TO: HONORABLE DANIEL E. SHEAROUSE
CLERK OF COURT

FROM: CLIFTON D. LYLES
294075

February 24, 2019

Dear Sir,

Please find enclosed one "PETITION FOR WRIT OF CERTIORARI" to be filed with your office. I pray that it is to you satisfaction. If you have any further directions please contact me.

I thank you in advance for your kind assistance in this matter.

Sincerely

Clifton D. Lyles
294075

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS
DANIEL D. HALL, CHIEF ADMINISTRATIVE JUDGE

APPELLATE CASE No. 2019-001128

Clifton D. Lyles.....Petitioner,

vs.

State of South Carolina.....Respondent.

PETITION FOR WRIT OF CERTIORARI

CLIFTON DONELL LYLES
1578 CLARENCE COKER HIGHWAY
TURBEVILLE, SOUTH CAROLINA 29162

July 24, 2019

STATEMENT OF ISSUES

I. WAS PETITIONER DENIED DUE PROCESS DUE TO THIS SOUTH CAROLINA SUPREME COURT'S LACK OF SUBJECT MATTER JURISDICTION TO DISMISS THE ORIGINAL PCR FOR FAILURE TO TIMELY SERVE THE NOTICE OF APPEAL IN COMPLIANCE WITH RULE 243(b) and 203(b)(1),SCACR: DUE TO PCR JUDGE LEE S. ALFORD'S FAILURE TO MAKE A FINAL JUDGMENT ON THE PENDING "NOTICE OF MOTION AND MOTION TO SET ASIDE ORDER (MISTAKE AND/OR EXCUSABLE NEGLECT)?;and

II. WAS PETITIONER DENIED ONE FULL AND FAIR PCR PROCESS DUE TO PCR COUNSEL IMPROPERLY AND WITHOUT HIS KNOWLEDGE, WAIVING HIS RIGHTS UNDER THE CIVIL RULES OF COURT, TO PETITION THE PCR JUDGE TO ALTER OR AMEND HIS JUDGMENT, IN VIOLATION OF S.C.CODE ANN.§17-27-80?

STATEMENT OF CASE

Petitioner agrees with the statement of the case as presented in the Procedural History in the Conditional Order of Dismissal, Case No.:2017-CP-46-3864, dated February 12,2019.

ARGUMENT

Petitioner contends that certiorari should be granted due to two extraordinary reasons which prevented him from getting a fair and full pcr process in violation of Article 1§3 of the South Carolina Constitution, and the 14th amendment of the United States Constitution.

I. SUBJECT MATTER JURISDICTION

Petitioner contends that the South Carolina Supreme Court lacked subject matter jurisdiction to dismiss the notice of appeal of his original pcr under rules 243(b) and 203(b)(1),SCACR, as the court had yet to aquire personal or subject matter jurisdiction through SC.Code Ann.§17-27-100 and Rule 243(a), due to Judge Alford failing to rule on the still pending "NOTICE OF MOTION AND MOTION TO SET ASIDE ORDER(MISTAKE AND/OR EXCUSABLE NEGLECT).see EXHIBIT A, DATED MAY 14,2010.

Petitioner's original pcr was held on December 2,2009, before

the Honorable Lee S. Alford. After the hearing, judge Alford denied and dismissed the application by written order on February 26,2010. Petitioner filed a Pro Se Rule 59(e) and Notice of Appeal on May 12,2010.see PRO SE MOTION DATED MAY 12,2010(EXIBIT B). PCR counsel, F.Craig Wilkerson,Jr., filed,with the court a "NOTICE OF MOTION AND MOTION TO SET ASIDE ORDER(MISTAKE AND/OR EXCUSABLE NEGLECT)" on May 14,2010.see MOTION DATED MAY 14,2010(EXHIBIT A). PCR counsel also filed a Motion for Notice of Appeal in the Court of Appeals dated May 14,2010.see NOTICE OF APPPEALDATED 5-14-10(EXHIBIT C).

