

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

May 04 2021

Appeal from Richland County
Honorable G. Thomas Cooper, Jr., Trial Judge
Honorable Jocelyn Newman, Post-Conviction Relief Judge

S.C. SUPREME COURT

Appellate Case No. 2020-000712

Fred Jack Sanders,

Petitioner,

vs.

The State of South Carolina,

Respondent.

SUPPLEMENTAL APPENDIX

ALAN WILSON
Attorney General

Victor R. Seeger
Appellate Defender

LINDSEY A. MCCALLISTER
Assistant Deputy Attorney General
SC Bar No. 79054
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29201
(803) 734-1330

ATTORNEYS FOR PETITIONER

ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Fred Jack Sanders, 300135,
 Plaintiff)

CASE NO.
2017-CP-40-4517

v.)

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina
 Defendant.)

Plaintiff's Attorney: Tricia A. Blanchette, Bar No. 74904 Address: PO Box 2147 Leesville, SC 29070 phone: 803-908-3266 fax: e-mail: blanchettelaw@gmail.com other:	Defendant's Attorney: Lindsey Mccallister, Bar No. Address: PO Box 11549 Columbia, SC 29211 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:
--	--

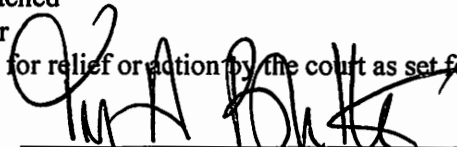
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Amendment
Estimated Time Needed: 3 hours Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant August 13, 2018
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
 Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE _____

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

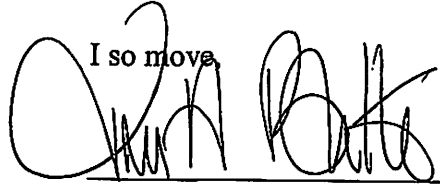
MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
)	
Fred Jack Sanders, 300135,)	2017-CP-40-4517
Applicant,)	
v.)	
)	AMENDMENT TO APPLICATION
State of South Carolina,)	FOR POST CONVICTION RELIEF
Respondent.)	

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on July 28, 2017. The State submitted a Return on January 24, 2018.

In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial and appeal. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of trial counsel:

1. Ineffective assistance of counsel for failure to ensure that all plea offers were properly and completely conveyed to Applicant and that Applicant knowingly and voluntarily rejected all plea offers.
2. Ineffective assistance of counsel for failure to address matters related to the search warrant and confidential informant prior to and during trial.
3. Ineffective assistance of counsel for failure to be properly prepared for trial and/or raise discovery issues prior to trial.
4. Ineffective assistance of counsel for the handling of witness Sara Brassell and for failure to request a mistrial or object to the curative instruction on the record.
5. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

I so move


Tricia A. Blanchette
Attorney at Law
PO Box 2147
Leesville, SC 29070

August 13, 2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Fred Jacks Sanders, 300135,)
 Applicant,)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

2017-CP-40-4517

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that place in the United States mail this 13th day of August 2018 an Amendment to Application for Post Conviction Relief to Lindsey McCallister of the Attorney General's Office, at:

Office of the Attorney General
 Att: Lindsey McCallister, Ast. AG
 P.O. Box 11549
 Columbia, SC 29211-1549



Tricia A. Blanchette
 PO Box 2147
 Leesville, SC 29070
 (803) 908-3266

August 13 2018

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

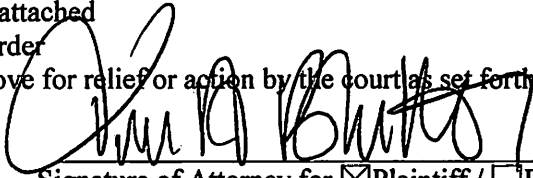
Fred Jack Sanders, 300135,
 Plaintiff)

CASE NO.
2017-CP-40-4517

v.)

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina
 Defendant.)

