

Telephone
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(803) 818-5701



Faulkner Law Firm LLC

616 E. Liberty Street
P.O. Box 1030
York, SC 29745

February 21, 2020

RECEIVED

FEB 25 2020

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

S.C. SUPREME COURT

RE: *James A. Giles v. State of South Carolina*
Case No.: 2014-CP-44-0295

Dear Mr. Shearouse:

Please find enclosed the original and one copy of the Notice of Appeal, Motion to File *In Forma Pauperis*, a copy of the order that is the subject of the appeal, and Proof of Service in the above referenced matter. Please file these documents with your office and return the copies to me in the enclosed self-addressed stamped envelope.

By copy of this letter, I am also serving the Defendant's counsel.

If you have any questions concerning this matter, please do not hesitate to contact me at (803) 818-5700.

With kind regards, I am

Yours very truly,

Beth Ramsey Faulkner

BRF:tml

Enclosures

cc: Justin J. Hunter, Esquire
w/enclosures
Mr. James A. Giles
w/enclosures
Union County Court of Common Pleas
w/enclosure

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM UNION COUNTY
COURT OF COMMON PLEAS

J. MARK HAYES, CIRCUIT COURT JUDGE

2014-CP-44-295

James A. Giles
Appellant

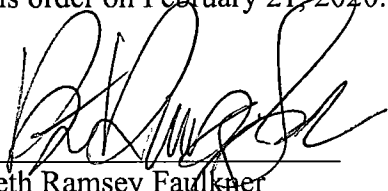
vs.

State of South Carolina
Respondent

NOTICE OF APPEAL

James A. Giles appeals the Order Denying Applicants Motion to Alter or Amend in this Post-Conviction Relief action issued by the Honorable J. Mark Hayes on January 31, 2020. Appellant received written notice of entry of this order on February 21, 2020.

February 21, 2020
York, South Carolina



Beth Ramsey Faulkner
Faulkner Law Firm, LLC
P.O. Box 1030
616 E. Liberty Street
York, South Carolina 29745
(803) 818-5700
Attorney for Appellant

Other Counsel of Record:

Justin J. Hunter, Esq.
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

RECEIVED
FEB 25 2020
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM UNION COUNTY
COURT OF COMMON PLEAS

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2014-CP-44-295

RECEIVED
FEB 25 2020
S.C. SUPREME COURT

James A. Giles
Appellant

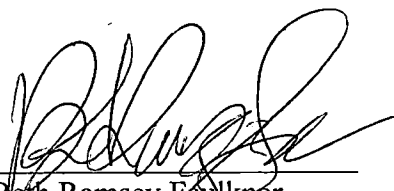
vs.

State of South Carolina
Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid on February 21, 2020 addressed to the attorney of records, Justin J. Hunter, Esq., PO Box 11549, Columbia, SC 29211.

February 21, 2020
York, South Carolina


Beth Ramsey Faulkner
Faulkner Law Firm, LLC
P.O. Box 1030
616 E. Liberty Street
York, South Carolina 29745
(803) 818-5700
Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

James Albert Giles, #264478,)

2014-CP-44-0295

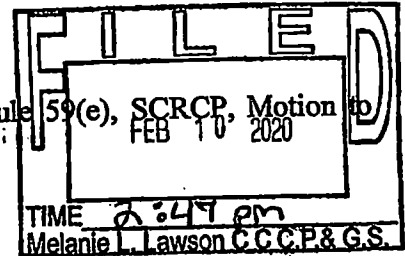
Applicant,)

v.)

**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND**

State of South Carolina,)

Respondent.)



This matter comes before this Court by way of Applicant's Rule 59(e), SCRPC, Motion to Alter or Amend filed on May 22, 2018.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Union County Clerk of Court. During the 2007 term, the Union County Grand Jury indicted Applicant for burglary, first degree (2006-GS-44-1207), kidnapping (2006-GS-44-1208), and strong arm robbery (2006-GS-44-1209). Applicant was represented by Vanessa Cason, Esquire (Counsel). On September 12, 2007, Applicant appeared before the Honorable John C. Hayes, III and proceeded to a jury trial. During the trial, Applicant relieved Counsel of representation and proceeded in his trial *pro se*. At the conclusion of the trial, the jury convicted Applicant of the charges as indicted. Judge Hayes sentenced Applicant to concurrent terms of thirty years for burglary, first degree, thirty years for kidnapping, and fifteen years for strong arm robbery.

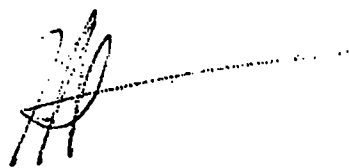
A Notice of Appeal was timely filed on behalf of Applicant and an appeal was perfected. The South Carolina Court of Appeals by written order affirmed Applicant's conviction and sentence. State v. Giles, 2010-UP-154 (Ct. App. filed on February 23, 2010). On May 24, 2010, Applicant submitted a petition for writ of certiorari, seeking review of the Court of Appeals decision. The Supreme Court of South Carolina granted certiorari and affirmed the decision of the Court of Appeals. State v. Giles, Op. No. 27353 (filed on January 15, 2014). The remittitur was sent on February 21, 2014.

Applicant then filed a timely application for post-conviction relief on July 22, 2014 alleging various ineffective assistance of counsel claims. On January 30, 2018, this Court presided over Applicant's evidentiary hearing at the Moss Justice Center. This Court denied and dismissed Applicant's application for post-conviction relief and Applicant filed a notice of appeal. Applicant then filed a Rule 59(e), SCRPC, Motion to Alter or Amend this Court's ruling, however, this Court declined to hear the motion based on Applicant's pending appeal. On May 20, 2019, the Supreme Court of South Carolina dismissed Applicant's appeal without prejudice and instructed this Court to rule on Applicant's Rule 59(e) motion. The remittitur was issued June 17, 2019.

