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S.C. SUPREME COURT  
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STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

Case No. 2018-CP-39-1276

The State,

Respondent,

v.

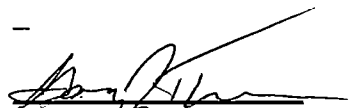
Gary Z. Thomas,

Appellant.

NOTICE OF APPEAL

Gary Z. Thomas appeals his conviction and sentence and the denial of post-conviction relief in this case. The final order denying post conviction relief was entered on October 21, 2020.

November 1, 2020

  
Gary Z. Thomas  
20 Berea Forest Circle  
Greenville, SC 29617  
(864) 547-0885  
Appellant

Other Counsel of Record:  
Taylor Zane Smith  
Assistant Attorney General  
1000 Assembly Street  
Columbia, South Carolina 29201  
(803) 734-0904  
Attorney for Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
Gary Z. Thomas, #310751,	)	C. A. No. 2018-CP-39-1276
Applicant,	)	
v.	)	<b>ORDER DENYING APPLICANT'S</b>
State of South Carolina,	)	<b>AMENDED MOTION TO</b>
Respondent.	)	<b>AMEND/ALTER JUDGMENT</b>

2018 OCT 21 A 9 43  
 CLERK OF COURT  
 PICKENS COUNTY  
 SOUTH CAROLINA

THIS MATTER is before the Court on Applicant Gary Z. Thomas (Applicant)'s Amended Motion to Alter or Amend this Court's Order of January 22, 2020, denying Applicant's application for post-conviction relief. Applicant represents himself, *pro se*, and Assistant Attorney General, Taylor Zane Smith, represents the State of South Carolina (Respondent). After consideration of the issues raised by the Applicant in his original SCRCP 59(e) motion, filed on February 14, 2020, and his amended 59(e) motion, filed on March 2, 2020, and the Respondent's Return, the Court **DENIES** Applicant's Amended Motion for the reasons set forth below.

**STANDARD OF REVIEW**

The court that renders judgment, retains the sole power to open, modify, or vacate the judgment. *Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). Accordingly, SCRCP 59(e) allows a party to serve a motion to alter or amend a judgment, "to request a trial judge to reconsider matters properly encompassed in a decision on the merits." *Pye v. Estate of Fox*, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006). The deadline to serve a SCRCP 59(e) motion is no later than ten days after receipt of written notice of the entry of the order. *Overland, Inc. v. Nance*, 423 S.C. 253, 256, 815 S.E.2d 431, 432 (2018). The ten-day deadline is absolute, as it strips a trial

court of power to grant an extension of time to file a motion to alter or amend a judgment. *Id.* at 256, 815 S.E.2d at 433. The failure of a party to serve a SCRCPP 59(e) motion within the specified ten-day window following receipt of notice of entry of the order, converts the order into a final judgment. *Id.* at 257, 815 S.E. 2d at 433. Thereafter, the aggrieved party must resort to file a notice of intent to appeal. *Id.*

The South Carolina Supreme Court has provided for when a party may and must file a SCRCPP 59(e) motion. "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). However, reconsideration of a judgment is an extraordinary remedy that should be used sparingly. *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998); *Croft v. Bayview Loan Servicing, LLC*, 176 F.Supp.3d 582, 585 (D.S.C. 2016). South Carolina state courts have not specifically addressed the issue of how a SCRCPP 59(e) motion is to be treated. Therefore, "where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure." *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991). The Fourth Circuit Court of Appeals, in construing the identical FRCP 59(e), has limited its application to three purposes. *Zinkand v. Brown*, 478 F.3d 634, 637 (4th Cir. 2007). First, to accommodate an intervening change in controlling law; second, to account for new evidence not available at trial; and third, to correct a clear error of law or a manifest injustice. *Id.*

A party's mere disagreement with a court's ruling does not warrant a Rule 59(e) motion. *Croft*, 176 F.Supp.3d at 585. Consequently, due to the interests of finality and conservation of judicial resources, SCRCPP 59(e) motions cannot be employed by an unsuccessful party to rehash

arguments and facts previously presented to the court, or to raise arguments which could, or should, have been made before judgment was rendered. *Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014).

