on **March 21, 2019**. But, the Petitioner noted that the South Carolina Commission On Indigent Defense was informed somehow of the Petitioner's appeal. And the Petitioner received a letter dated **March 25, 2019**, from SCCID asking if the Petitioner wanted SCCID to represent her. The Petitioner sent a letter dated **April 4, 2019**, declining the offer.

Remarkably, the Petitioner received another letter from SCCID dated **April 9, 2019**. The SCCID feigned concern about the Petitioner representing herself. But it is evident that SCCID wants to represent the Petitioner so it can control the appeal in the same manner that it controls the Petitioner's brother's appeal. Also, the State is using this fake concern as a ploy to delay the submission of the Petitioner's appeal. The Petitioner also noted that when she filed the notice of appeal, the record showed that her appeal was "pending," which explained why the Court failed to acknowledge receipt of the Petitioner's appeal.

The Court suspended the Petitioner's matter allowing Mr. Dudek time to persuade the Petitioner to let SCCID represent her. In response to Mr. Dudek's correspondence dated April 9, 2019, the Petitioner faxed response to Mr. Dudek on **April 17, 2019**. The Petitioner said that she did not submit the affidavit of indigency because she didn't trust SCCID or any agency that proved that is not working in the interest of justice, the Petitioner or her brother, Mr. Billy Roy Boyd.

Moreover, the Petitioner said that her brother has representation, and yet the State has failed to decide his case for almost four **(4) years.** Further, Mr. Boyd's writ of certiorari filed with the

EXHIBIT 6

Supreme Court on **May 21, 2018**, and on October 3, 2018, without notice to Mr. Boyd, inexplicably, the State transferred Mr. Boyd's case to the South Carolina Court of Appeals where Mr. Boyd's case has allegedly awaited consideration almost seven (7) **months**. The Supreme Court/Taylor Smith received the Petitioner's April 4, and April 17, 2019, letter on April 22, 2019. Coincidentally, the same date the Clerk of Court dismissed the Petitioner's appeal.

However, the Petitioner received a letter dated **April 23, 2019**, acknowledging receipt of the Petitioner's notice of appeal, and informing the Petitioner of the assigned case number. The Petitioner noted that the date appeared to be written over. The Petitioner's appeal pending since March 21, 2019? So, why would the State delay one month to acknowledge receipt of the Petitioner's appeal?

More importantly, how can the Court dismiss the Petitioner's case on **April 22, 2019**, and on **April 23, 2019**, the Court acknowledges receipt of the Petitioner's appeal? The Clerk of Court dismissed the Petitioner's appeal on April 22, an appeal that it had not recognized as filed before April 23, 2019. It is apparent that the Clerk of Court is working with the State to deny the Petitioner due process and thwart the judicial process. **(EXHIBIT C, ORDER, APRIL 22, 2019, AND NOTICE OF APPEAL, APRIL 23, 2019).**

Remarkably, on **September 16, 2016**, the Petitioner's former counsel colluded with the State, (including Justice John Cannon Few) and faked to file a writ of certiorari concerning this same criminal matter. **(EXHIBIT B, APPELLATE CASE NO. 2016-001942, 16 PAGES).** The Court acknowledged receipt of the petition for writ of certiorari on September 22, 2016. But the Petitioner noted that there is no initial letter of notice of appeal dated **September 16, 2016**, in the record. Also, the record indicated that there was no request for the transcript. The evidence showed that Daniel Shearouse through the office of the Clerk Court facilitated this unlawful action. This ploy was one of many employed by the State to deny the Petitioner due process and thwart the judicial process. The Petitioner makes this motion to reinstate even though the Court acknowledged the Petitioner's notice of appeal on April 23, 2019.

Exhibit 6

Dated April 30, 2019

Donna Boyd
Pro Se
Post Office Box 1168
Mauldin, South Carolina 29662

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE ALEX KINLAW, JR.

2019-000458

DONNA BOYD,

PETITIONER,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

Exhibit 6

AFFIDAVIT OF SERVICE

I certify that I have served MOTION TO REINSTATE on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, certified mail on ~~April 29~~ May 1, 2019, addressed to their attorney of record. Megan Jameson, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated ~~April 29~~, 2019

Donna Boyd
Pro Se
Post Office Box 1168
Mauldin, South Carolina 29662

dcb
Enclosures

cc: Supreme Court
Taylor Smith
South Carolina Court Administration

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