On May 25,2010, judge Alford denied and dismissed both, the pro se rule 59(e) motion and notice of appeal.see ORDER DENYING APPLICANT'S PRO SE RULE 59(e) AND NOTICE OF INTENT TO APPEAL,DATED MAY 15,2010(EXHIBIT D). In the order of dismissal, judge Alford acknowledges that pcr counsel did file a "MOTION TO SET ASIDE ORDER PURSUANT TO SCRCP RULES 59(e) and 60(b) on or about May 14,2010, to which Respondant is simultaneously filing a separate response.see ORDER,PG.2,NOTE 4 and PG.3 NOTE 5(EXHIBIT D). Judge Alford has yet to rule on the motion and nor has Respondant made a return to the motion.see PROCEDURAL HISTORY OF CONDITIONAL ORDER OF DISMISSAL, DATED 2-12-19.

Judge Alford's Order denying the Pro Se Rule 59(e), twice, made it known that he was aware of pcr counsel's pending notion and that he would be making a ruling at a later date after he received the response to the motion from the Respondent.see ORDER, NOTE 4 and 5(EXHIBIT D). This then would mean that the Motion is still pending and that judge Alford has failed to make a final judgment on the application.

South Carolina Code Ann.§17-27-80(2003), states that a pcr

"Shall make specific findings of fact, and state expressly its conclusions of law relating to each issue presented. This is the final judgment."(emphasis added). Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent applicantion, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application."Id. A final judgment entered under the Uniform Post-Conviction Act may be reviewed by writ of certiorari.S.C.Code Ann.§17-27-100,Rule 277(a),SCACR.

In the original pcr, judge Alford failed to make specific findings of facts and conclusions of law on the "NOTICE OF MOTION AND MOTION TO SET ASIDE ORDER(MISTAKE AND/OR EXCUSABLE NEGLECT)" and left the matter open to be ruled on at a later date. This then is not a final order.see Garner v. State,371 S.C. 1,636 S.E.2d 860(2006)(An order in a pcr matter which does not include specific finding of fact and conclusions of law relating to each issue presented, but dismisses some of the issues without prejudice to them being raised in a future pcr proceeding, does not constitute a final order or judgment under the Uniform Post-Conviction Relief Act and therefore is not reviewable by writ of certiorari).

So, based on the pcr judge's failure to make a final judgment, Petitioner was precluded from seeking certiorari review of the application in this Honorable Supreme Court.S.C.Code.Ann§17-27-100,Rule 243(a),SCACR.

This then would mean that the June 17,2010 Order(EXHIBIT E), dismissing the original application based on a failure to timely serve the notice of appeal in accordance with Rules 243(b) and 203(b)(1),SCACR is without subject matter jurisdiction and is thereby void, along with all other rulings made in any other proceedings prior to this motion being ruled on.see Brown v. State,343 S.C. 342,540 S.E.2d 846(S.C.2001)(The acts of a court with respect to a matter as which it has no jurisdiction are void).

Instead, the court should have dismissed the notice of appeal for failure to make a final order or judgment in compliance with S.C.Code Ann.§17-27-100 and Rule 243(a),SCACR, and remanded the matter back down to the pcr judg to make findings of facts and conclusions of law on the pending motion.Pruitt v. State,310 S.C. 254,423 S.E.2d 127(1992);Marlar v. State,375 S.C. 407 S.E.2d 266(2007);Fortune v. State,Unpublished Opinion No.2016-UP-102.

Accordingly, this matter should be remanded back down to the pcr judge with specific orders to make a final judgment on the Motion and application.

II. FULL AND FAIR PCR PROCESS

Petitioner contends that he was denied one full and fair pcr process due to his pcr counsel withholding the pcr judge's order denying his application from him until both, the time to file a Rule 59(e) motion to amend judgment, and an appeal had expired.see NOTICE OF APPEAL,DATED MAY 14,2010(EXHIBIT C).

PCR counsel states in his notice of appeal that Petitioner was not supplied with a copy of the signed and filed order of dismissal. PCR counsel also states in the NOTICE OF MOTION AND

MOTION TO SET ASIDE ORDER(MISTAKE AND/OR EXCUSABLE NEGLECT) that "the applicant was not provided a copy of the Order of Dismissal ...This was through no fault of the Appellant.see Motion dated May 14,2010EXHIBIT A). So if Petitioner was unaware of the time expiring to file an appeal, then he had to be unaware of the time expiring to utilize the civil court rules. So because the time expired without his knowledge, then they were unknowingly and involuntarily waived. Under the statute, S.C.Code Ann.§17-27-80, it states, (in pertinent part) "All rules and statutes applicable in civil proceedings are available to the parties."

