

Date May 27 2020

The Honorable Jimmy Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

JUN 01 2020

SC Court of Appeals

RE: Gavin v. Jones v. State of South Carolina
Appellate Case NO: 2018-001099
Lower Court Case NO: 2012-CP-04-0261

RECEIVED

MAY 27 2020

P.C.I. MAILROOM

Dear Ms. Kitchings,

As a inmate one of the reasons I am writing this Court on this issue. I cannot properly get to the Law Library because of the Restrictions of the Prison due to the State of Emergency covid 19. The Respondent has used deceitful means to slip a Return to Appellates 59(E) into the record, one that I never received or was never filed with the Court. It is very unprofessional and shows a lack of Integrity and Ethics in the Attorney General's office. This should

show you the extent the State will go to, to have my case denied or dismissed, they care nothing about the rules they care nothing about my constitutional rights. I mailed the Clerk of Court and the Respondent a copy of the 59(E) motion twice March 1 2018 and March 5 2018. But all of the sudden the Clerk of Court in Anderson could not find it, until after I sent my family to get a time stamp copy.

I wrote him a letter had it stamped by the mail room the date I mailed it March 30 2018. (I have sent you a mailing affidavit and a copy of the letter.

Respondent has a footnote on Page 6 of 7 of the Respondent's 59(E) Return. They are explaining that my 59(E) was filed April 11 2018. The last page of Respondent's 59(E) Return is dated April 30 2018. I received a letter dated May 16 2018 from the Attorney General advising me of the Order signed by Judge Maddox dated April 26 2018 which denied my 59(E). By the time the Respondent would have finished the Return (April 30 2018) Maddox had already signed his order on the 26th of April.

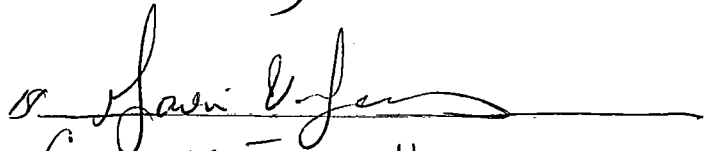
Ms. Kitchings I may be a Inmate who is slow to the tricks of the State, but you are not. The Respondent not only printed up a false 59(E) Return, they lied in that Return they never addressed my issues in the 2015 Amendment I filed. I never thought that they would try something deceitful in this Court, the Lower Court yes.

But not the Court of Appeals. But as you see they have done just that. I am asking that someone from the Court of Appeals with Integrity step up and say NO this is wrong. I don't have to tell you Ms. Kitchings you know that it's wrong the question is what will you do? Because I know the Respondent cannot say "Hey what about Rule such + such. when they themselves just have showed clearly a lack of professional conduct.

I am asking you to please show them that they cannot disrespect the Court like this. They suppose to be held to a higher standard, this was something done on purpose.

I am asking that the Court Sanction the Attorney General's Office for the over \$300,000 dollars I've paid having this law work done and copied. I am asking that the Supplement be stricken from the records. Ms. Kitchens this was not only disrespectful to you, it was disrespectful to the Court. You read the documents I've sent, you will see I speak the Truth. All I am asking for is a fair proceeding. They have done everything they could to keep my case from being heard on the merits by someone who is fair and just. In Jesus alone I truly thank you for your Integrity

Respectfully Submitted



GAVIN V. JONES # 2591726

CX-17 RHO Perry Corr.

430 OAKLAWN RD

Pelzer S.C 29669

This day May 27 2020

Petitioner filed a Petition for Rehearing, which was denied on August 23, 2001. Subsequently, Petitioner filed a *pro se* Petition for Writ of Certiorari in the Supreme Court of South Carolina, which was denied on January 24, 2002.

2002-CP-04-1817

Petitioner then filed an application for post-conviction relief on July 6, 2002. In his application, Petitioner set forth the following allegations:

1. Counsel was ineffective for presenting and failing to object to evidence of the Applicant's use of drugs;
2. Counsel was ineffective for failing to present evidence that the crime was committed by someone else; and
3. Ineffective assistance of appellate counsel.

Thereafter, Petitioner filed a *pro se* document entitled "Applicant's Additional Supplemental to Original Post-Conviction Relief Application" on August 6, 2002. In this amended application, Petitioner raised the following allegations:

1. Counsel was ineffective for failing to properly and thoroughly impeach State witnesses Joshua Stewart and Shirley Rainey with their out-of-court statements;
2. Counsel was ineffective for failing to object to the trial court's circumstantial evidence instruction to the jury;
3. Counsel was ineffective for failing to object to the Solicitor's improper hypothetical questions to the medical examiner;
4. Counsel was ineffective for failing to present favorable witnesses and evidence in the Applicant's defense;
5. Counsel was ineffective for failing to object to the admission of irrelevant evidence;
6. Counsel was ineffective for failing to adequately cross-examine State witnesses; and
7. Appellate counsel was ineffective for failing to raise in a merits brief that the trial court erred in allowing the State to bolster testimony of Jackie Sanders with her consistent out-of-court statement.

Petitioner again amended his application in a document captioned "Applicant's Supplement to Original Post-Conviction Relief Application" on September 13, 2002. In this amendment, he raised the following additional ground for relief:

1. Because the Solicitor failed to comply with the procedures that are laid down by the courts, the trial court did not have jurisdiction to entertain the Applicant's case and convict him.

Respondent made its Return on June 9, 2004, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on December 15, 2004, at the Anderson County Courthouse. Petitioner was present at the hearing and proceeded *pro se*. Assistant Attorney General Christopher L. Newton of the South Carolina Attorney General's Office represented Respondent. By Order dated February 9, 2005, the Honorable J. Cordell Maddox, Jr., denied and dismissed the application with prejudice. Thereafter, Petitioner filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRPC, which Judge Maddox denied on March 5, 2005.

Petitioner filed a timely notice of appeal. Assistant Appellate Defender Aileen P. Clare of the South Carolina Office of Appellate Defense represented Petitioner and perfected an appeal on his behalf. On November 16, 2005, the Supreme Court of South Carolina denied Petitioner's Petition for Writ of Certiorari. The Remittitur was issued on December 2, 2005.

Thereafter, Petitioner filed a *pro se* document in the Circuit Court entitled "Motion for New Trial Based on After Discovered Evidence of Unconstitutional Grand Jury Proceedings" on November 5, 2008. On October 7, 2009, Judge Maddox denied Petitioner's Motion for New Trial and again dismissed Petitioner's post-conviction relief action.

Petitioner appealed from this Order on October 9, 2009, and filed a *pro se* Petition for Writ of Certiorari on February 16, 2010. By Order dated May 13, 2011, the Supreme Court of

South Carolina denied Petitioner's Petition for Writ of Certiorari. The Remittitur was issued on June 1, 2011.

3:06-788-TLW-JRM

Petitioner filed a Petition for Writ of Habeas Corpus on March 24, 2006, in the United States District Court for the District of South Carolina. In his Petition, Petitioner alleged the following grounds:

- Ground One:** Lower Court erred in failing to grant a directed verdict were [sic] evidence was constitutionally insufficient.
- Supporting Facts:** States case was wholly circumstantial, there was no DNA, no forensics, no eyewitness, no fingerprints to place Petitioner at the scene. Coroner did nothing scientific to determine time of death thus giving the State a 6 hr window. State used testimony Petitioner had money days after crime to say he robbed the victim.
- Ground Two:** Counsel was constitutionally ineffective for failing to bring fourth [sic] evidence of third party guilt.
- Supporting Facts:** Counsel admitted during PCR that he only perused the evidence concerning third party guilt the day before trial. Sam Mackey committed murder and a suicide after he was asked [if] he killed the victim. Sam Mackey's nephew gave Statement that Mackey said it was a hit and he was paid . . . to kill victim.
- Ground Three:** Counsel was constitutionally ineffective for failing to ask for an alibi charge.
- Supporting Facts:** Before trial counsel sent a notice of alibi to the State no State witness place Petitioner at the scene during the time period victim was killed. Counsel's defense was to show his client was not at the scene and Petitioner told counsel [sic] from the beginning as counsel . . . at PCR that I was innocent and wasn't there.
- Ground Four:** Counsel was constitutionally ineffective for not pointing out to jury that unseemingly [sic] stain was not blood.
- Supporting Facts:** All of Petitioner[s] clothing was tested by SLED lab and his shirt the State reported no blood identified. However the shirt had two stains that appeared to have dried blood circled with a permanent marker this shirt went back to the

jury. Detective testified when he 1st received shirt there were no stains on shirt.

On June 15, 2006, Respondent filed a Return and Motion for Summary Judgment. By Order dated March 23, 2007, the District Court granted Respondent's Motion for Summary Judgment and dismissed the Petition with prejudice.

On April 26, 2007, Petitioner filed a Notice of Appeal and Request for Certificate of Appealability to the United States Court of Appeals for the Fourth Circuit. The United States Court of Appeals for the Fourth Circuit subsequently denied the certificate of appealability and dismissed the appeal on July 31, 2007. Petitioner subsequently petitioned for rehearing *en banc*, which was denied on September 24, 2007.

II.

Thereafter, on March 14, 2012, Petitioner filed a document captioned "Petition for Writ of Mandamus." In his Petition, Petitioner argues "The State Tried and Convicted the Petitioner for an Unindicted Murder Offense." Petitioner contends the indictment charging him with murder, dated January 5, 1999, is in direct violation of an Order from the South Carolina Supreme Court cancelling the Anderson County General Sessions Court for that day. On November 19, 2012, Respondent made its "Notice of Motion and Motion to Dismiss Pursuant to Rules 12 and 4, SCRCPC and Laches," seeking summary dismissal of the petition. On February 20, 2014, a motions hearing was held before this Court. Petitioner was present at the hearing and

represented by Rodney W. Richey, Esquire². By written Order signed February 6, 2018, and filed February 9, 2018, this Court denied and dismissed the Petition.

On April 11, 2018³, Petitioner filed this "Motion to Alter or Amend Judgment." Respondent received said Motion on April 16, 2018. This Return follows.

III.

In his "Motion to Alter or Amend Judgment Rule 59(E)," Petitioner asserts that the Court's Order overlooks "very important Facts and law . . . as well as the State never addressed amended portion of Mandamus filed 2013." Specifically, Petitioner contends "although subject matter contained in the charging instrument upon which he was tried and convicted appears to be correct he was nevertheless tried and convicted without a **PROPER** and/or lawfully **VALID INDICTMENT**." Moreover, Petitioner takes issue with the grand jury process itself, referring to the process as "*ex parte* hearings."

Respondent submits this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits this Court fully ruled on all issues presented through Petitioner's writ of mandamus and, therefore, Petitioner's "Motion to Alter or Amend Judgment 59(E)" should be denied. As each

² At the onset of the hearing, Mr. Richey informed this Court that Petitioner had moved to relieve counsel, and this Court permitted Petitioner to present his argument *pro se*. Thereafter, this Court granted Petitioner's motion to relieve his counsel.

³ "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC (emphasis added). The Order dismissing Petitioner's Writ of Mandamus was signed February 6, 2018, and filed February 12, 2018. Subsequently, Petitioner was served with a copy of this Order February 15, 2018. Therefore, Petitioner should have filed this motion on or before February 26, 2018. This motion was not filed until April 11, 2018, well after the requisite filing period.

allegation was addressed fully in the Order, Respondent submits Petitioner's assertions are without merit.

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

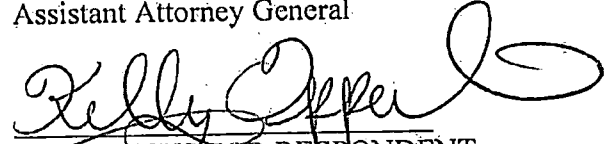
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

BY:


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

April 30, 2018

To: Clerk of Court

March 30, 2018

RECEIVED

MAR 30 2018

P.C.I. MAILROOM

Mr. Shirley,

The Original Motion (59)E WAS
mailed to your office, for filing March 1 2018
and because I left something out of the Motion
I mailed another Complete Copy of the (59)E
Motion March 5 2018. Two weeks after, my family
member came to your office to get a Time-Stamped
Copy. And was told you could not find it. Please
explain Sir how you lost two copies. Here is
more verification from the Post Master here at
Berry Correctional. I pray this was a mistake. The
motion was filed once it was placed
in the Institutional Mail.

Please let me know if you
need a 3rd copy.

Mr. James V. Jones

Thank You

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
)
Gavin V. Jones, #259726)
Petitioner,)
)
V.)
)
State of South Carolina)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

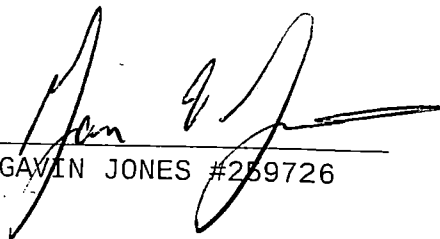
2012-CP-04-0861

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of **RULE 59(E) MOTION TO ALTER AND AMEND JUDGMENT** has been served upon the Respondent & Court by mailing Two (2) copies in the United States mail, postage prepaid, addressed to:

SOUTH CAROLINA ATTORNEY GENERALS OFFICE
POST OFFICE BOX 11549
COLUMBIA SC 29211-1549

J. CORDELL MADDOX JR.
PRESIDING JUDGE
TENTH JUDICIAL CIRCUIT COURT
POST OFFICE BOX 8002
ANDERSON SOUTH CAROLINA 29621

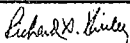
/s/ 
GAVIN JONES #259726

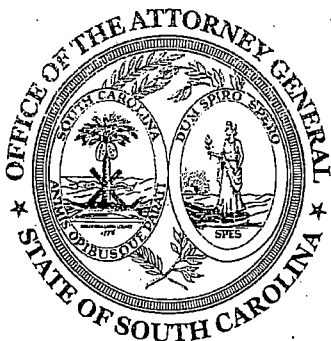
SWORN to before me this 1st day of March 2018.