### ANALYSIS

The Applicant asserts numerous grounds for his Amended Motion. The Court finds these raised issues to be without merit, as the Applicant has not provided any additional information or argument that requires the Court to alter or amend its January 22, 2020 Order of Dismissal of Applicant's post-conviction relief. The Court acknowledges that the Applicant is dissatisfied with his sentence for the second-degree domestic violence charge, for which he pleaded guilty in December 2017. However, Applicant's 59(e) motions are not the proper legal instrument to address such dissatisfaction. Applicant had the opportunity to present his case for post-conviction relief at an evidentiary hearing before this Court on October 22, 2019, wherein the Court considered all arguments, testimony, and evidence, and found the Applicant failed to meet his requisite burden of proof for post-conviction relief. Consequently, his application for post-conviction relief was denied.

Additionally, the Court notes that the ten-day deadline for the filing of a SCRPC 59(e) motion by the Applicant had long passed at the February 14, 2020 filing date of his original motion to alter or the amend this Court's January 22, 2020 Order. And, the filing date had passed with the filing of the Applicant's foregoing amended motion on March 2, 2020. The filing deadline for a 59(e) motion in this case was February 3, 2020. The Applicant did not file his original 59(e) motion until 23 days after the deadline and the foregoing amended motion was not filed until 40 days after the deadline. As the ten-day deadline is absolute, the Applicant's foregoing amended motion on this point alone is denied as time barred.

**CONCLUSION**

Having thoroughly considered the foregoing reasons raised by Applicant and consulting the South Carolina Rules of Civil Procedure, and relevant case law, the Court DENIES Applicant's Amended Motion to Alter or Amend this Court's January 22, 2020 Order, denying and dismissing Applicant's application for post-conviction relief with prejudice. Furthermore, the Court strikes from the record the documents identified and the quotations contained in the Applicant's original and amended motions to alter or amend that were ruled inadmissible at the post-conviction relief hearing.

**IT IS SO ORDERED.**



The Honorable Edward W. Miller  
Judge, Thirteenth Judicial Circuit

Dated: October 20, 2020  
Greenville, South Carolina

CLERK OF COURT  
SPICKENS COUNTY  
SOUTH CAROLINA

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
Gary Z. Thomas, #310751,	)	C. A. No. 2018-CP-39-1276
Applicant,	)	
v.	)	
State of South Carolina,	)	
Respondent.	)	

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**CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA**

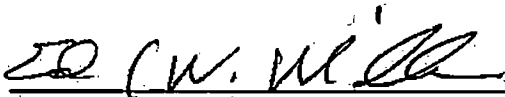
**SUPPLEMENTAL ORDER  
CORRECTING CLERICAL FILING  
ERROR OF ORDER DENYING  
APPLICANT'S AMENDED MOTION TO  
ALTER/AMEND JUDGMENT**

This Supplemental Order is being issued to correct and clarify a clerical filing error of this Court's Order Denying Applicant's Amended Motion to Alter/Amend Judgment, issued by the undersigned on September 14, 2020. The Court received notification on October 12, 2020 from the Pickens County Clerk of Court's Office that this Court's foregoing September 14, 2020 Order was not fully received by their office. For reasons unknown to the Court, the Pickens County Clerk of Court only received the caption page of the four (4) total pages of the Court's preceding Order.

The protocol for issuing a court order in a post-conviction relief action is to file the order with the respective clerk of court's office of the South Carolina county wherein the action was initiated. In the case at hand, the county was Pickens County. Accordingly, this Court, by way of the Greenville County Clerk of Court's Office, mailed two (2) executed original copies of the Order through the United States Mail to the Pickens County Clerk of Court after it was issued by the undersigned on September 14, 2020. The Court was not notified of the incompleteness of the receipt of the Order until inquiries were made with the Pickens County Clerk of Court's Office, after Applicant emailed the Court to press the undersigned to rule on his Amended Motion to Alter/Amend Judgment.

Therefore, having now succinctly delineated the facts regarding the clerical filing error of this Court's September 14, 2020 Order, the Court hereto reissues the same Order, denying Applicant's Amended Motion to Alter/Amend Judgment (see attached Order). Additionally, the Court further finds this matter is now moot, as Applicant has now been released from prison as he has completed his sentence for the second-degree domestic violence, for which he pleaded guilty in December 2017.

**IT IS SO ORDERED.**

  
The Honorable Edward W. Miller  
Judge, Thirteenth Judicial Circuit

Dated: October 20, 2020  
Greenville, South Carolina

2020 OCT 21 A 9 03  
CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA