

To: Clerk of Court

Could you please return to me a clock stamp
copy of this motion. Thank you very much
for your precious time and consideration in
this matter. I have provided two copy

Respectfully
David A. Juren

RECEIVED
AUG 29 2019
S.C. SUPREME COURT

The State of South Carolina
County of Richland

David A. Duren
Plaintiff

-v-

State of South Carolina
Judge Jocelyn Newman
Attorney Timothy L. Smith
Defendant

The Supreme Court of
South Carolina

Motion to Vacate and
Set Aside the Notice of
Appeal

Request Evidentiary Hearing
Trial By Record

To: The Supreme Court of South Carolina
The Honorable Harold Beatty

Now Come the Plaintiff to wit: file a motion to vacate and set aside the notice of appeal filed by Attorney Timothy L. Smith dated 3-6-2017 upon the following grounds: to wit (1) because Attorney Timothy L. Smith was not attorney of record. (2) Attorney Timothy L. Smith and Judge Jocelyn Newman committed fraud upon the Court. (3) Judge Jocelyn Newman declared Plaintiff PRO SE at her hearing on July 26, 2016. Therefore the appeal filed by Attorney Timothy L. Smith is null and void, and all pleading pertaining to that notice of appeal is null and void.

(1) Plaintiff will show the Court through a preponderance of evidence that is clear and convincing that Attorney Timothy L. Smith was relieved of attorney of record at her hearing by Judge Jocelyn Newman.

See: Exhibit (1) Transcript of Record 07-26-2016

See Page 6, Line 16-25, Page 7, Line 1-25, Page 8 Line 1-25, Page 9, Line 1-25, Page 10 Line 1-25

(2) Plaintiff will show the Court through a preponderance of evidence that is clear and convincing that the order of dismissal for Case # 2015-CP-43-2134 was recorded Dec 2, 2016 and the Remittitur from the Supreme Court was sent down Dec 19, 2016. See Exhibit (2) order of dismissal See Exhibit (3) Remittitur from S.C.

(3) Plaintiff will show the Court through a preponderance of evidence that is clear and convincing that after a Remittitur has been sent from the Supreme Court, you have 30 days to file an appeal

See: Exhibit (4) Rule 20 SCACR this was not done

(4) Plaintiff Request that the Clerk of Court, Sumner County and PCR Judge produce record to show where Plaintiff was ever notified about the order of dismissal.

(5) plaintiff will show the Court through a preponderance of evidence that is clear and convincing that once the Court and the PCR Judge Jocelyn Flemons Retire that the Plaintiff was never served the order of dismissal dated and recorded Dec 2, 2016 and the Remittitur dated Dec 19, 2016, that they went and recorded the same order of dismissal on Feb 28, 2017

See: Exhibit (5)

(6) Plaintiff will show through a preponderance of evidence that is clear and convincing that Attorney Timothy L. Smith committed fraud upon the Court on 3-6-2017 when he filed the Notice of appeal for Case # 2015-CP-43-2134, Received by the S.C. Supreme Court Nov 13, 2017.

See: Exhibit (6)

(7) Plaintiff will show through a preponderance of evidence that is clear and convincing that the plaintiff only found out about all of this when he received a letter from the S.C. Supreme Court informing him that he couldn't file anything pro se before the Court, because he was represented by the Division of Appellate Release. This was their way of covering up the fraud upon the Court, the conspiracy and the decision.

See: Exhibit (7)

(8) Plaintiff will show through a preponderance of evidence that is clear and convincing that Judge Lydia Newman committed fraud upon the Court when she said in her order of dismissal, when she said applicant was present at hearing and was represented by Attorney Timothy L. Smith Esquire. Knowing full well that she relieved him as Counsel of Record.

See: Exhibit (1) Line 24, 25 on page 9.

(9) Plaintiff will show through a preponderance of evidence that is clear and convincing that once an Attorney has been Relieved as Attorney of Record by a Judge Court, the Judge must issue an order to Relieve Counsel.

See: Exhibit (8) SCRCP Rule 11(B)

See: Exhibit (9) Eq. Pate Strum 343 S.C. 257 (2000) Page 262

(10) Plaintiff will show through a preponderance of evidence that is clear and convincing that the State Court created a procedural road-block denying plaintiff equal protection and due process of law, and it is a gross miscarriage of justice.