Findings on Applicant's Motion to Alter or Amend

On December 18, 2019, this Court heard argument from Applicant and Respondent regarding Applicant's motion at the Union County Courthouse. After reviewing all of the relevant documents and the argument from the attorneys, this Court hereby denies Applicant's motion to alter or amend the denial of his post-conviction relief application.

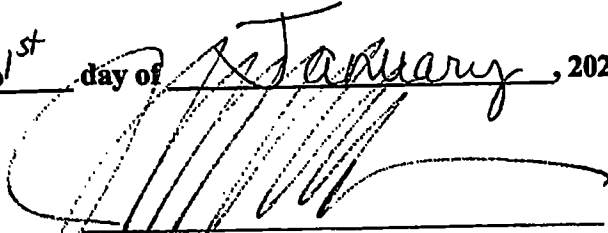
Although this Court has concerns regarding Counsel's representation of Applicant, after reviewing the materials again and considering the testimony elicited at the evidentiary hearing, this Court finds Applicant has failed to meet his burden as set forth in Strickland v. Washington, 466 U.S. 668 (1984). Despite this Court's finding that Counsel's performance was weak, Applicant has failed to show any resulting prejudice from Counsel's performance. Applicant has failed to show this Court how the outcome of his trial would have been different had Counsel been more aggressive or acted substantially different. This Court declines to alter or amend its ruling to conclude that Counsel's performance prejudiced Applicant because that conclusion would be based on speculation.

A handwritten signature in black ink, appearing to be the initials 'JH' followed by a long horizontal line extending to the right.

IT IS THEREFORE ORDERED:

1. Applicant's Rule 59(e), SCRCP, Motion to Alter or Amend is denied and dismissed; and
2. Applicant is to remain in the custody of Respondent.

AND IT IS SO ORDERED this 31st day of January, 2020.



J. MARK HAYES
Presiding Judge
Sixteenth Judicial Circuit

Union, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF UNION
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-44-0295

JAMES A. GILES

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

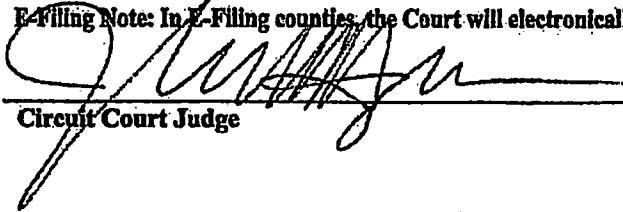
ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

0137
Judge Code

12/23/19
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This is a post-conviction relief matter. The matter was originally heard January 30, 2018, while this Court was in York County. After a ruling was signed by the Court, an appeal was filed. Subsequent to the notice of appeal being filed, a motion to reconsider was filed. This Court declined to hear the motion based on the filing of the appeal. Upon direction of the appellate court, this Court was directed to proceed with the present motion. The present PCR attorneys reconstructed the prior hearing and provided the undersigned copy of all of the documents relevant to the present motion. After conducting oral argument, reviewing the transcript and other documents, the attorney general is asked to prepare a formal order denying the present motion. Please include in the formal order that this Court has concerns with applicant's trial attorney's performance as was expressed during the hearing. After once again reviewing the materials and considering testimony, this Court, nevertheless cannot find that the applicant has met his burden of proof that the outcome of his trial would have been different. The previous form 4 issued by this Court remains the opinion of this Court even after reviewing the transcript of the prior PCR hearing. As referenced in the prior Form 4, this Court's opinion as to the weakness of trial Counsel's performance remains, applicant has failed to show that her weaknesses changed the outcome if she had been more aggressive or acted substantially different. Please include in the formal order this Court's finding that to conclude that counsel's error prejudiced the applicant and effected the outcome would be speculative.

The formal order once signed and filed will be the final order of this Court on this matter.

STATE OF SOUTH CAROLINA
COUNTY OF UNION
James Albert Giles,
Plaintiff(s),
-vs-
South Carolina State of,
Defendant(s).

FILED FOR RECORD

2016 AUG 10 PM 3:30

IN THE COURT OF COMMON PLEAS
16th JUDICIAL CIRCUIT
CASE NO.: 2014CP4400295
APPOINTMENT OF COUNSEL OR GAL
(Select one.)

ORDER
 AMENDED ORDER

CLERK OF COURT
UNION, SC
TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
 SVP case
 Minor Name Change
 Adoption
 Custody and/or Visitation
 Other: Post Convict Rel 500
 Juvenile
 Abuse and Neglect

It appears James Albert Giles, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
 counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
 counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
 court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
 Other: Applicant's motion for counsel to be relieved was granted. New counsel to be appointed (previous counsel Leah Moody and Nathan Sheldon)


Therefore, it is ordered that Beth Faulkner hereby is appointed as (Select one.)

Counsel lead counsel (if capital PCR case) guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
August 10, 2016


 Circuit Judge Clerk of Court

Plaintiff Attorney:

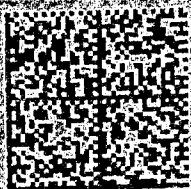
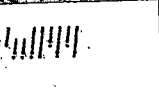
Beth Faulkner	803-684-4462
PO Drawer 300	
York, South Carolina 29745	

Defendant Attorney:

Justin J. Hunter	
Office of the Attorney General	
PO Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CP20 (08/08)
SCCA/267 (03/07)



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The Supreme Court of South Carolina
Attention: The Honorable Daniel E.
Shearouse