STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County

Honorable L. Casey Manning, Judge

LeHenry S. Riley, 332689,

Respondent,

vs.

State of South Carolina,

RECEIVED
MAR 27 2013
S.C. Supreme Court

Appellant.

NOTICE OF APPEAL

The State of South Carolina hereby appeals from the Order of the Honorable L. Casey Manning, Presiding Judge for the 5th Judicial Circuit, dated March 1, 2013 and received by the State on March 25, 2013 in the matter of LeHenry S. Riley vs. State of South Carolina, Case No. 2009-CP-40-7428.

Megan E. Harrigan

Megan E. Harrigan
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 26, 2013
Other Counsel Of Record:

Jeremy A. Thompson, Esquire
1612 Marion Street, Suite 210
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

PERSONALLY appeared before me, Megan E. Harrigan, who being duly sworn, deposes and says:

That he is one of the attorneys for the Petitioner herein;

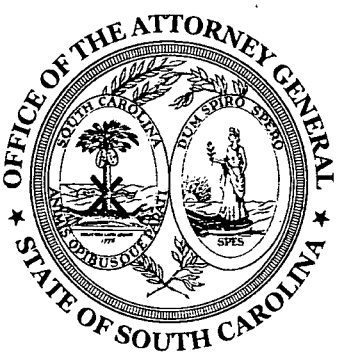
That there is a regular communication by mail throughout the State of South Carolina, and that this is a proper circumstances for service by mail; and

That she served the foregoing NOTICE OF APPEAL on the following person on March 26, 2013 by depositing one copy of each in the U.S. Mail, postage prepaid, and addressed as follows:

Jeremy A. Thompson, Esquire
1612 Marion Street, Suite 210
Post Office Box 12891
Columbia, South Carolina 29211

Megan E. Harrigan

Megan E. Harrigan
Assistant Attorney General



ALAN WILSON
ATTORNEY GENERAL

RECEIVED
MAR 27 2013
S.C. Supreme Court

March 26, 2013

The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: LeHenry S. Riley, 332689, Applicant v. State of South Carolina, Petitioner
Case No. 2009-CP-40-7428

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. Proof of service of the notice of appeal on the respondent(s).
2. A copy of the order which is to be challenged on appeal.
3. A copy of the order to properly preserve the state's argument for appellate review.
3. A letter ordering the PCR Transcript from court reporter.

Sincerely,

Megan E. Harrigan

Megan E. Harrigan
S C Bar No. 100108
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Petitioner

MEH/jri

cc: Jeremy A. Thompson Esquire; Attorney for Applicant
The Honorable Jeanette W. McBride, Richland County Clerk of Court
The Richland County Solicitor's Office
Office of Appellate Defense
David M. Tatarsky, Esquire
Trisha Allen, Victims Assistance Counselor

FORM 4

JUDGMENT IN A CIVIL CASE

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

CASE NUMBER: 2009CP4007428

Le Henry Shaundel #332689 Riley — PLAINTIFF(S)

State of South Carolina — DEFENDANT(S)

Submitted by: _____ | Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **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 PUBLIC 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
		$
		$
		$

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.**

Circuit Court Judge _____ Judge Code _____ 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 4 March 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Le Henry Shaundel #332689 Riley — Jeremy Adam Thompson — Brian T. Petrano

Le Henry Shaundel #332689 Riley

ATTORNEY(S) FOR THE PLAINTIFF(S) — ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____ Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

RICHLAND COUNTY FILED 2013 MAR -4 AM 11:09 JEANETTE W. McBRIDE C.C.P. & G.S.

SCANNED

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
LEHENRY S. RILEY, #332689,	)	**CASE NO.: 09-CP-40-7428**
Applicant,	)	
v.	)	**ORDER**
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

RICHLAND COUNTY FILED
2013 MAR -4 AM 11:08
JEANETTE W. McBRIDE C.C.P. & G.S.