(11) FRAUS EST TULUS NEMINI: PATROCINARI DEBENT
FRAUS EST CELARE FRAUDEM

FICTIO JURIS EST UBI VERITAS
CONVENT VINCIT LEGEM

(12) See: Chewing v Ford Motor Co. 354 S.C. 72 (2003)
Since Attorney was officer of the Court, their conduct if dishonest, would constitute fraud on the Court,
(Nixon v Comm'n of Internal Revenue 2003 WL 12116290 (9th Cir 2003))

Tuten v Jobb 410 S.C. 104, 763 S.E. 2d 54

(1) In determining when the attorney-client relationship is terminated, the Court must point to an affirmative act either by the attorney or the client that signals the end of the relationship.

Cordor v Luff 164 W. VA 307, 262 S.E. 2d 889, 892 (1980)

Charleston Law Review (2008) Roy v Ray

Respectfully

Submitted

David A. Juren

Proof of Service

I Certify that I have served this Motion
to vacate and set aside the Notice of Appeals
dated 3-6-2017 filed by Attorney Timothy L.
Smith, Received S.C. Supreme Court 3-13-2017
by placing said document in U.S. Mail, postage
prepaid to the S.C. Supreme Court to the address
listed below on Aug 26, 2019.

Respectfully
David A. Duran

Copy to: S.C. Supreme Court
Attn: Judge Donald Beatty
Post Office Box 11330
Columbia, S.C. 29211

Swear or affirmed to and
subscribe before me this day
Aug 26, 2019

Tamara Conwell
Notary Public

RECEIVED

AUG 26 2019

P.C.I. MAILROOM

My Commission Expires: September 25, 2023

Certificate of Service

I the undersigned do here by under the penalty of perjury § 16-90-10(A)(a) of the S.C. Code of Law (1976), that on Aug 26, 2019 served a true and exact copy of this

Motion to vacate and set aside the Notice of Appeal filed by Attorney Timothy L. Smith dated 3-6-2017, received by S.C. Supreme Court 3-13-2017 by placing same in U.S. Mail, postage prepaid, on Aug 26, 2019 to the S.C. Supreme Court.

Respectfully

David A. Duren

Copy to: S.C. Supreme Court
Attn: Judge Harold Beatty
Post Office Box 11330
Columbia, S.C. 29211

RECEIVED

AUG 26 2019

P.C.I. MAILROOM

Swear or Affirmed to and
subscribe before me this day
Aug 26, 2019.

Jamara Cornwell
Notary Public

My Commission Expires: September 25, 2023
My Commission Expires

State of South Carolina)
County of Sumter)

In the Court of Common Pleas
Third Judicial Circuit
2015-CP-43-2134

David A. Duren, Jr.,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

Transcript of Record

July 26, 2016
Sumter, South Carolina

B E F O R E:

The Honorable Jocelyn Newman, Judge

A P P E A R A N C E S:

David A. Duren, Jr.
Self-represented Litigant

Julie A. Coleman, Esquire, Assistant Attorney General
Attorney for the Respondent

ALSO PRESENT:

Timothy L. Griffith, Esquire

Complete

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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<u>Witness/Description</u>	<u>Page No.</u>
Jacob M. Smith	
Direct Examination by Ms. Coleman.	28
Cross-examination by Mr. Duren	32
Certificate Page.	70

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
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No Exhibits Introduced.

1 MS. COLEMAN: This is *David Duren vs. The State of*
2 *South Carolina*, 2015-CP-43-2134, and he's present today and
3 represented by Mr. Griffith, and I believe they have a
4 motion before the court.

5 THE COURT: Yes, sir.

6 MR. GRIFFITH: Your Honor, Mr. Duren has submitted a
7 motion, along with certificate of service handwritten. I'm
8 not sure if Your Honor has see it -- seen it. It was sent
9 out July 8th asking for the court to relieve counsel so
10 that he may either seek other counsel or represent himself.

11 This would be the third time that he's sent in a
12 request to relieve counsel. I certainly consent to being
13 relieved, but I would leave that up to the court, and Mr.
14 Duren, of course, presented the motion. You may want to
15 hear from him as well.

16 THE COURT: Yes, sir, I do, but I have not seen the
17 motion. Do you have a copy that I can look at?

18 MR. GRIFFITH: This is the latest one.

19 THE COURT: Okay.

20 (A PAUSE.)

21 THE COURT: Mr. Duren, if you would raise your right
22 hand and be placed under oath?

23 BAILIFF: Raise your right hand, please.

24 MR. DUREN: Excuse me, Your Honor, with all due
25 respect, Your Honor, before we get started I would like to

1 put the -- is this being recorded?