In the present case, the civil rules were not made available to Petitioner. He was without the very tools that the law knew that all of those similarly situated would need to have a fair opportunity to receive a full procedural bite at the apple. What's more, is that because petitioner was equipped with an attorney, which is the tool used to protect him, he was prevented from filing either an appeal or a motion to alter or amend because South Carolina law doesn't recognize "hybrid representation" as Judge Alford stated in his order denying the motion.se ORDER DATED May 25,2010(EXHIBIT D).Foster v. State,298 S.C. 306,379 S.E.2d 907(1989).

This was highly unfair and prejudicial to petitioner as the court recognized in its order dismissing the notice of appeal. The court stated that "This dismissal is without prejudice to Petitioner's ability to seek relief under Austin v. State,305 S.C. 453,409 S.E.2d 395(1991).see ORDER DATED JUNE 17,2010(EXHIBIT E).

This shows that the court intended for petitioner to be able to

correct the procedural errors that occurred due to pcr counsel's failure to comply with the pcr rules.see Odom v. State,337 S.C. 256,523 S.E.2d 753(1999)(Austin is intended to act as an applicant's final safeguard against unjust procedural errors, even errors in the application of the statute of limitations). Therefore, Petitioner's second pcr application was exempt from both, the procedural successiveness clause under 17-27-90 and the statute of limitations under 17-27-45(a).Odom supra,"Successive post-conviction relief applications are permitted in rare procedural circumstances."

The problem with the second and third pcr processes, is that the pcr judges are incorrectly limiting the reach of an Austin appeal. In both processes, the pcr judges refused to address the issue of the lost usage of the civil court rules by stating that "the holding in Austin only allows an applicant to seek a second post-conviction relief application on the limited issue of whether an applicant requested and was denied the opportunity to seek appellate review from the denial of a post-conviction relief application."see FINAL ORDER OF DISMISSAL,PG.3 and 4,dated April 15,2019;and FINAL ORDER OF DISMISSAL PG.2,dated November 17,2011.

Petitioner contends that both judges have misconstrued the holdings in Aice v. State,305 S.C. 448,409 S.E.2d 392(1991), that Austin is limited to its particular factual situation. When the court made that staement in Aice, it did so because Aice, whom was seeking to convince the court to create an exception to Supreme Court Rule 50(3) and §17-27-90's requirement that "Successive applications for relief are not to be entertained, and the burden shall be on the applicant to establish that any

new ground raised in a subsequent application could not have been raised by him in the previous application", sought to use the court's findings in Austin to support his request to be allowed to raise three new grounds in a second pcr.see Aice v. State,305 S.C. 448,409 S.E.2d at 394(1991). The court explained that Austin, unlike Aice, whom was seeking more than one procedural bite at the apple, by raising three new claims in a second pcr, never received a full "bite" at the apple, as he was prevented from seeking any review of the denial of his pcr application. The court therefore provided him with a remedy in order to effectuate the purposes of the Uniform Act and of the pcr rules.

Austin's "particular factual situation" dealt only with the facts of not receiving appellate review of the denial of his original pcr application. Therefore, the court correctly held that in Austin's particular factual situation, it would only address his failure to receive an appeal in violation of SC.Code Ann.§17-27-100and Rule 50(9). In other words, the court is saying that Austin could not raise any other issues that didn't apply directly to the denial of a full procedural process. Aice was seeking to use the ruling in Austin to receive a second pcr process which is why the court stated that "Austin is limited to its own factual situation."