Plaintiff's Attorney: Tricia A. Blanchette, Bar No. 74904 Address: PO Box 2147 Leesville, SC 29070 phone: 803-908-3266 fax: e-mail: blanchettelaw@gmail.com other:	Defendant's Attorney: Lindsey McCallister, Bar No. Address: PO Box 11549 Columbia, SC 29211 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
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Nature of Motion: Amendment Estimated Time Needed: 3 hours Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	November 14, 2018 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID – AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	_____ JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED – AMOUNT DUE: _____	

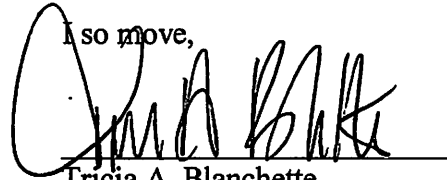
STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
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Fred Jack Sanders, 300135,)	2017-CP-40-4517
Applicant,)	
v.)	
)	
State of South Carolina,)	AMENDMENT TO APPLICATION
Respondent.)	FOR POST CONVICTION RELIEF

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on July 28, 2017. The State submitted a Return on January 24, 2018. On August 14, 2018, Applicant, through counsel, filed a Amendment to Application for Post Conviction Relief. Applicant, through counsel, hereby revises and/or clarifies the filed Amendment as follows below.

In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial and appeal. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of trial counsel:

1. Ineffective assistance of counsel for failure to ensure that all plea offers were properly and completely conveyed to Applicant and that Applicant knowingly and voluntarily rejected all plea offers. As a result of this allegation, Applicant is seeking a new trial and alternate relief pursuant to Davie v. State, 675 S.E.2d 416 (2009).
2. Ineffective assistance of counsel for failure to address matters related to the search warrant and confidential informant prior to and during trial.
3. Ineffective assistance of counsel for failure to be properly prepared for trial and/or raise discovery issues prior to trial.
4. Ineffective assistance of counsel for the handling of witness Sara Brassell and for failure to request a mistrial or object to the curative instruction on the record on the basis raised on direct appeal.

5. Pursuant to Rule 15(b), SCRCF, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

I so move,


Tricia A. Blanchette
Bar #74904
Attorney at Law
PO Box 2147
Leesville, SC 29070

November 14, 2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Fred Jacks Sanders, 300135,)
 Applicant,)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

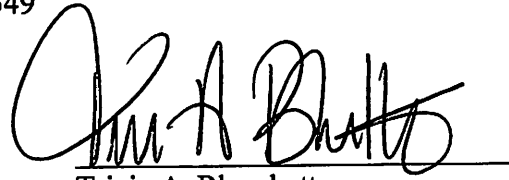
IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

2017-CP-40-4517

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that place in the United States mail this 14th day of November 2018 an Amendment to Application for Post Conviction Relief to Lindsey McCallister of the Attorney General's Office, at:

Office of the Attorney General
 Att: Lindsey McCallister, Ast. AG
 P.O. Box 11549
 Columbia, SC 29211-1549



Tricia A. Blanchette
 PO Box 2147
 Leesville, SC 29070
 (803) 908-3266

November 14, 2018

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF RICHLAND)

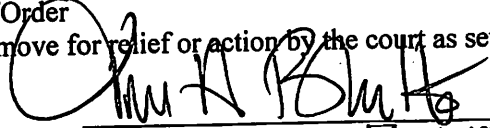
Fred Jack Sanders, 300135,)
 Plaintiff)

CASE NO.)
2017-CP-40-4517)

v.)

MOTION AND ORDER INFORMATION)
FORM AND COVER SHEET)

State Of South Carolina)
 Defendant.)

Plaintiff's Attorney: Tricia A. Blanchette, Bar No. 74904 Address: PO Box 2147 Leesville, SC 29070 phone: 803-908-3266 fax: e-mail: blanchettelaw@gmail.com other:	Defendant's Attorney: Lindsey McCallister, Bar No. Address: PO Box 11549 Columbia, SC 29211 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Reconsideration Estimated Time Needed: 30 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
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<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	May 24, 2019 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Date Filed: _____ Collected by: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
)	
Fred Jack Sanders, 300135,)	2017-CP-40-4517
Applicant,)	
v.)	
)	MOTION PURSUANT TO
State of South Carolina,)	RULE 59 (a) & (e), SCRPC
<u>Respondent.</u>)	

Pursuant to Rule 59(a) and (e) of the South Carolina Rules of Civil Procedure, Applicant would move before this Court for relief as follows.