THIS MATTER comes before the Court by way of an Application for Post-Conviction Relief filed October 19, 2009. The State made its Return on March 19, 2010. An evidentiary hearing was convened in this case on March 2, 2011. The Applicant was present and was represented by Jeremy A. Thompson, Esquire. The State was represented by Brian T. Petrano, Assistant Attorney General.

I.
PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. The Richland County Grand Jury indicted the Applicant at the May 15, 2002, term of General Sessions for Armed Robbery (02-GS-40-0731) and Kidnapping (02-GS-40-0732). On December 12, 2008, the Applicant pleaded guilty as charged to the kidnapping offense and pleaded guilty to the lesser-included offense of common law robbery. He was represented at this proceeding by James D. Cooper, III, Esquire, and J. Rhodes Bailey, Esquire, both with the Richland County Public Defender's Office. The Honorable Clifton Newman, presiding circuit judge, sentenced the Applicant to ten years imprisonment on the robbery charge and seven years imprisonment for the

SCANNED

kidnapping charge, with the sentences to run concurrently. The Applicant did not appeal his convictions or sentences.

II.
ALLEGATIONS RAISED

In his Application for Post-Conviction Relief, the Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and
2. Involuntary guilty plea.

He alleged generally that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, were violated prior to and during his plea.

In his Application, the Applicant also alleged "[v]iolations of 17-11-10 articles IV(c), V(d)" and that "[c]ounsel advised plea in violation of Interstate Agreement on Detainers." At the evidentiary hearing convened in this case, the Applicant proceeded on these arguments, specifically alleging:

1. The Interstate Agreement on Detainers was violated by Judge Childs' granting the State's motion for a continuance and by his subsequent pleas of guilty;
2. Defense counsel was ineffective in failing to advise the Applicant that he could move to dismiss his charges due to a violation of the Interstate Agreement on Detainers, and for failing to advise the Applicant that he could appeal an unfavorable ruling on such a motion; and
3. The Applicant's pleas of guilty were not knowingly, voluntarily, or intelligently entered inasmuch as they were entered without the knowledge that he could continue to argue that the Interstate Agreement on Detainers was violated during trial and on appeal.

The Applicant also argued that his SCDC records improperly have him listed as an individual who will have to register as a sex offender following his release from prison.

III.
EVIDENCE BEFORE THE COURT

At the Post-Conviction Relief hearing held in this case on March 2, 2011, the Applicant presented his own testimony, as well as testimony from defense counsel James D. Cooper, III, Esquire. In addition to this testimony, this Court has before it a transcript of the guilty plea, a transcript of the continuance hearing held December 3, 2008, a copy of the records of the Richland County Clerk of Court regarding the subject convictions, a copy of the Applicant's records with the South Carolina Department of Corrections, along with the exhibits submitted by the parties in this case. What follows below are the findings of fact and rulings of law made by this Court in accordance with the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 *et seq.* (1985).

IV.
FINDINGS OF FACT

The facts in this case are not in significant dispute. The Applicant was arrested for armed robbery and kidnapping on December 23, 2001. He was subsequently released on bond. The Applicant then traveled to Florida where he was arrested for, and convicted of, additional charges there. He served approximately a year-and-a-half on his Florida sentence before he made a request to dispose of his charges pursuant to Article III of the Interstate Agreement on Detainers ("IAD").[1] The Florida Department of Corrections sent a letter dated June 18, 2008, to the Fifth Circuit Solicitor's Office that notified the Solicitor of the Applicant's request to dispose of his charges. The Applicant was then transported to South Carolina by the Columbia Police Department. He arrived in South Carolina on August 5, 2008. See Applicant's Exhibit 1.

[1] The IAD is codified at S.C. Code Ann. §17-11-10 *et seq.*

At an indeterminate point in time, the Applicant's case was scheduled for trial the week of December 8, 2008. On December 1, 2008, the State filed a Notice of Motion and Motion for Extension, requesting a continuance until the week of December 15, 2008, or after, because

> [T]he Victim in this case is unavailable due to an out of state vacation planned until December 11, 2008. Further, it is the State's understanding that the lead trial, State v. Jason Craig, will be proceeding and will last the entire week. Therefore, this trial would not have court opportunity to be heard.