In the present case, Petitioner, like Austin, is only seeking to receive one full and fair procedural process. In Petitioner's particular factual situation, he failed to receive the usage of the civil court rules in violation of 17-27-80 and the right to seek appellate review in violation of 17-27-100. Therefore, an Austin appeal in his particular factual situation would require

that both of those procedural violations be corrected.see Odom v. State,523 S.E.2d 753(S.C.1999). This is detrimental in Petitioner's particular situation based on the following:

At pcr hearing, petitioner raised several issues, one in particular dealing with the identity of the confidential informant.App.pg.467-468. He complained that although a hearing was held on the issue before trial, that the judge never ruled on the motion.App.pg.467-468. In the PCR judge's order denying the claim, he states (verbatim) that "this court finds that trial counsel was not ineffective for failing to obtain the confidential informant's identity. In addition to trial counsel's testimony, the record clearly establishes that trial counsel did argue a motion to compel the state to disclose the confidential informant's identity. The trial court denied counsel's motion. This court further finds the trial court's denial of trial counsel's motion to compel the state to disclose the identity of the confidential informant raises a direct appeal issue that is procedurally barred by S.C.Code Ann.§17-27-20(b)(2003). Trial court error, therefore, is not a cognizable claim for PCR.Roscoe v. State,345 S.C. 16,546 S.E.2d 417(2001);Wolfe v. State,326 S.C. 158,485 S.E.2d 367(1997);Ashley v. State,260 S.C. 436,196 S.E.2d 501(1973).Trial counsel made a motion to compel the state to disclose the confidential informant's identity. The trial court was well within its discretion to deny trial counsel's motion. The Applicant could have raised the issue that the trial court erred in denying counsel's motion on direct appeal. His failure to do so has waived this allegation as a ground for relief.

Therefore, this allegation is denied."see ORDER DATED FEBRUARY 29,2010,pg.13 and/or app.pg.541.

Clearly, the pcr judge's order was not supported by the facts in the record. The trial court actually declined to rule on the motion and said that it would rule at a later time but that it was not making a ruling at that time.see Trial Transcript pg.75,line 19-pg.77,line 25 and/or App.pg.75,line 19-pg.77 line 25. The trial court never ruled on the motion afterwards.

This then would mean that the pcr judge's order is incorrect by stating that, "the issue was procedurally barred" or "because it could have been raised on direct appeal." Under South Carolina Rules, issues not raised to, and ruled on by the cirfuit court may not be raised on appellate review.Caldwell v. Wiquist,402 S.C. 565(2013)(Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court; where an issue has not been ruled upon by the trial judge nor raised in a post-trial motion, such issue may not be considered on appeal);McHam v. State,746 S.E.2d 41,46(2013). The pcr judge's order was also incorrect in stating that the confidential informant issue was waived as a ground for relief. But because Petitioner's pcr counsel with held the pcr judge's order from him until the time to file a rule 59(e) motion to alter or amend judgment had expired, he could not have the matter addressed.

This is the type of situation that the court was trying to prevent when it addressed this same issue three seperate times in McCray v. State,305 S.C. 329,408 S.E.2d 241(1991),Pruitt v. State ,423 S.E.2d 127(1992), and Marlar v. State,375 S.C. 407,653

(2007). In each one of those cases, the court state that "even after an order is filed, counsel has an obligation to review the order and file a rule 59(e),SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by S.C.Code Ann.§17-27-80 and Rule 52(a),SCRCP. Still today, PCR counsels are continuing to disregard this obligation and defendants are continuing to pay the price by losing meritorious issues and serving long sentences as they unskillfully bumble their way through this very complex judicial system.

For this very reason, Petitioner is required to also provide to this Honorable court a reason why he should not be restricted from any future filings in the lower courts without first getting this courts permission. My short answer is "Appellate Counsels."

In all reality, Petitioner's trial is not over because trial judge has not ruled on the pre-trial motion. Therefore, all appellate courts lack subject matter jurisdiction in petitioners particular case.Brown v. State,343 S.C. 342,540 S.E.2d 846(S.C.2001)(The acts of a court with respect to a matter as to which it has no jurisdiction are void).

CONCLUSION

Certiorari should be granted on both questions as well as whether subject matter jurisdiction is still with the pre-trial court motion. And this should serve as an explination of why I should not be barred from any future filings in the lower courts.