Tamara Conwell
Notary Public for South Carolina.

My Commission Expires: My Commission
September 25, 2023

FILED-CLERK'S OFFICE
ANDERSON SC
2018 APR 11 PM 2:11
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY
APR 11 2018

CLERK OF COURT



ALAN WILSON
ATTORNEY GENERAL

May 16, 2018

Gavin Jones, #259726
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

Re: Gavin Jones, #259726, State of South Carolina
2012-CP-04-0861

Dear Mr. Jones:

Enclosed please find a copy of the signed and filed **Order Denying Plaintiff Gavin Jones' Motion to Alter and Amend** in your above mentioned post-conviction relief case. With this letter, we are closing our file in this matter.

Sincerely,

Kelly Oppenheimer
Assistant Attorney General

KO/ch
Enclosures

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2012-CP-04-0861

Gavin Jones,)
)
Plaintiff,)
)
vs.)
)
State of South Carolina,)
)
Defendants.)
_____)

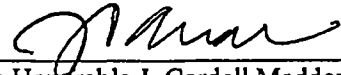
**ORDER DENYING PLAINTIFF
GAVIN JONES' MOTION TO ALTER
AND AMEND**

RECEIVED

JUN 01 2020

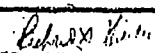
SC Court of Appeals

This matter comes before the Court on Plaintiff Gavin Jones's Motion to Alter or Amend
pursuant to Rule 59(e), South Carolina Rules of Civil Procedure. This Motion for Reconsideration
is hereby denied.



The Honorable J. Cordell Maddox, Jr.
South Carolina Circuit Court Judge

This 26 day of April 2018

A TRUE COPY
MAY - 2 - 2018

ANDERSON CLERK OF COURT

COMMON PLEAS AND
GENERAL SESSIONS
2018 MAY - 2 - 10: 28
ANDERSON SC
FILED-CLERK'S OFFICE

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

GAVIN JONES, #259726

Applicant **RECEIVED**

JUN 01 2020

SC Court of Appeals

v.

STATE OF SOUTH CAROLINA,

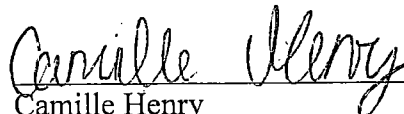
Respondent.

CERTIFICATE OF SERVICE

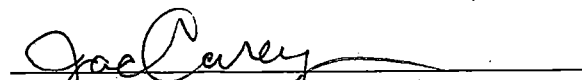
The undersigned hereby certifies that a true copy of the **Order Denying Plaintiff Gavin Jones' Motion to Alter and Amend** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Gavin Jones, #259726
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

This 16th day of May, 2018.


Camille Henry
Legal Assistant, PCR

SWORN to before me this 16th day of May, 2018.


Notary Public for South Carolina.
My Commission Expires: 5/14/2024

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUN 01 2020

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

SC Court of Appeals

Cordell Maddox Jr Circuit Court Judge

CASE NO. 2018 - 001099

GAVIN V JONES

Appellant

v

State of South Carolina

Respondent

Certificate of Service

I Gavin V. Jones have mailed this day May 27 2020 the Original letter about the Attorney General using Fraud to place a copy of a Return to a S(E) motion filed by Appellant March 1 2018. This Return was never received by Appellant or Filed with the Lower Court. This Letter with Documents have been mailed to Court of Appeals Clerk of Court Jeremy Abbott Kitchings and Attorney General Taylor Zanic Smith Esq. by placing copies in the Institutional Mail.

RECEIVED

Gavin V Jones

This day May 27 2020

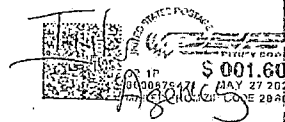
MAY 27 2020
P.C.I. MAILROOM
Gavin V. Jones # 254726
CX-7 R4U Perry Corr.
430 Oaklawn Road
Pelzer S.C 29669

Mr. GAVIN V. JONES #259426

CX-7 RHU Perry Corr.

430 OAK Lawn Road

Pelzer S.C. 29669



RECEIVED
MAY 27 2023
P.C.I. MAILROOM

Legal
Mail

The Honorable Jenny Abbott Kitchins
Clerk, South Carolina Court of Appeals

Post Office Box 11629

Columbia, South Carolina

29211