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on July 28, 2017. The State filed a Return on or about January 24, 2018. Applicant filed an Amendment on August 14, 2018 and November 19, 2018. An evidentiary hearing was conducted at the Richland County Courthouse in front of the Honorable Jocelyn Newman on December 7, 2018. Applicant was present and represented by Tricia A. Blanchette, Esquire. The State was represented by Lindsey McCallister, Assistant Attorney General.

At the evidentiary hearing, Applicant proceeded on the following allegations contained in the Amendment filed on November 19, 2018:

1. Ineffective assistance of counsel for failure to ensure that all plea offers were properly and completely conveyed to Applicant and that Applicant knowingly and voluntarily rejected all plea offers. As a result of this allegation, Applicant is seeking a new trial and alternate relief pursuant to Davie v. State, 675 S.E.2d 416 (2009).
2. Ineffective assistance of counsel for failure to address matters related to the search warrant and confidential informant prior to and during trial.
3. Ineffective assistance of counsel for failure to be properly prepared for trial and/or raise discovery issues prior to trial.

4. Ineffective assistance of counsel for the handling of witness Sara Brassell and for failure to request a mistrial or object to the curative instruction on the record on the basis raised on direct appeal.

At the conclusion of the evidentiary hearing, the Honorable Jocelyn Newman requested proposed Orders from the parties and granted Applicant's counsel time to obtain the transcript from the evidentiary hearing. Thereafter, Applicant's counsel ordered the transcript and followed up on the request with Court Administration. After being informed that the request had been assigned to a court reporter, counsel received notice of several extensions. After communicating with the court reporter this week, Applicant's counsel is still waiting to receive the requested transcript.

On May 17, 2019, Applicant's counsel received a signed and filed Order of Dismissal ("Order") via email from the Richland County Clerk of Court. Upon receipt and review, counsel contacted the Honorable Jocelyn Newman via email, which was copied on opposing counsel. By way of this email, counsel raised her concern with the Order being issued prior to the receipt of the transcript and proposal of Orders, while noting the issuance of the Order was within the discretion of the Court. In response, the Honorable Jocelyn Newman instructed counsel to file the instant motion and request time to supplement the motion upon receipt of the transcript. Therefore, Applicant, through counsel, is filing this motion and asking for the opportunity to further supplement, if needed, upon receipt of the evidentiary hearing transcript.

ARGUMENT

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue

presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that the Court ensure that specific findings of fact and conclusions of law are entered on each issue raised and the record before the Court and testimony of each witness is properly addressed in the standing Order of Dismissal. Additionally, Applicant would respectfully request that the Court reconsider the Order and find that relief should be granted.

Specifically, Applicant would ask the Court to address the following as to each issue set forth in the Amendment and raised at the evidentiary hearing.

1. Ineffective assistance of counsel for failure to ensure that all plea offers were properly and completely conveyed to Applicant and that Applicant knowingly and voluntarily rejected all plea offers. As a result of this allegation, Applicant is seeking a new trial and alternate relief pursuant to Davie v. State, 675 S.E.2d 416 (2009).¹

As a threshold matter, it appears the Court addressed this issue as it was stated in the August 2018 Amendment; therefore, Applicant would ask that the issue be addressed as raised in the November 2018 Amendment and as addressed at the evidentiary hearing. Specifically, Applicant would ask the Court to address the alternate relief sought under Davie.

In the Order, the Court has failed to address a majority of the testimony and exhibits introduced regarding this issue. At the evidentiary hearing testimony was offered and exhibits were introduced regarding emails between trial counsel and the assigned Solicitor regarding the plea offers on September 10, 2013, October 22, 2013, March 3, 2014 and March 5, 2014. Specifically, the emails from March 3, 2014 were discussed in detail

¹ It appears the Order of Dismissal lists the issues raised in the August 2018 not November 2018 Amendment; therefore, this issue is not properly listed in the Order.

whereby the Solicitor offered ten years via email at 11:44 a.m. and followed up with another email at 11:47 a.m. stating "Scratch the ten years; I meant straight up plea."

At trial, counsel informed the court that the offer was a cap of ten years. Transcript p. 373, ln. 9. During sentencing the State informed the trial court that they had been in trial for three days since Applicant rejected a reasonable offer to zero to ten years, with a cap of ten. Transcript p. 478, ln. 20, 479, ln. 6. At the reconsideration hearing, trial counsel clarified that it was a mistake as to what was said at trial since the best offer was a cap of ten years. Reconsideration pp. 2-3. In response, the State informed the court that an offer was made to a cap of ten years, and it was rejected. Reconsideration p. 9, ln. 12.