July 24,2019

BY: Clifton Donald Lyles 294025

NOTICE OF MOTION AND MOTION
TO SET ASIDE ORDER
(MISTAKE AND/OR EXCUSABLE NEGLECT)
(EXHIBIT A)

Exhibit A

STATE OF SOUTH CAROLINA COUNTY OF YORK Clifton Donell Lyles, #294075 Applicant, State of South Carolina, Respondent,	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT Case No.: 2009-CP-46-1759 **NOTICE OF MOTION AND MOTION TO SET ASIDE ORDER (MISTAKE AND/OR EXCUSABLE NEGLECT)**

NOW COMES the Applicant, by and through his attorney, and pursuant to the South Carolina Rules of Civil Procedure 59(e), 60(b) seeking to set aside the January 25, 2010, Order of Dismissal in this matter on the grounds that the Applicant was not provided a copy of the Order of Dismissal which had been signed by the Trial Judge and filed with the Clerk of Court for York County, South Carolina, on February 26, 2010. This was through no fault of the Appellant. Therefore, the Appellant was unaware that the time frame within which to file a Notice of Intent to Appeal had expired.

That this Motion is made for good cause.

That the granting of this Motion would be in the best interest of all parties, would result in no prejudice to any party, and would further the interest of justice.

WHEREFORE, based on the foregoing, Plaintiff respectfully requests that the Court hear the Applicant, Clifton Donell Lyles', 59(e) Motion.

Respectfully Submitted,

May 14, 2010

E. Craig Wilkerson, Jr.
242 Oakland Avenue
Rock Hill, South Carolina 29730
803-324-7200
Attorney for Applicant

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

Clifton Donell Lyles, #294075,)
) Civil Action Number: 2009-CP-46-1759
Applicant,)

vs.) AFFIDAVIT OF SERVICE BY MAIL

State of South Carolina,)

Respondent,)

The undersigned, as Clifton Donell Lyles, Applicant, hereby certifies that Notice of Motion and Motion to Set Aside Order (Mistake and/or Excusable Neglect) was served on the undersigned counsel for the Respondent by depositing a copy of same in the United States mail postage prepaid this 14 day of May, 2010, addressed as follows:

Suzanne H. White
Jennifer A. Kinzeler
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

F. Craig Wilkerson, Jr.
242 Oakland Avenue
Rock Hill, S.C. 29730
(803) 324-7200
ATTORNEY FOR APPLICANT

Sworn to before me this
14th day of May, 2010

Notary Public for SC
My Commission Expires: 10-4-2016

PRO SE MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO SCRCP 59(e)
(EXHIBIT B)

EXHIBIT 19

State of South Carolina
County of York
Clifton Darell Lyles, #294075
Applicant
v.
State of South Carolina,
Respondent

In The Court of Common Pleas
Sixteenth Judicial Circuit
Case No: 2009-CP-46-175

Motion To Amend or Alter Judgment Pursuant To SCRCP 59(e).

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CLERK OF COURT
YORK COUNTY, SC

Applicant makes this motion on the following Grounds: (A) Trial Judge failed to make a ruling on Any of the five (5) specific issues That were raised in my Application. He simply allowed The Attorney General To Send To him a proposed order That Re-arranged The wording of The Issues presented, supported itself with (both) falsely alleged Testimony, as well as false contextually used Testimony, and signed it as if he had made These findings on his on.

Applicant contends That The PCR Judge Violated S.C. Code Ann. § 17-27-80 (1985) and Rule 52(a) S.C.R.C.P. because he has failed To make a specific finding of facts and conclusions of Law with regard To each issue raised in his application. Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992); McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Petitioner asks The Court To remand This matter To The Post-Conviction relief Judge To make proper findings of fact and Conclusions of Law.

(B) After being informed by Applicant That he was not comfortable With PCR Attorney being That before The actual date of The hearing, Applicant had never had any communication With This Attorney & made The Statement That "He doesn't care about Whether

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YORK COUNTY, SC

applicant is comfortable, and that applicant can't pick and choose any attorney that he wanted." After [redacted] asking and being confirmed by P.C.R. Attorney that he had infact never had any contact with Applicant, P.C.R Judge then instructed Applicant that he would allow him and P.C.R. counsel to go and confer [redacted] for a moment, and that in the mean time he would allow applicant's trial attorney to go ahead and give his testimony being that he had other things to take care of.

Applicant then informed the Judge that he thought that that idea was prejudicial to him because he had other issues that needed to be Amended to his P.C.R. Application, that would require further testimony from trial attorneys. The Judge then concurred with applicant, and stated that he would just continue the hearing until the next term.