2 THE COURT: Yes, sir.

3 MR. DUREN: Okay. For the record, and the court shall
4 take judicial notice I, a human being, a living soul of
5 flesh and blood, reserve all my rights and waiver not. Do
6 you understand?

7 THE COURT: Yes, sir.

8 MR. DUREN: For the record, and the court shall take
9 judicial notice I, a human being, a living soul of flesh
10 and blood, do not wish to represent a corporate entity
11 named David A. Duren, Jr., and I have never consent to
12 represent that corporate entity, and I have no intention of
13 representing that corporate entity.

14 THE COURT: Okay. What is your opposition to being
15 placed under oath, whether ---

16 MR. DUREN: Because ---

17 THE COURT: --- you swear or affirm to tell the truth?

18 MR. DUREN: Please place under oath, Your Honor, the
19 holy Bible simply said thou shalt not swear by nothing on
20 heaven or the earth.

21 THE COURT: And let me interrupt you, sir, and let you
22 know that affirming that you will tell the truth ---

23 MR. DUREN: To ---

24 THE COURT: --- is an option.

25 MR. DUREN: To, to affirm, Your Honor, would be a

1 legal, binding contract with the court, and I do not wish
2 to contract with this court, Your Honor.

3 THE COURT: Well, unless I know that you're giving
4 me ---

5 MR. DUREN: I ---

6 THE COURT: --- truthful testimony, then how can I ---

7 MR. DUREN: I will let my ---

8 THE COURT: --- trust anything ---

9 MR. DUREN: I will let my ---

10 THE COURT: --- you say?

11 MR. DUREN: --- yes be yes and ney be ney.

12 THE COURT: Well, that's what everybody says, but we
13 have a procedure in which people have to tell me that they
14 are going to tell me the truth.

15 MR. DUREN: Well, Your Honor, at this -- yes, sir --
16 yes, ma'am, excuse me. No disrespect to the court, Your
17 Honor, but at this time, Your Honor, I would like to invoke
18 UCC1-302/3-305(a)(1)(iii).

19 THE COURT: Which says what?

20 MR. DUREN: Under prejudice and I am under no
21 obligation if I affirm, Your Honor.

22 THE COURT: What does the Uniform Commercial Code have
23 to do with this matter?

24 MR. DUREN: Because ---

25 MR. GRIFFITH: Pardon me, Your Honor. I believe what

1 he's stating is that he may affirm to tell the truth. He
2 just will not swear to it but, Your Honor, I believe that
3 he may affirm to tell the truth.

4 Would you -- is that what you're talking about?

5 MR. DUREN: Yes.

6 THE COURT: That's all I'm asking.

7 MR. GRIFFITH: And so if you were to raise your hand
8 and so affirm to tell the truth, then that would, I think,
9 be acceptable by the court.

10 THE COURT: That's all I'm asking, sir.

11 MR. DUREN: Okay.

12 THE COURT: And he's going to ask you if you swear or
13 affirm.

14 MR. DUREN: I'll affirm.

15 DAVID A. DUREN, JR., DULY AFFIRMS

16 AND TESTIFIES AS FOLLOWS:

17 THE COURT: Perfect. Now, Mr. Duren, I want you to
18 tell me why you don't want Mr. Griffith to represent you.

19 MR. DUREN: Because, Your Honor, it would be a
20 conflict of interest because the state is paying, the state
21 is paying Mr. Griffith to represent me, and he took a
22 solemn oath, and he is a member of the South Carolina Bar
23 Association, along with the state, and that is a conflict
24 of interest, Your Honor.

25 THE COURT: So, who do you want to represent you?

1 MR. DUREN: I'm representing myself, Your Honor.

2 THE COURT: All right. Well, then if he consents to
3 be relieved and you're going to represent yourself, are you
4 ready to go forward today?

5 MR. DUREN: Yes, ma'am.

6 THE COURT: All righty. Well, we'll just relieve Mr.
7 Griffith, and you can represent yourself, sir.

8 MR. DUREN: Yes, ma'am. Thank you.

9 MR. GRIFFITH: Thank you, Your Honor, and, Your Honor,
10 just to inform the court, this is Mr. Duren's file, and I'm
11 going to give it to him so that he does have all the
12 information that I have. And I know he has this plus
13 others, but I just wanted to be sure that everything is in
14 here today.