Applicant's Exhibit 1. The State's motion also stated that it requested the continuance pursuant to "Article III and IV" of the IAD. Applicant's Exhibit 1.

On December 3, 2008, the continuance motion was heard by the Honorable J. Michelle Childs. At the outset of that hearing, the State restated the reasons for the continuance and argued to schedule the case for trial the week of December 15, 2008, because the 180-day time requirement of Article III of the IAD would expire on that date. See 12/3/08 Tr. p. 3, line 23-p. 4, line 24. In response, defense counsel argued that not only did the 180-day requirement of Article III apply, but that the 120-day requirement of Article IV also applied. See 12/3/08 Tr. p. 5, lines 5-12. Defense counsel argued that under Article IV, the 120-day time limit would expire on December 4, 2008. Defense counsel also argued that the State's grounds for a continuance did not rise to the level of "good cause" because the State knew about the trial date for several months. See 12/3/08 Tr. p. 6, lines 17-25. After an extensive argument, Judge Childs granted the State's motion for a continuance. See 12/3/08 Tr. p. 21, line 6-p. 22, line 6. The Applicant then pleaded guilty on December 12, 2008.

At the PCR hearing, the Applicant testified that he was unaware that he could continue to argue that the IAD was violated in his case at trial and, if unsuccessful at trial, on appeal. Defense counsel testified that he informed the Applicant that the chances of success at trial were

small, but that he could not remember specifically informing the Applicant of his right to appeal an unsuccessful IAD motion at trial. The Applicant testified that had he known he could appeal the denial of the IAD motion, he would not have pleaded guilty but would have instead insisted upon proceeding to trial.

V.
STANDARD OF REVIEW

The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief proceeding. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP. In order to prevail in a PCR action challenging the effective assistance of guilty plea counsel, the operative question is whether a defendant, but for counsel's errors and omissions, would have exercised his right to trial. Hill v. Lockhart, 474 U.S. 52 (1985). Further, the Applicant must show that there is a reasonable probability that he would have insisted on proceeding to trial on the matter instead of pleading guilty. Porter v. State, 368 S.C. 378, 629 S.E.2d 353 (2006). In other words, a defendant who pleads guilty on the advice of counsel may collaterally attack the voluntariness of his plea only by showing (1) that counsel was ineffective; and (2) that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997).

VI.
CONCLUSIONS OF LAW

The Applicant's allegations in this case stem from his contention that Article IV of the IAD was violated by Judge Childs' grant of a continuance to the State on December 3, 2008, and by his subsequent plea on December 12, 2008.[2] In order to properly resolve the Applicant's

[2] It should be noted that the Applicant stated that he was not arguing that Article III of the IAD was violated in his case during the PCR hearing. In any event, under Article III's 180-day time requirement, the Applicant's trial would

arguments, the Court must decide several matters. First, the Court must determine whether or not Article IV of the IAD applies to the Applicant's case. Second, the Court must determine whether or not the State's motion for a continuance was properly granted by Judge Childs. Third, the Court must determine whether or not counsel was ineffective in failing to advise the Applicant to plead guilty. Fourth, the Court must determine whether or not a violation of the IAD is cognizable under the PCR Act. The Court will address each matter in turn.

A. The Application of Article IV of the IAD

This Court will begin its discussion with an overview of the IAD. The IAD is an interstate compact between virtually every state, including South Carolina, and the federal government that "creates uniform procedures for lodging and executing a detainer, *i.e.*, a legal order that requires a State in which an individual is currently imprisoned to hold that individual when he has finished serving his sentence so that he may be tried by a different State for a different crime." Alabama v. Bozeman, 533 U.S. 146, 148 (2001). The IAD provides two methods by which a detainer may be resolved. The first method is set forth in Article III, which states that a defendant, upon notification that a detainer exists, may request the disposition of his pending charges. If a defendant requests disposition pursuant to Article III, then the receiving State has 180 days in which to try the defendant after "the prisoner's request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer against him." Fex v. Michigan, 507 U.S. 43, 52 (1993).