After being excused and escorted out of the courtroom, Applicant was later informed by P.C.R. counsel that the hearing would be held the following day.

Applicant then called his brother (Stanthony Lyles) who was in the Audience along with his wife (Elizabeth Montgomery Lyles) and her daughter (Alexis Montgomery), who informed applicant that when he was taken out of the courtroom, that a conference insued between the Attorney General, P.C.R. counsel, and the Trial Attorney, inwhich the Attorney General stated to them that it was very important that applicant's hearing took place in front of Judge Alford. She confered too them that she was gonna ask Judge Alford to allow the hearing to be held the next day,

inwhich They both agreed. After informing Judge Alford of This request, he stated That if P.C.R. counsel was okay with it, Then he would grant The request.

Applicant contends That This was a violation of both his 6th Amendment right To "Equal Protection" and his 14th Amendment right To "Due Process of Law" due To The failure of him being provided with The proscribed protections under Rule 71.1 §(D) S.C.-R.C.P., inthat he was not afforded a reasonable amount of time To confer With his counsel, Thereby denying him a fair opportunity To present his claims Too The Court.

(C) P.C.R. applicant avers That he was not afforded The protections proscribed pursuant To Rule 56, S.C.R.C.P. §17-27-70 of The Uniform Post-Conviction Relief Act, which instructs That a Response To P.C.R. application be made, and That it not be more Than 30 days, unless an extension is granted by The courts.

Applicant avers That, Instead of P.C.R. Judge holding The State accountable for it's failure To comply With Rule 56, IT simply allowed The State To by-pass It's failure, by submitting To The court a proposed order That falsely stated That The State made a return on November 12, 2009, and That his honor made a ruling denying The motion for summary Judgment at The hearing.

Applicant asks That The Audio Transcripts be perserved, and That This hearing be remanded back down for The Judge To make a specific finding of facts and Conclusion of Law.

NOTICE OF APPEAL
DATED MAY 14,2010
(EXHIBIT C)

Exhibit C

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Case No.:2009-CP-46-1759

Clifton Donell Lyles, #294075 ..... Appellant,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Clifton Donell Lyles, #294075 appeals the Order Dismissal of The Honorable Lee S. Alford dated January 25, 2010. Appellant received a copy of the proposed Order of Dismissal on or about January 26, 2010, however never received a copy of the signed and filed Order. A copy of the Order, which was signed by The Honorable Lee S. Alford on January 25, 2010 and filed with the Clerk of Court for York County, South Carolina on February 26, 2010, was mailed to counsel for the Appellant, however, he did not realize that he had been provided a copy of the Order until May 12, 2010. Counsel for the Appellant has filed a Motion to Be Allowed to File Notice of Intent to Appeal Out of Time.

May 14, 2010

F. Craig Wilkerson, Jr.
242 Oakland Avenue
Rock Hill, SC 29730
Attorney for Appellant

Other Counsel of Record:
Suzanne H. White
Jennifer A. Kinzeler
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Case No.:2009-CP-46-1759

Clifton Donell Lyles, #294075 ..... Appellant,

v.

State of South Carolina, ... Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on May 14, 2010, addressed to: Suzanne H. White and Jennifer A. Kinzeler, South Carolina Attorney General's Office, P.O. Box 11549, Columbia, SC 29211.

F. Craig Wilkerson, Jr.
242 Oakland Avenue
Rock Hill, SC 29730
Attorney for Appellant

May 14, 2010

ORDER DENYING APPLICANT'S PRO SE
59(e) MOTION and NOTICE OF APPEAL
(EXHIBIT D)

Exhibit D

STATE OF SOUTH CAROLINA COUNTY OF YORK Clifton D. Lyles, # 294075, Applicant, v. State of South Carolina, Respondent.	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT Case No.: 2009-CP-46-1759 2010 JUN -3 AM 9:08 YORK COUNTY ORDER DENYING APPLICANT'S PRO SE RULE 59(e) MOTION and NOTICE OF INTENT TO APPEAL