15 THE COURT: All righty.

16 MR. GRIFFITH: Thank you, Your Honor.

17 THE COURT: Well, let me ask before we begin. Is the
18 state ready to proceed on this case today?

19 MS. COLEMAN: Yes, Your Honor, we are ready to
20 proceed.

21 THE COURT: Okay. All right.

22 MR. GRIFFITH: Thank you, Your Honor.

23 THE COURT: Thank you, sir.

24 MS. COLEMAN: Your Honor, would you like me to read
25 the procedural history?

1 THE COURT: Yes, please.

2 MS. COLEMAN: Okay. We'll start with -- do you have
3 that list of factors that we were looking at yesterday? I
4 can pull them up to qualify him as pro se.

5 THE COURT: I did not.

6 MS. COLEMAN: Okay.

7 MR. GRIFFITH: Excuse me, Your Honor.

8 THE COURT: Yes, sir.

9 MR. GRIFFITH: Will you be giving him the *Faretta*
10 warning?

11 MS. COLEMAN: The state would request that you will.

12 THE COURT: If somebody has that list? I haven't
13 brought it ---

14 MS. COLEMAN: Yeah, we can pull that.

15 MR. GRIFFITH: Okay. Thank you, Your Honor.

16 THE COURT: Yes, I will.

17 MS. COLEMAN: Your Honor, would you mind if we did the
18 other case before we begin with this one in order to get
19 our witnesses out?

20 THE COURT: I hate to shuffle the inmates around too
21 much.

22 MS. COLEMAN: Yes, Your Honor.

23 THE COURT: But I do recognize that ---

24 MS. COLEMAN: Just while we pull up those factors
25 maybe to give us a chance to find those.

1 THE COURT: Well, I mean, Mr. Duren has been through
2 this before. I understand you filed motions to relieve
3 other attorneys before, right?

4 MR. DUREN: Yes, ma'am.

5 THE COURT: And you've come to court on those. I
6 mean, you understand that representing yourself, you don't
7 have any legal training. You know that, right, any formal
8 legal training? I'm not assuming that you don't know
9 anything about the law, but you've not been to law school,
10 correct?

11 MR. DUREN: No, ma'am.

12 THE COURT: Okay. You feel qualified to represent
13 yourself?

14 MR. DUREN: Ma'am?

15 THE COURT: You feel qualified to represent yourself?

16 MR. DUREN: Yes, ma'am, because the reason I'm
17 representing me, I called Mr. Griffith the other day,
18 right, and this has been going on, and I asked him. I said
19 what are we arguing at my PCR hearing? He asked me who is
20 this. I said this is Duren. He didn't even know we were
21 having a ---

22 THE COURT: Well, I understand. Mr. Griffith is gone.

23 MR. DUREN: Yeah.

24 THE COURT: He's not your lawyer anymore; I've taken
25 care of that. I'm just worried about you representing

1 yourself.

2 MR. DUREN: Well.

3 THE COURT: But, of course, the problem is if you
4 believe that any member of the South Carolina Bar has some
5 allegiance to the State of South Carolina, then I can't
6 appoint anybody to represent you because they'd all be paid
7 by the taxpayer dollars, by the bar, or Indigent Defense.

8 MR. DUREN: Your Honor, the State of South Carolina is
9 a corporation.

10 THE COURT: Okay.

11 MR. DUREN: Sumter County is a corporation.

12 THE COURT: Okay.

13 MR. DUREN: This courtroom is a corporate court.

14 THE COURT: All right. I just want to make sure you
15 know what you're doing representing yourself.

16 MR. DUREN: Yes, ma'am.

17 THE COURT: All right.

18 MR. DUREN: Yes, ma'am.

19 THE COURT: All right. I think we should, while you
20 pull those things up -- unless you have them before you
21 right now.

22 MS. COLEMAN: Not yet, Your Honor.

23 THE COURT: We're going to hear one more case before
24 we hear yours, Mr. Duren, because I think yours could be a
25 little bit long, and I've got a bunch of other people out

Exhibit 21

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) 2015 DEC -2) IN THE COURT OF COMMON PLEAS
3:3) THIRD JUDICIAL CIRCUIT

David A. Duren, #181965,) 2015-CP-43-2134

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 14, 2015. Respondent submitted its Return and Partial Motion to Dismiss on December 3, 2015. An evidentiary hearing into the matter was convened on July 25, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Timothy Griffith, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the May 2015 term of the Sumter County Grand Jury for Burglary- Second Degree (2012-GS-43-1149). Applicant proceeded pro-se at trial before the Honorable George C. James, Jr. Applicant was found guilty as indicted on May 20, 2015. Judge James sentenced Applicant to life without parole. Applicant did not appeal his conviction or sentence.