The second method to resolve a detainer is set forth in Article IV, which requires the prosecutor to make "a written request" that the defendant be brought to the prosecutor's jurisdiction to dispose of the detainer. §17-11-10, Article IV(a). If Article IV's procedures are

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have needed to commence on or before December 15, 2008. Since that is when the trial was scheduled to start, and the Applicant pleaded guilty prior to that date, there could have been no Article III violation in this case. There is no evidence that the State sought to continue the case beyond the December 15, 2008, trial date.

used, then the State has 120 days after the defendant has returned to the State's jurisdiction to dispose of the defendant's charges. The "120 day time limitation imposed under Article IV(c) is mandatory." State v. Holbrook, 274 S.C. 4, 6, 260 S.E.2d 181, 182 (1979).

Article V(c) of the IAD provides that

> [I]n the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

In other words, if either time limit provided by Article III or Article IV applies and the State fails to try the defendant within the applicable time limit, then the charges must be dismissed with prejudice. See generally Holbrook, *supra*, at 6, 260 S.E.2d at 182.

On the one hand, courts have required that criminal defendants follow the procedure outlined in Article III—including the use of the appropriate forms provided by the IAD—in order for Article III's time limit to apply. See generally State v. Johnson, 278 S.C. 668, 301 S.E.2d 138 (1983) (finding that the defendant's letter to the prosecutor did not trigger Article III's time limit because it did not provide completely accurate information regarding his location and it was not accompanied by a certificate required by the IAD). On the other hand, courts have imposed Article IV's time limit on prosecutors when the prosecutor has not used the IAD's specific procedure to obtain custody of the defendant. See generally United States v. Mauro, 436 U.S. 340, 364 (1978) (holding that the use of a writ of habeas corpus *ad prosequendum* by the United States Attorney's Office to bring a state inmate to trial in federal court can trigger Article IV's time limit when the detainer has been lodged against the defendant, even though Article IV does not mention the use of such writs). In the case of Article IV, the United States Supreme

Court has held the less-stringent standard is required because "[a]ny other reading of this section would allow the Government to gain the advantages of lodging a detainer against a prisoner without assuming the responsibilities that the [IAD] intended to arise from such an action." Id. (internal footnotes omitted).

Turning to the present case, there is no question that the Applicant met the requirements of Article III. The Applicant filed the documents required by the IAD upon learning of his South Carolina detainer while in Florida's custody, and he properly transmitted those documents to the Fifth Circuit Solicitor's Office. Furthermore, this Court finds that the State invoked the requirements of Article IV by requesting and obtaining custody of the Applicant following his Article III request. While the mere transfer of the Applicant to South Carolina would not invoke Article IV's time limits, the fact that the State specifically stated that Article IV applied in its continuance motion is significant evidence that the State requested custody of the Applicant pursuant to Article IV. See Applicant's Exhibit 1 at 2. Additionally, when confronted with defense counsel's argument that Article IV applied, the assistant solicitor never once replied that Article IV was not applicable; instead, she stated that she was acting under the assumption that Article III applied. When all of these factors are considered in conjunction with the lesser standard required of the State to trigger Article IV, this Court concludes that the State triggered the 120-day time limit of Article IV by requesting the Applicant's transfer to South Carolina.

As a final matter, courts have split on the question of which IAD request should be enforced when both Article III and Article IV apply. See generally State v. Almlv, 216 Ariz. 41, 162 P.3d 680 (Ariz. App. 2007) (discussing cases on all three approaches); Ullery v. State, 988 P.2d 332, 340 (Okla. Crim. App. 1999) (same). The first approach holds "that where the defendant initiates Article III proceedings he invariably waives his Article IV rights (including

the shorter time limit)." Ullery at 340. The second approach looks to "which party first initiates [IAD] procedures." Id. Finally, the third approach "appl[ies] both Articles when both parties initiate [IAD] procedures and look to see which, if any, provisions have been violated in determining which time limit applies." Id. at 341. While South Carolina has not yet had an opportunity to decide this issue, this Court finds that the third approach is consistent with the overall application of the IAD. If this Court were to apply either the first or the second approach, the Court would have to "hold that one article of the IAD necessarily preempts the other." Almly at 45, 162 P.3d at 684. This Court finds that Articles III and IV are not "mutually exclusive of one another ... because there is nothing in the text of the IAD to support such an interpretation." Id.