This matter comes before this Court by way of Applicant's pro se Rule 59(e) Motion to Alter and/or Amend filed May 12, 2010. Applicant's motion pertains to the Order of this Court filed February 26, 2010. In his pro se Rule 59(e) motion, Applicant asserts that the Court did not rule on each issue raised or make its own specific findings, that Respondent failed to respond to his application within thirty days, and that he was forced go to forward with the hearing despite advising the Court that he was "not comfortable" with PCR counsel's representation due to insufficient time to meet. Applicant requests this Court have his hearing "remanded back down for the Judge to make a specific finding of facts and conclusion of law."[1]

This Court first finds that it does not have jurisdiction to consider Applicant's pro se Rule 59(e) Motion and that the Motion must be denied and dismissed. Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, a motion to alter or amend the judgment must be served no later than ten (10) days after receipt of written notice of entry of the order. Applicant's motion was dated May 12, 2010. Neither Applicant nor his attorney specifies the date either received the Order of Dismissal. However, according to the Court's certificate of service accompanying the Order, both Respondent and Applicant's attorney were served with a copy of the Order of Dismissal on February 26, 2010.

[1] Applicant also requests "that the audio transcripts be preserved." Rule 607(i), SCACR governs the retention of tapes. It provides that a court reporter shall retain the primary and back-up tapes of a proceeding that has not been transcribed for a period of at least five years after the date of the proceeding.

Respondent received a copy of the Order of Dismissal on March 1, 2010. Presumably Applicant's attorney also received the Order at that time. In fact, Applicant's attorney states in his Motion to be Allowed to File Notice of Intent to Appeal Out of Time, dated May 14, 2010[2] that "the clocked in Order was mailed to counsel where it was erroneously filed and not forwarded to Lyles/Appellant." Counsel stated he "did not realize he had been provided a copy of the Order until May 12, 2010." Further, on January 26, 2010, Applicant's attorney mailed to Applicant a copy of the proposed Order submitted to the Court.

Thus, Applicant's Rule 59(e) Motion, if properly filed, should have been served and filed well before May 12, 2010. For all intents and purposes, the Rule 59(e) Motion should have actually been served and filed no later than March 11, 2010, which is ten (10) days after Applicant's attorney presumably received written notice of entry of the Order.[3] Therefore, Applicant's pro se Rule 59(e) Motion must be dismissed because it is not timely and the Court lacks jurisdiction to consider the Applicant's request. See Rule 59(e), SCRCP.

This Court further finds Applicant's pro see Rule 59(e) Motion must be denied and dismissed because Applicant is represented in the post-conviction relief proceeding by F. Craig Wilkerson, Jr., Esquire. Pursuant to Rule 11, SCRCP, counsel shall sign every motion of a party represented by an attorney. Applicant's pro se Motion is not proper.[4] State law does not permit or recognize "hybrid representation," this is, representation that is partially by counsel and partially pro se. See e.g. Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

Moreover, and based on the record before it, this Court finds there are no grounds upon which Applicant's Rule 59(e) Motion should be granted. The Order of Dismissal sufficiently addresses all of the issues raised, and sufficiently states all of the relevant findings of fact and conclusions of law. To be

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[2] Filed in the South Carolina Court of Appeals.
[3] Presuming Applicant's attorney received the Order the same day Respondent did, in light of the fact the Order was mailed to both parties on the same day (February 26, 2010).
[4] Applicant's attorney filed a Motion to Set Aside Order pursuant to SCRCP Rules 59(e) and 60(b) on or about May 14, 2010, to which Respondent is simultaneously filing a separate response.

clear, this Court did in fact make its own specific findings of fact and conclusions of law regarding this action as evidenced by this Court's letter to both Respondent and Applicant's counsel dated December 21, 2009, in which the Court stated its findings and requested Respondent prepare the Order. Furthermore, of those findings, this Court specifically indicated that Applicant failed to show any prejudice as a result of the Respondent's delay in filing its Return. Likewise, in response to Applicant's concern that he did not have enough time to meet with counsel, the Court continued Applicant's hearing to the next day to allow Applicant and counsel adequate time to confer. The Court finds Applicant does not provide any valid grounds in support of his request to alter or amend the judgment but is merely seeking an opportunity to reassert evidence and argument presented and rejected by this Court at the hearing and in its Order of Dismissal.

With regard to Applicant's pro se motion captioned Notice of Intent to Appeal, this Court finds the motion must also be summarily denied and dismissed. First, there is no indication the Notice was filed with the Clerk of the Supreme Court as required under SCACR Rule 203. Second, and as previously stated, Applicant is represented in the post-conviction relief proceeding by F. Craig Wilkerson, Jr., Esquire. Therefore, Applicant's pro se motion is not proper.[5] SCRCP Rule 11, SCRCP; See also, e.g., Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

Finally, Applicant's pro se motion regarding an appeal from the Court's Order is untimely. A notice of intent to appeal (from the Court of Common Pleas) must be filed within thirty (30) days of receipt of written notice of entry of the order or judgment. While Applicant's counsel is not certain of the date he received the order, both parties were aware that Applicant's PCR application was dismissed as early as December 21, 2009. On January 26, 2010, Applicant and his attorney were in receipt of the proposed Order of Dismissal. Respondent received a copy of the Order of Dismissal on March 1, 2010. Presumably Applicant's attorney also received the Order at that time. In fact, as previously stated,

[5] Applicant's attorney filed a Motion to Set Aside Order pursuant to SCRCP Rules 59(e) and 60(b) on or about May 14, 2010, to which Respondent is simultaneously filing a separate response. Applicant's attorney also filed in the Court of Appeals a Motion to Be Allowed to File Notice of Intent to Appeal Out of Time and Notice of Appeal on May 14, 2010.

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Applicant's attorney concedes the time by which the Notice of Intent to Appeal must be filed has expired in his Motion to be Allowed to File Notice of Intent to Appeal Out of Time, dated May 14, 2010.[6] Thus, by Applicant's counsel's own candid admission, the time to appeal from the Court's Order dismissing this action has expired. For the foregoing reasons, this Court finds Applicant's pro se motion captioned "Notice of Intent to Appeal" must also be denied and dismissed.

IT IS THEREFORE ORDERED that Applicant's pro se Rule 59(e) Motion to Alter and/or Amend is denied and dismissed.

AND IT IS SO ORDERED this 25th day of May, 2010.

Lee S. Alford
Chief Administrative Judge
Sixteenth Judicial Circuit

[6] Filed in the South Carolina Court of Appeals.

#4

ORDER DISMISSING THE NOTICE OF APPEAL
DATED JUNE 17,2010
EXHIBIT E)

Exhibit E

14
JK

The Supreme Court of South Carolina

Clifton Donell Lyles, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Lee S. Alford
York County
Trial Court Case No. 2009-CP-46-01759

ORDER

The notice of appeal in this matter was served on May 14, 2010. Petitioner's counsel admits that he received written notice of entry of the order on appeal sometime in March 2010.

The notice of appeal is dismissed for failing to timely serve the notice of appeal. Rules 243(b) and 203)(b)(1), SCACR. This dismissal is without prejudice to petitioner's ability to seek relief under Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). The motion to allow a late appeal is

denied. Rule 263(b), SCACR (time for serving notice of appeal under Rules 203 and 243 may not be extended).

IT IS SO ORDERED.

C.J.

FOR THE COURT

Columbia, South Carolina

June 17, 2010

cc: Appellate Defense
Assistant Attorney General Jennifer Kinzeler
F. Craig Wilkerson, Jr., Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS
DANIEL D. HALL,CHIEF ADMINISTRATIVE JUDGE

APPELLATE CASE No.2019-001128

Clifton D. Lyles.....Petitioner,

v.

State of South Carolina.....Respondent.

CERTIFICATE OF SERVICE

I,Clifton D. Lyles(Petitioner), do certify that I did on this date, serve the Respondent with the "PETITION FOR WRIT OF CERTIORARI", by placing one copy of the same in the U.S. mail, postage prepaid, addressed as follows:

JANELL H. GREGORY,AAG
ATTORNEY GENERAL'S OFFICE
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549

This 24 day of July 2019

BY: Clifton D. Lyles 294075
PRO SE
1578 CLARENCE COKER HWY
TURBEVILLE,S.C. 29162

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Supreme Court of South Carolina
Honorable Daniel E. Shearouse, Clerk
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