At the evidentiary hearing, trial counsel and Applicant testified about the plea offers made and whether all the offers were communicated properly. Applicant submits that there is evidence and testimony to support his assertions that all plea offers were not properly conveyed and/or knowingly rejected. Therefore, Applicant would ask the Court to reconsider the findings in the Order and/or ensure that this issue is properly and completely addressed.

2. Ineffective assistance of counsel for failure to address matters related to the search warrant and confidential informant prior to and during trial.

In general, Applicant would request that the Court ensure that this issue is properly addressed and/or reconsider granting relief on this issue after careful review of the testimony and evidence offered at the evidentiary hearing. Specifically, Applicant would note that the Order seems to not address counsel's failure to make a motion to suppress the search warrant. As is discussed in the Order, counsel made a motion regarding the confidential order and his argument touched on the search warrant, but the Order fails to

address that counsel never moved to suppress the search warrant. Applicant submits that this error by counsel warrants that relief be granted.

3. Ineffective assistance of counsel for failure to be properly prepared for trial and/or raise discovery issues prior to trial.

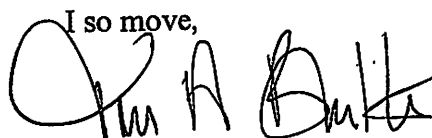
In general, Applicant would request that the Court ensure that this issue is addressed as it was raised via testimony and evidence at the evidentiary hearing. Specifically, Applicant would ask the Court to reconsider granting relief due to counsel's admitted failure to discover that the evidence had been destroyed prior to week before trial and his discovery that Applicant was allegedly involved in an underlying buy, which no records were obtained from, with the confidential informant during trial. Transcript pp. 54-55, 68, ln. 4, 89.

4. Ineffective assistance of counsel for the handling of witness Sara Brassell and for failure to request a mistrial or object to the curative instruction on the record on the basis raised on direct appeal.

In general, Applicant would request that the Court ensure that this issue is addressed as it was raised via testimony and evidence at the evidentiary hearing. Specifically, Applicant would request that the Court reconsider her finding that counsel's decision to "make a bigger splash" was reasonable trial strategy.

CONCLUSION

In conclusion, Applicant would request that the Court allow further supplement of this motion upon receipt of the evidentiary hearing transcript, review the full record, including the evidentiary hearing transcript, reconsider and/or alter or amend the standing Order of Dismissal, and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRCF.

I so move,


Tricia A. Blanchette
Attorney for Applicant
PO Box 2147
Leesville, SC 29070

May 24, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Fred Jacks Sanders, 300135,)
 Applicant,)
 v.)
)
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 Respondent.)
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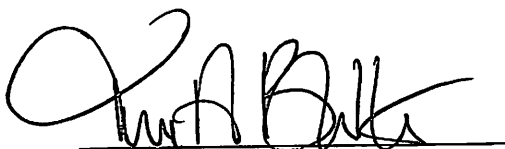
IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

2017-CP-40-4517

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that place in the United States mail this 24th day of May 2019 a Rule 59, SCRCPP, Motion to Lindsey McCallister of the Attorney General's Office, at:

Office of the Attorney General
 Att: Lindsey McCallister, Ast. AG
 P.O. Box 11549
 Columbia, SC 29211-1549



Tricia A. Blanchette
 PO Box 2147
 Leesville, SC 29070
 (803) 908-3266

May 24, 2019

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS 17

COUNTY OF RICHLAND)

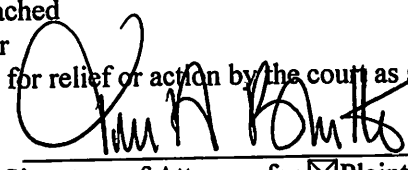
Fred Jack Sanders, 300135,
 Plaintiff)

CASE NO.
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v.)

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State Of South Carolina
 Defendant.)

Plaintiff's Attorney: Tricia A. Blanchette, Bar No. 74904 Address: PO Box 2147 Leesville, SC 29070 phone: 803-908-3266 fax: e-mail: blanchettelaw@gmail.com other:	Defendant's Attorney: Lindsey Mccallister, Bar No. Address: PO Box 11549 Columbia, SC 29211 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:
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<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	
Date submitted: <u>June 6, 2019</u>	
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Fred Jack Sanders, 300135,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
2017-CP-40-4517
SUPPLEMENTAL MOTION
PURSUANT TO
RULE 59 (a) & (e), SCRPC

Pursuant to Rule 59(a) and (e) of the South Carolina Rules of Civil Procedure,
Applicant would move before this Court for relief as follows.

This matter comes before the Court pursuant to an Application for Post
Conviction Relief filed on July 28, 2017. The State filed a Return on or about January 24,
2018. Applicant filed an Amendment on August 14, 2018 and November 19, 2018. An
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At the evidentiary hearing, Applicant proceeded on the following allegations
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1. Ineffective assistance of counsel for failure to ensure that all plea offers were properly and completely conveyed to Applicant and that Applicant knowingly and voluntarily rejected all plea offers. As a result of this allegation, Applicant is seeking a new trial and alternate relief pursuant to Davie v. State, 675 S.E.2d 416 (2009).
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4. Ineffective assistance of counsel for the handling of witness Sara Brassell and for failure to request a mistrial or object to the curative instruction on the record on the basis raised on direct appeal.

At the conclusion of the evidentiary hearing, the Honorable Jocelyn Newman requested proposed Orders from the parties and granted Applicant's counsel time to obtain the transcript from the evidentiary hearing. Thereafter, Applicant's counsel ordered the transcript and followed up on the request with Court Administration. After being informed that the request had been assigned to a court reporter, counsel received notice of several extensions.

On May 17, 2019, Applicant's counsel received a signed and filed Order of Dismissal ("Order") via email from the Richland County Clerk of Court. Upon receipt and review, counsel contacted the Honorable Jocelyn Newman via email, which was copied on opposing counsel. By way of this email, counsel raised her concern with the Order being issued prior to the receipt of the transcript and proposal of Orders, while noting the issuance of the Order was within the discretion of the Court. In response, the Honorable Jocelyn Newman instructed counsel to file a motion and request time to supplement the motion upon receipt of the transcript. Therefore, Applicant, through counsel, submitted a motion on May 24, 2019 and asked for the opportunity to further supplement, if needed, upon receipt of the evidentiary hearing transcript.

Thereafter, Applicant, through counsel, received the evidentiary hearing transcript, from which this supplemental motion follows.

ARGUMENT

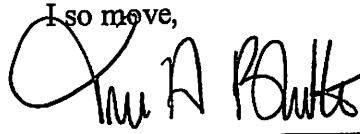
Herein, by reference, Applicant would incorporate and rely upon the arguments made in the Motion filed on May 28, 2019. Upon review of the evidentiary hearing transcript, Applicant would ask the Court to consider the transcript in evaluating Applicant's request to reconsider and/or alter or amend the standing Order. Specifically, Applicant would note the following testimony from the evidentiary hearing transcript, which supports his request:

1. The testimony of Lucas Hawks, Esquire, regarding the preservation of the issue involving prior bad act testimony. PCR Transcript pp. 35-38.
2. The testimony of Lucas Hawks, Esquire, regarding his understanding of the plea offers made by the State and whether all plea offers were communicated to Applicant. PCR Transcript pp. 44-52. Specifically, his testimony that it was fair to infer that he did not understand that the ten years had been scratched, and his testimony that he could not say with certainty that he told Applicant that the ten years had been scratched. PCR Transcript p. 50, lns. 7-10, p. 51, lns. 17-24.
3. The testimony of Applicant that the plea offer never left ten years. PCR Transcript p. 114, lns. 3-15, pp. 118, 130, 136. The testimony of Applicant that upon review of the record and email exhibit, he was sure he was not told about all plea offers. PCR Transcript p. 129.
4. When recalled, the testimony of Lucas Hawks, Esquire, that it was possible there was an oral offer before trial regarding a cap of ten years, yet he acknowledged on cross-examination that the email offer (straight up) was in place until the Friday before trial. PCR Transcript pp. 144, 147, 153.

CONCLUSION

In conclusion, Applicant would request that the Court review the full record, including the evidentiary hearing transcript, reconsider and/or alter or amend the standing Order of Dismissal, and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRCF.