Additionally, Applicant was true bill indicted at the February 2002 term of the Sumter County Grand Jury for three counts Burglary – Second Degree and Arson Second Degree (2002-GS43-109).¹ Jack Howle, esquire represented Applicant. On April 4, 2002, Applicant pled guilty as indicted before the Honorable Clifton Newman. Judge Newman sentenced Applicant to seven year term of imprisonment for burglary – second degree for two counts of burglary-second degree and six year term of imprisonment for arson – second degree with those charges running concurrent to each other. Applicant did not appeal his guilty plea or sentence.

Applicant filed a timely application for post-conviction relief on September 14, 2015.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. “4th, 5th, 6th, 8th, 13th, 14th, amend. Violation.”
2. Due process violation.
3. Fraud upon the court.
4. Subject matter jurisdiction
5. Ineffective Assistance of Counsel

At the evidentiary hearing, Respondent moved to dismiss any allegations pertaining to Applicant's Burglary and Arson charges from 2002 as untimely. This Court granted Respondent's motion and dismissed those allegations accordingly for Applicant's lack of due diligence in raising them. Applicant proceeded only on the allegations regarding his 2015 convictions.

III. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must

¹ Applicant listed this indictment on his current PCR application.

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. 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).



As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice.

Based on the testimony at the evidentiary hearing as well as the trial transcript, it is clear that Applicant wished to represent himself at trial, and he relieved his prior attorney in order to represent himself. The record indicates that Applicant was deemed able to represent himself at trial after being given all proper warnings at a pre-trial hearing with Judge Cothran.

At the evidentiary hearing, prior counsel Jacob Smith testified that he met with Applicant ten to fifteen times during the brief course of his representation. He stated that he filed discovery motions, reviewed the materials with Applicant, discussed the elements of the charges, relayed the State's plea offers, and investigated possible alibi defenses. Mr. Smith stated that Applicant decided to go *pro se* and he had him relieved as counsel. Based on this testimony, this Court finds that the representation of Applicant's prior counsel did not fall below standards of professional norms. Applicant has failed to meet his burden in proving that any of the attorneys who previously represented him were ineffective, and that any alleged ineffectiveness prejudiced him in any way. Therefore, this allegation is denied and dismissed with prejudice.

DUE PROCESS

Applicant alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However,



Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976).

This Court finds that Applicant did not present any meritorious evidence of a due process violation and thus has failed to meet his burden of proof, and this allegation is denied and dismissed with prejudice.

SUBJECT MATTER JURISDICTION

Applicant has claimed that the trial court lacked subject matter jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, supra. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, to meet his burden, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Therefore, because Applicant has failed to meet his burden in proving that the court lacked subject matter jurisdiction, this allegation is denied and dismissed with prejudice.



FAILURE TO STATE A CLAIM

Applicant further alleges various constitutional violations as well as fraud upon the court. This Court finds these allegations to be meritless, as Applicant has failed to state a claim that is cognizable under the Uniform Post-Conviction Relief Act, S.C. Code Ann. § 17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d



501 (1973). Therefore, this allegation is denied and dismissed as it is not proper in a post-conviction relief action.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

V. CONCLUSION

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

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

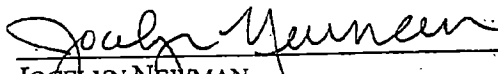
[signature block on following page]



IT IS THEREFORE ORDERED:

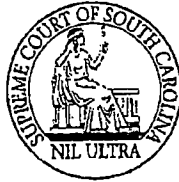
1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 22nd day of February, 2018¹⁷.


JOCELYN NEWMAN
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina

Exhibit (3)



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

December 19, 2016

The Honorable James C. Campbell
Sumter County Judicial Center
215 North Harvin Street
Sumter SC 29150-4974

REMITTITUR

Re: David A. Duren V. State
Lower Court Case No. 2015CP4302134
Appellate Case No. 2016-002356

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

cc: Timothy Lee Griffith, Esquire
Julie Amanda Coleman, Esquire

The Supreme Court of South Carolina

David A. Duren, Petitioner,

v.

State of South Carolina, Respondent.

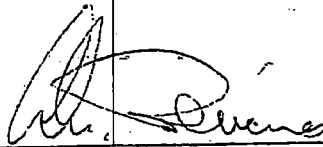
Appellate Case No. 2016-002356

Lower Court Case No. 2015CP4302134

ORDER

Petitioner has served and filed a notice of appeal from a form order dated November 9, 2016. This order, which was apparently issued after an evidentiary hearing was held in this matter, does not indicate that any full written order is to follow.

The order does not contain specific findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80. Accordingly, the order of November 9, 2016, is vacated, the notice of appeal is dismissed without prejudice, and the matter is remanded to the circuit court to enter a written order that complies with the statute.



C.J.

FOR THE COURT

Columbia, South Carolina
December 1, 2016

cc: Timothy Lee Griffith, Esquire
Julie Amanda Coleman, Esquire

Exhibit (4)

Rule 20. Appeals

Rule 20(B) An appeal must be made within thirty (30) days after mailing of copy of the final decision by the appealing party, except that if based upon corruption, fraud or other undue means, it shall be made within thirty (30) days after such grounds are known or should have been known.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2017 FEB 28 AM 9:19

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

David A. Duren, #181965,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2015-CP-43-2134

CERTIFIED TRUE COPY
OF ORIGINAL FILED.

Applicant,

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 14, 2015. Respondent submitted its Return and Partial Motion to Dismiss on December 3, 2015. An evidentiary hearing into the matter was convened on July 25, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Timothy Griffith, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the May 2015 term of the Sumter County Grand Jury for Burglary- Second Degree (2012-GS-43-1149). Applicant proceeded pro-se at trial before the Honorable George C. James, Jr. Applicant was found guilty as indicted on May 20, 2015. Judge James sentenced Applicant to life without parole. Applicant did not appeal his conviction or sentence.

[Signature]

Additionally, Applicant was true bill indicted at the February 2002 term of the Sumter County Grand Jury for three counts Burglary – Second Degree and Arson Second Degree (2002-GS43-109).¹ Jack Howle, esquire represented Applicant. On April 4, 2002, Applicant pled guilty as indicted before the Honorable Clifton Newman. Judge Newman sentenced Applicant to seven year term of imprisonment for burglary – second degree for two counts of burglary-second degree and six year term of imprisonment for arson – second degree with those charges running concurrent to each other. Applicant did not appeal his guilty plea or sentence.

Applicant filed a timely application for post-conviction relief on September 14, 2015.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. “4th, 5th, 6th, 8th, 13th, 14th, amend. Violation.”
2. Due process violation.
3. Fraud upon the court.
4. Subject matter jurisdiction
5. Ineffective Assistance of Counsel

At the evidentiary hearing, Respondent moved to dismiss any allegations pertaining to Applicant's Burglary and Arson charges from 2002 as untimely. This Court granted Respondent's motion and dismissed those allegations accordingly for Applicant's lack of due diligence in raising them. Applicant proceeded only on the allegations regarding his 2015 convictions.

III. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must

¹ Applicant listed this indictment on his current PCR application.



prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. 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).



As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice.

Based on the testimony at the evidentiary hearing as well as the trial transcript, it is clear that Applicant wished to represent himself at trial, and he relieved his prior attorney in order to represent himself. The record indicates that Applicant was deemed able to represent himself at trial after being given all proper warnings at a pre-trial hearing with Judge Cothran.

At the evidentiary hearing, prior counsel Jacob Smith testified that he met with Applicant ten to fifteen times during the brief course of his representation. He stated that he filed discovery motions, reviewed the materials with Applicant, discussed the elements of the charges, relayed the State's plea offers, and investigated possible alibi defenses. Mr. Smith stated that Applicant decided to go *pro se* and he had him relieved as counsel. Based on this testimony, this Court finds that the representation of Applicant's prior counsel did not fall below standards of professional norms. Applicant has failed to meet his burden in proving that any of the attorneys who previously represented him were ineffective, and that any alleged ineffectiveness prejudiced him in any way. Therefore, this allegation is denied and dismissed with prejudice.

DUE PROCESS

Applicant alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However,



Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976).

This Court finds that Applicant did not present any meritorious evidence of a due process violation and thus has failed to meet his burden of proof, and this allegation is denied and dismissed with prejudice.

SUBJECT MATTER JURISDICTION

Applicant has claimed that the trial court lacked subject matter jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, supra. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, to meet his burden, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Therefore, because Applicant has failed to meet his burden in proving that the court lacked subject matter jurisdiction, this allegation is denied and dismissed with prejudice.



FAILURE TO STATE A CLAIM

Applicant further alleges various constitutional violations as well as fraud upon the court. This Court finds these allegations to be meritless; as Applicant has failed to state a claim that is cognizable under the Uniform Post-Conviction Relief Act, S.C. Code Ann. § 17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d



501 (1973). Therefore, this allegation is denied and dismissed as it is not proper in a post-conviction relief action.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

V. CONCLUSION

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

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

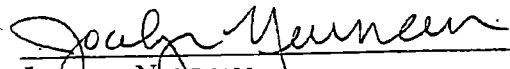
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IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 22nd day of February, 2018¹⁷.



JOCELYN NEWMAN
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina

NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF
COMMON PLEAS

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case # 2015-CP-43-2134

RECEIVED

MAR 13 2017

S.C. SUPREME COURT

The State,

Respondent,

v.

David A. Duren # 181965

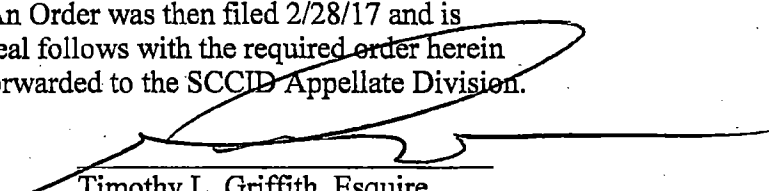
Appellant.

NOTICE OF APPEAL

David A. Duren # 181965, appeals his denial of PCR request in this case. The PCR was denied by The Honorable Jocelyn Newman where Mr. Duren requested that he represent himself and his appointed under 608 attorney Timothy L. Griffith Esquire was relieved as counsel on July 25, 2016. A Form Order was filed and recorded November 15, 2016 and received by his attorney on 11-21-2016 and an appeal was noticed. The Court filed a REMITTITUR and ORDER December 19, 2016 which remanded to circuit Court to enter a written order a copy of which is attached herewith. An Order was then filed 2/28/17 and is attached herewith. The corrected appeal follows with the required order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated

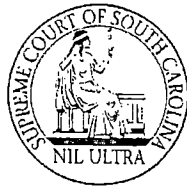
3/6/17


Timothy L. Griffith, Esquire
360 W. Wesmark Blvd,
Sumter, South Carolina 29150
Telephone: (803)607-9087
Attorney for Appellant (relieved)
Will not be representing on appeal

Other Counsel of Record:
Julie A. Coleman, Esquire

Assistant Attorney General
South Carolina Attorney General's Office P.O. Box 11549
Columbia, S.C. 29211

Exhibit (7)



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

June 15, 2017

Mr. David A. Duren, Jr., #181965
Lieber Correctional Institution
P. O. Box 205
Ridgeville SC 29472

Re: David A. Duren, Jr. v. State
Appellate Case No. 2017-000605
Lower Court Case No. 2015CP302134

Dear Duren::

As you know, this post-conviction relief case is pending before this Court and is related to your conviction and sentence in 2012GS4301149. You are currently represented in this case by the Division of Appellate Defense of the Office of Indigent Defense.

You have now sent this Court a motion seeking to compel the Solicitor's office to provide certain information relating to 2012GS430119. Since you are currently represented before this Court by the Division of Appellate Defense, no action will be taken on this *pro se* motion by this Court. Instead, if it is appropriate to seek this type of relief from this Court, that request will have to be made by the Division of Appellate Defense. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d

907 (1989).

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

CLERK

cc: Julie Amanda Coleman, Esquire
Robert Michael Dudek, Esquire
Solicitor, Third Judicial Circuit

5C RCP Rule 11.8

(2) Change of Attorney - An attorney may be changed by Counsel, or upon Cause shown, and upon such terms as shall be just, upon application, by order of the Court, and otherwise. A written notice of change of attorney must be served as provided by Rule 5.

In light of this ruling on the merits, it is not necessary for this Court to address Collins' contention that Strom's estoppel argument was not properly raised as an additional sustaining ground.

II. Rule 11(b), SCRCP

Strom argues the Court of Appeals erred in holding that an attorney can only be relieved as counsel by obtaining a court order utilizing the procedure set forth in Rule 11(b), and may not retroactively be relieved pursuant to Rule 60(a). We disagree.

[2] Rule 11, SCRCP, provides: "An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of Court, *and not otherwise.*" (emphasis added). We hold that after entering an appearance with the court, an attorney must receive a court order pursuant to Rule 11(b) in order to be relieved as counsel. As this Court stated in *Culbertson v. Clemens*, 322 S.C. 20, 25, 471 S.E.2d 163, 165 (1996):

In all actions, it is of vital importance, not only to the parties involved but to the court as well, that the correct attorneys are listed as the attorneys of record. The best way to achieve this is by strict adherence to Rule 11(b), which was designed to eliminate any confusion regarding which attorneys are representing parties by requiring that any changes be made by application to the court.

It is irrelevant whether the attorney is discharged or seeks to withdraw for his own reasons. A client has the absolute right to trust and rely upon attorneys whom he believes to be his counsel of record. In the instant case, the only evidence that Strom was discharged by Collins is the testimony of Strom himself and the absence of billing records during a time when the matter was held in abeyance. Contrarily there is evidence that Collins still believed Strom would continue to represent it if and when the case proceeded to trial. As the text of Rule 11(b) implies, either the attorney, the replacement attorney, or the client may apply for a court order changing or removing an attorney. If an attorney is discharged, and the client or the new attorney fails to apply for a court order, it is incumbent upon the discharged attorney to do so himself. In

a situation such as this one where the client claims not to have discharged the attorney, strict adherence to Rule 11(b) would have solved the confusion. If Strom had filed a Rule 11(b) motion at the time he believed he was discharged, Collins would have been notified and could have corrected Strom's belief.

[3] Strong policy considerations dictate that a client and the court must be unequivocally informed when an attorney intends to withdraw from representing a party, for whatever reason. Equally strong policy considerations dictate that the court must, by order, approve a client's discharge of an attorney of record in a court proceeding. The conflict in understanding between Collins and Strom in this case is a perfect illustration of the need for adherence to Rule 11's requirement of a court order. Here, Strom and Collins' in-house counsel, Youmans, both testified credibly about their understanding of their telephone conversation. Unfortunately each lawyer interpreted the conversation differently.

[4] We hold that in order to be removed as counsel of record, an attorney must receive a court order pursuant to 11(b), SCRCP. In a case where an attorney believes he has been discharged, if the client fails to request a court order changing attorneys, the attorney is required to request such an order on his own motion.² In *Smith v. Bryant*, 264 N.C. 208, 141 S.E.2d 303 (1965), the North Carolina Supreme Court articulated the policy behind placing such an obligation on an attorney. The Court held that an attorney who has entered a formal appearance in an action is "not at liberty to abandon [the client's] case without (1) justifiable cause, (2) reasonable notice to [the client], and (3) permission of the court." *Id.* at 305. The court explained: "[a]n attorney not only is an employee of his client but also is an officer of the court. This dual relation imposes a dual obligation." *Id.* at 306. Based on case law and policy, once an attorney has made a formal

2. Strom cites *In re Tillman*, 319 S.C. 461, 462 S.E.2d 283 (1995), in support of his argument that a discharged attorney does not have an obligation to file a Rule 11(b) motion. Strom accurately cites *Tillman* for the proposition that an attorney who is discharged can no longer perform work on the client's case. However, requiring an attorney to file a motion to change attorneys under Rule 11(b) does not constitute "continuing representation after discharge."

Exhibit 9

"Fraud"

Exhibit H

An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of matter of fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which should have been disclosed which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth or suggestion of what is false, whether it be by direct falsehood or innuendo, by speech or silence, word of mouth, or look or gesture.

DeLahanty v First Pennsylvania Bank, 11 A. 318 PA Supra. 90 464
A 2d 1943, 1951. A generic term, embracing all malicious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions, or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and unfair way by which another is cheated.
Johnson v McDonald, 170 Okl 117, 39 P2d 150. Bad faith and fraud are synonymous, and also synonymous of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc.

Element of fraud of a cause for fraud include false representation of a present or past fact made by defendant relied in reliance thereupon by plaintiff, and damage resulting to plaintiff from such misrepresentation.
Citizen Standard Life Ins Co. v Gilkey. Tex Civ App 521
S.W2d 354, 356

Fraud

Exhibit H

As distinguished from negligence, it is always positive, intentional. It comprise all acts, omission, and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes swindling calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false.

David Q. Jensen # 181965
Perry C.I. O 3 B-215
430 OAKLAWN RD
Pelzer, S.C. [29662]

South Carolina Supreme Court
Post Office Box 11330
Columbia, S.C. 29211

RECEIVED

AUG 28 2013

P.C.I. MAILROOM