This Court finds that Article IV was applicable in this case. Since the Applicant was returned to the custody of the State on August 5, 2008, his 120-day time limit for disposing of his charges would have expired on December 3, 2008, the date of the continuance hearing. Therefore, the Court will turn to the question of whether or not Judge Childs properly granted the State's motion for a continuance.

B. The Continuance Motion

Both Article III and Article IV provide that "for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance." §17-11-10, Article III(a); Article IV(c). As a general matter, scheduling conflicts do not constitute "good cause" to extend the IAD's time limits. See State v. Brown, 157 N.H. 555, 565-566, 953 A.2d 1174, 1183 (2008) (discussing several cases on what constitutes "good cause" under the IAD). "[P]rosecuting authorities should not only be

attentive to the IAD deadlines and procedures, but also should bear in mind their burden of showing compliance with the IAD." Id. at 566.

This Court finds that Judge Childs improperly granted the State's motion for a continuance. The two grounds asserted by the State for the continuance were that the docket was overcrowded and that the victim was going to be out-of-town for a vacation. Neither ground is sufficient to sustain a continuance under the IAD, especially when the deadline under the IAD is approaching because the State is subject to the requirements of Article IV. The State's "grounds" for the continuance were problems created by the State. Furthermore, Judge Childs stated that under the system for scheduling cases for trial, the cases are scheduled months ahead of time to "give[] you all time to plan." 12/3/08 Tr. p. 16, lines 11-23. Given the length of time that this case had been scheduled for trial, and the State's knowledge of the IAD's time requirements, the State should not have been allowed to continue the case beyond the 120-day time limit of Article IV.[3] Accordingly, inasmuch as the IAD requires a heightened standard for obtaining a continuance to schedule the trial, this Court finds that Judge Childs improperly granted the State's motion for a continuance. Consequently, since the Applicant's plea on December 12, 2008, was made nine days after the expiration of time under Article IV of the IAD, Article IV of the IAD was violated in this case.

C. Defense Counsel's Ineffectiveness

Having determined that defense counsel correctly objected to the State's continuance request, this Court turns to the question of whether or not defense counsel was ineffective when

[3] A significant dispute arose during the continuance hearing about whether or not defense counsel had agreed to schedule the trial for the week of December 8, 2008, which would have been outside Article IV's time limits. The United States Supreme Court has held that a defense attorney can agree to a trial date outside the IAD's time limits without running afoul of the IAD when agreeing to schedule a case for trial. New York v. Hill, 528 U.S. 110 (2000). This case is distinguishable from Hill because defense counsel clearly objected to the case being continued to the December 15, 2008, term of court, and his earlier "consent" to the December 8, 2008, trial date would not have extended to December 12, 2008, the date of the Applicant's plea.

he advised the Applicant to plead guilty to kidnapping and common law robbery. The Applicant argues that defense counsel was ineffective in this regard due to the clear violation of the IAD. This Court agrees.

Following the continuance hearing, the Applicant and defense counsel discussed the Applicant's options at trial. Defense counsel testified that it was his opinion that any IAD motion would be unsuccessful at trial, since the motion would necessarily relitigate the continuance request. However, the testimony is clear that defense counsel did not advise the Applicant that an unsuccessful motion at trial *could* be successful if raised on appeal. Since the Applicant had been pressing the IAD issue since his arrival in South Carolina,[4] defense counsel's responsibility to fully advise the Applicant on how to pursue the IAD motion was heightened. It is undeniable that the Applicant would have continued to pursue his rights under the IAD had he known he would have been able to do so.[5] This is especially true when it is considered that the IAD motion would have in all likelihood been granted on appeal, given this Court's conclusion that the IAD was violated in this case. Consequently, his failure to advise the Applicant that the IAD motion could be successful on appeal, even if the motion was unsuccessful at trial, constituted deficient performance.

It is equally clear that the Applicant was prejudiced by defense counsel's performance. As noted above, the Applicant wanted the IAD issue litigated. Had defense counsel properly advised the Applicant that there was a strong likelihood that the IAD motion would have been successful on appeal, there can be no question that the Applicant would have exercised his right

[4] The Applicant testified before this Court that he had done research on the IAD before filing his Article III transfer request, and that he knew the State would need to try him before the 180-day time limit expired. Defense counsel testified that the Applicant was very knowledgeable about the IAD. Simply because the Applicant was knowledgeable about the IAD, however, does not mean that the Applicant was knowledgeable about appellate procedure and the method by which he would need to bring an IAD allegation to an appellate court.

[5] This Court finds support for this conclusion in the Applicant's *pro se* PCR application, which continued to argue that the IAD was violated in this case.

to trial. See generally Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (stating that a PCR applicant challenging the validity of a guilty plea must demonstrate "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it"). Consequently, this Court finds that the Applicant has met his burden of proof with regard to this issue, and his convictions and sentences should be vacated.[6]

D. The Application of the PCR Act

In addition to his ineffective assistance of counsel argument, the Applicant argues that this Court can find a substantive violation of the IAD independent of a Sixth Amendment violation. Specifically, the Applicant contends that a violation of the IAD is a "violation of the ... laws of this State" recognizable on collateral review. S.C. Code Ann. §17-27-20(a)(1). This Court agrees.

This Court recognizes that virtually all claims brought on PCR are allegations of ineffective assistance of counsel. However, the Uniform Post-Conviction Procedure Act ("the PCR Act") does not limit PCR claims to those of ineffective assistance of counsel. Instead, §17-27-20(a) recognizes six different methods by which a PCR applicant can bring a PCR:

> (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;

[6] Given the violation of the IAD in this case, the proper remedy on remand should be the trial court entering "an order dismissing the [charges] with prejudice." §17-11-10, Article V(c).

(5) That his sentence has expired, his probation, parole or conditional release 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.

Only the first of those provisions provides a method for bringing a PCR based on ineffective assistance of counsel. Furthermore, §17-27-20(a)(1) provides that a violation of the "laws of this State" can be used as a basis for filing a PCR. As the Supreme Court held in Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000), the PCR Act is appropriate where the PCR applicant is challenging "the validity of his conviction[s] or sentence[s]." Since a violation of the IAD would necessarily render the Applicant's convictions and sentences invalid, this Court finds that a violation of the IAD can be made separate from a claim of ineffective assistance of counsel pursuant to §17-27-20(a)(1).

This Court has found that Judge Childs improperly extended the time in which the State was allowed to try the Applicant. The Applicant's pleas of guilty occurred nine days after the expiration of time under Article IV of the IAD, which rendered his convictions invalid. Therefore, this Court finds that the Applicant's convictions and sentences should be vacated pursuant to §17-27-20(a)(1), and that the charges against the Applicant should be dismissed with prejudice. See §17-11-10, Article V(c).

E. The Applicant Does Not Need to Register as a Sex Offender

The Applicant argues that he should not be required to register as a sex offender pursuant to S.C. Code Ann. §23-3-430.[7] This Court agrees.[8]

[7] The Applicant's SCDC records currently state that he is required to register as a sex offender.

The record is unmistakable on this issue. The Applicant pleaded guilty to the offense of kidnapping. Pursuant to §23-3-430(C)(15), an individual must register as a sex offender following a conviction for kidnapping unless "the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense." Had no issue been raised about the sexual nature of the kidnapping during the plea, the Applicant would be required to register as a sex offender pursuant to this statute. However, the parties explicitly agreed during the Applicant's plea that the kidnapping was not sexual in nature. See 12/12/08 Tr. p. 16, lines 1-4 ("If you will also make a specific finding that this does not involve the sex offender registry for the kidnapping conviction"). Therefore, this Court explicitly finds that the Applicant's kidnapping conviction was not sexual in nature, and that the Applicant does not need to register as a sex offender pursuant to S.C. Code Ann. §23-3-430.

VII.
CONCLUSION

This Application for Post-Conviction Relief is hereby granted. The Applicant's convictions and sentences are vacated, and the Applicant's charges are dismissed pursuant to Article V(c) of the Interstate Agreement on Detainers. See S.C. Code Ann. §§17-11-10; 17-27-20(a)(1). In the alternative,[9] the Applicant's convictions and sentences are vacated and this matter is remanded to the Richland County Court of General Sessions for dismissal of the Applicant's charges pursuant to Article V(c) of the Interstate Agreement on Detainers. The Applicant is not required to register as a sex offender pursuant to S.C. Code Ann. §23-3-430.

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[8] While this Court's rulings on the Applicant's other arguments render this ruling moot, since the Applicant's conviction for kidnapping no longer stands, this Court evaluates this claim in the event of a successful appeal by the State on those issues.

[9] This alternative should only take effect should the State successfully appeal the grant of Post-Conviction Relief on the grant of relief pursuant to this Court finding a substantive violation of the IAD.

IT IS SO ORDERED.

L. Casey Manning
Presiding Circuit Judge
Fifth Judicial Circuit

This 1 day of March, 2013.

Cola, South Carolina.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2009CP4007428

Le Henry Shaundel #332689 Riley — PLAINTIFF(S)

State of South Carolina — DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

RICHLAND COUNTY FILED 2013 MAR 20 AM 10: 32 JEANETTE W. McBRIDE C.P. & G.S.

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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **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 PUBLIC 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
		$
		$
		$

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.**

Circuit Court Judge _____ **Judge Code** _____ **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 20 March 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Le Henry Shaundel #332689 Riley

Jeremy Adam Thompson

Robert Daniel Corney

Le Henry Shaundel #332689 Riley

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNE

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
LeHenry S. Riley, #332689, Applicant	)	Civil Action No: 2009-CP-40-7428
vs.	)	**ORDER**
State of South Carolina, Respondent.	)	

RICHLAND COUNTY
FILED
2013 MAR 20 AM 10:31
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Respondent, State of South Carolina, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, moves this court to alter/amend its March 4, 2013, order granting Applicant's request for post-conviction relief. This matter originally came before the Court by way of an application for post-conviction relief (PCR) filed October 19, 2009. A hearing on the matter was convened before this Court on March 2, 2011, at which Applicant was present with counsel, Jeremy Thompson. The State was represented by Brian Petrano of the South Carolina Attorney General's Office. Following a hearing on the matter and review of the arguments submitted by all parties, this Court granted the application for post-conviction relief. Respondent then filed a Motion to Reconsider.

IT APPEARS THAT:

1. By order dated March 1, 2013, and filed with the clerk March 4, 2013, this court granted the application and ordered Applicant's underlying charges be dismissed with prejudice based upon the requirements of the Interstate Agreement on Detainers.

2. Respondent submits the 59(e) Motion along with the previously submitted proposed order denying Applicant's request for post-conviction relief and submits the analysis set

SCANNED

forth therein properly addresses the allegations raised through the 59(e) and requests this Court reconsider its decision to grant relief based upon such.

3. Further, Respondent respectfully requests the previously submitted proposed order denying Respondent's PCR, which is attached to the 59(e) Motion be incorporated into the record of the PCR hearing as a Court's Exhibit to properly preserve the state's argument for appellate review.

THEREFORE, after review of the motion and arguments therein, The Motion to Reconsider is hereby **DENIED**. The previously submitted proposed order denying Respondent's PCR is hereby made a part of the record of the PCR hearing and is to be made a Court's Exhibit to properly preserve the state's argument for appellate review.

AND IT IS SO ORDERED this 19th day of March, 2013

The Honorable L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina