

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case Number: 2021-000946

Arthur W. MaconPetitioner,

v.

State of South Carolina,Respondent.

Appendix Volume III of III

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CONCLUSION

Based on all the foregoing, as well as the arguments set forth at the evidentiary hearing, Respondent respectfully requests this Court affirm its denial and dismissal of each of Applicant's allegations for relief. Respondent additionally requests this Court deny Applicant's Rule 59(e), SCRCF, motion without a hearing by issuance of a written order, as no additional testimony or argument is needed and these issues are all properly preserved for appellate review.

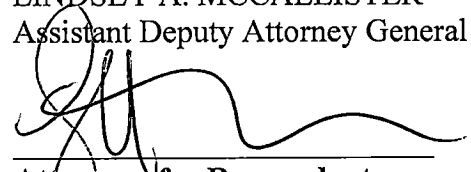
Respectfully submitted,

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July 26, 2021

It is difficult to read *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019), or watch the oral argument in *Kevin S. Epting v. State*, Appellate Case No. 2017-000696, and not conclude that our supreme court is frustrated with the practice of advocates drafting the final orders in PCR cases. The time has come to ban the practice altogether.

B. Conflict of Interest.

The order of dismissal implies it is an acceptable practice for defense counsel not to disclose to a client that counsel is married to the deputy solicitor in the same county where the client is being prosecuted. The State's Return asks this Court to re-endorse that position. Mr. Macon finds it difficult to believe any court would endorse that position; however, if this Court believes that practice is acceptable, then Mr. Macon respectfully requests an explanation of that reasoning.

C. Indictment.

The order of dismissal implies there is not any irregularity in the indictment because an indictment is merely a notice document, citing S.C. Code Ann. § 17-19-20. Since *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) prosecutors consistently try to reduce the significance of an indictment to a notice document. Here, the irregularity of the indictment goes to whether the indictment was properly presented.

D. Solicitor's Closing Argument.

The order of dismissal twice endorses the proposition that it is acceptable for defense counsel not to know the law. The State's Return acknowledges trial counsel's "candid testimony that she was not aware of any case law to support an objection," but then urges this Court to excuse this lack of knowledge as a strategic decision. This approach is contrary to the approach followed by our supreme court, which looks at existing case law to determine when "reasonably competent

trial counsel should know to object.” *Briggs v. State*, 421 S.C. 316, 325, 806 S.E.2d 713, 718 (2017). This Court should follow the same approach.

E. Improper Vouching.

The State’s Return acknowledges the order of dismissal is only general as to this issue. The failure to make findings of fact on this claim violates S.C. Code Ann. §17-27-80 and *Fishburne*. This Court, accordingly, should make findings of fact and conclusions of law on this issue.

F. Juror Deliberations.

The order of dismissal and the State’s return commit the same fundamental error by assuming the trial court’s obligation is to protect the majority jurors. The purpose of an *Allen* charge, however, is to protect the minority juror(s). Mr. Macon believes this Court understands this principle. Once this Court applies this principle, it becomes apparent that Mr. Macon was prejudiced by trial counsel’s deficient performance.

This issue is the second instance that the order of dismissal and the State’s Return endorse trial counsel not understanding the law. As discussed above, this approach is contrary to the approach followed by our supreme court. *See, e.g., Briggs, supra*.

G. Cumulative Error.

The State asserts the cumulative error analysis does not apply in PCR cases despite cases from the Supreme Court of the United States to the contrary. Mr. Macon believes that any one of the issues raise in his Rule 59(e) motion are sufficient to require a new trial; however, out of an abundance of caution, this Court should apply a cumulative error analysis.

(conclusion on next page)

CONCLUSION

For the reasons set forth in Mr. Macon's Rule 59(e) motion and this pleading, this Court should withdraw the order of dismissal, grant post-conviction relief, and remand this case to the Court of General Sessions for a new trial.

Respectfully Submitted,

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Attorney for Arthur William Macon

August 5, 2021
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
)	Case No. 2019-CP-40-05591
Arthur William Macon,)	
)	
Applicant,)	
)	
vs.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

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 GREENWOOD, SC

I certify that I have served a copy of this pleading on the State of South Carolina, pursuant to South Carolina Supreme Court Order No. 2021-03-04-01, Section (c)(13), by emailing at copy to counsel, at their AIS email address, as reflected below:

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August 5, 2021
 Greenwood, South Carolina

THE STATE OF
SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

) Case No. 2019-CP-40-05591

Arthur William Macon,
Applicant)

vs)

ORDER DENYING MOTION

State of South Carolina)
Respondent)

FILED
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RICHLAND COUNTY
FILED

This matter comes before the court upon Applicant's Rule 59(e), Motion dated July 16, 2021. Applicant requests that this Court withdraw its order of dismissal, grant post-conviction relief and remand this case for a new trial.

Both parties submitted briefs supporting their respective positions. After reviewing the briefs I find no reason to reverse the prior order and grant the relief requested by Applicant.

Accordingly, Applicant's Motion is hereby DENIED.

August 10, 2021



Brooks P. Goldsmith
Circuit Judge