I so move,



Tricia A. Blanchette
Attorney for Applicant
PO Box 2147
Leesville, SC 29070

June 6, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Fred Jacks Sanders, 300135,)
 Applicant,)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

2017-CP-40-4517

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that place in the United States mail this 6th day of June 2019 a Rule 59, SCRPC, Motion to Lindsey McCallister of the Attorney General's Office, at:

Office of the Attorney General
 Att: Lindsey McCallister, Ast. AG
 P.O. Box 11549
 Columbia, SC 29211-1549



Tricia A. Blanchette
 PO Box 2147
 Leesville, SC 29070
 (803) 908-3266

June 6, 2019

FRED JACK SANDERS (SCDC# 300135)

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.

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. 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
- 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:

RICHLAND COUNTY
FILED
2020 MAR 30 AM 11:09
FRED JACK SANDERS
C.C.P., G.S., & F.C.

ORDER INFORMATION

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

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

2757
Judge Code

March 24, 2020
Date

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Fred Jack Sanders (SCDC #300135),

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2017CP4004517

**ORDER DENYING APPLICANT'S MOTION
PURSUANT TO RULE 59(A) & (E), SCRCF**

RICHLAND COUNTY
FILED
2020 MAR 30 AM 11:09
JEANETTE W. HORTON
C.C.P., S.S., & F.C.

This matter came before the Court upon "Motion Pursuant to Rule 59(a) & (e), SCRCF," which was filed by Fred Jack Sanders ("Applicant") on May 28, 2019, and supplemented on June 10, 2019. In the motion, Applicant asks this Court to reconsider the matters contained in its Order of Dismissal, which was entered on May 17, 2019. For the reasons set forth below, the motion for reconsideration is DENIED.¹

BACKGROUND

Applicant is currently confined at the South Carolina Department of Corrections ("SCDC"). After being arrested and indicted for a number of offenses, Applicant pled guilty on March 17, 2014, to the charge of possession of a firearm by a person convicted of a crime of violence. On the same day, he was tried before a jury on the remaining charges. Upon conclusion of the trial on March 19, 2014, the jury found Applicant guilty of manufacturing methamphetamine, possession with intent to distribute heroin, possession of a controlled substance, possession of methamphetamine, and possession of crack.

¹ The Court decides this motion without oral argument pursuant to Rule 59(f), SCRCF.

The Honorable G. Thomas Cooper, Jr., sentenced Applicant to terms of imprisonment for each of the charges as follows: six months for possession of a controlled substance; five years for each charge of possession of methamphetamine, possession of crack cocaine, and possession of a firearm; and twenty years each for manufacturing methamphetamine and possession with intent to distribute heroin. All sentenced were to be served concurrently. Applicant was represented by Assistant Public Defenders Lucas D. Hawkes, Esquire (“Trial Counsel”) and John Christopher Shipman, Esquire, for both the guilty plea and jury trial.

Applicant timely filed a Motion for Reconsideration, asking that Judge Cooper reconsider the sentences imposed at trial. A hearing was convened regarding that motion on June 9, 2014. As a result, Judge Cooper reduced the twenty-year sentences to fifteen years each, still to be served concurrently.

On July 28, 2017, Applicant filed an Application for Post-Conviction Relief (“PCR Application”). Two amendments to the PCR Application were filed on August 14 and November 19, 2018. An evidentiary hearing was conducted on December 7, 2018, and by Order dated May 17, 2017, this Court denied the PCR Application and dismissed it with prejudice. Applicant now asks that this Court reconsider its decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Plea Offer

Applicant contends that the Court failed to fully consider his argument that Trial Counsel failed to convey to him the plea offers made by the State and to ensure that he knowingly and voluntarily rejected those plea offers before the jury trial commenced. Applicant believes that he is entitled to a new trial or resentencing pursuant to *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009). The Court disagrees.

It is clear from the record that there were three plea offers made by the State, all for a plea to possession with intent to distribute (“PWID”) heroin, second offense (reduced from a third offense) – a ten-year sentence, a maximum of ten years, and a “straight up” plea. Although Applicant testified that he was only informed of a single plea offer of a ten-year sentence, the Court finds that this testimony lacks credibility. Applicant’s testimony was contradicted by the credible testimony offered by Trial Counsel, who was clear that he conveyed the “cap of ten” offer to Applicant. What Trial Counsel was uncertain about was whether he told Applicant that the “cap of ten” had been withdrawn, whether he advised Applicant that he could plead “straight up,” and which offer he conveyed to Applicant was the best offer.

Despite those specific uncertainties, the Court finds no prejudice to Applicant. First, Applicant was not interested in pleading guilty for a maximum ten-year sentence; so it is immaterial whether the withdrawal of that offer was communicated to Applicant. It is also irrelevant to the Court’s analysis whether Applicant was aware that he could plead “straight up” to the charge, as this is a less favorable plea offer. It simply does not make sense – and, therefore, is not credible – that Applicant would reject a maximum ten-year offer but would jump at the chance to plead “straight up” to the same charge. Under the former arrangement, the sentencing range would be anywhere from no prison time to a maximum ten years; yet the latter would expose him to a maximum sentence of thirty years. The Court finds, based on the testimony of both Applicant and Trial Counsel, that Trial Counsel conveyed the “cap of ten” offer to Applicant, but Applicant ignored the explanation of that offer, believing it to be the same as the ten-year offer.

In order to find that Applicant is entitled to the relief set forth in *Davie*, the Court would have to find that Trial Counsel failed to communicate a plea offer to Applicant, that the failure to do so constituted deficient performance, and that there is a reasonable probability that but for Trial

Counsel's deficient performance, Applicant would have accepted the original plea offer. 381 S.C. at 608, 675 S.E.2d at 420. The Court does not make these findings here. First, the only plea offer that may have been withheld from Applicant was a "straight up" plea. As indicated above, the Court cannot find that the failure to communicate that offer was either deficient or prejudicial. It is clear that the intent of *Davie* is to protect the accused from receiving a more stringent sentence where they were deprived, by counsel's errors, of the opportunity to accept a plea offer for a lesser sentence. That scenario does not apply here. Therefore, Applicant's motion for reconsideration of this issue is denied.

II. Search Warrant and Confidential Informant

Next, Applicant contends that the Order of Dismissal fails to address Trial Counsel's failure to move to suppress the search warrant in his case. The Court finds, as it did in the Order of Dismissal, that this allegation must be denied and dismissed.

Trial Counsel admitted in his testimony that he did not make a motion to suppress the search warrant. Although such a motion, if granted, could result in dismissal of the charges against Applicant, Trial Counsel found no reason to make such a motion. Moreover, based on his experience, Trial Counsel made a strategic decision not to make such a motion, as he testified that the State often responds to suppression motions by withdrawing plea offers. Finally, Applicant offered no evidence from which the Court could find that he was prejudiced by Trial Counsel's failure to make such a motion.

Although, in hindsight, Trial Counsel may believe that he could have done a better job, that sentiment does not amount to proof that counsel was ineffective in his representation. While an attorney's failure to object to certain evidence can result in effective assistance, that is not true in every case; and even when deficiency is found, prejudice must still be shown. *See, e.g., Bruno v.*

State, 347 S.C. 446, 556 S.E.2d 393 (2001). The Court does not even find deficiency here, much less prejudice. Therefore, Applicant's motion for reconsideration of this issue is denied.

III. Additional Arguments

Applicant also asks that the Court reconsider its conclusions regarding Trial Counsel's trial preparation, discovery issues, and the handling of trial witness Sara Brassell. Because Applicant simply reiterates the same arguments found in his PCR Application and the amendments thereto, the Court need not address these arguments again. Therefore, Applicant's motion for reconsideration of these issues is denied.

CONCLUSION

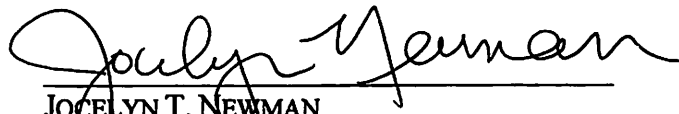
Based on the foregoing, the Court again finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant the requested relief. Therefore, the Application for Post-Conviction Relief was properly denied, as is the instant motion for reconsideration.

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS, THEREFORE, ORDERED that Applicant's "Motion Pursuant to Rule 59(a) & (e), SCRCP" is DENIED.

IT IS FURTHER ORDERED that Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED.



JOCELYN T. NEWMAN
Presiding Judge

March 24, 2020
Columbia, South Carolina.