

S-C.

{ STATE OF SOUTH CAROLINA }  
{ IN THE SUPREME COURT }

} APPEAL FROM AIKEN COUNTY }  
{ THE HONORABLE W. JEFFERY YOUNG PRESIDING JUDGE }

9A No. 2006-CP-02-1417

**RECEIVED**

JAMES PRATHER # 315663  
Applicant

MAY 16 2013

S.C. Supreme Court

v

STATE OF SOUTH CAROLINA  
Respondents

{ NOTICE OF APPEAL }

THE APPLICANT JAMES PRATHER #315663 DOES HEREBY APPEAL THE LOWER COURTS FINAL ORDER OF DISMISSAL 2006-CP-02-1417 TO THE SOUTH CAROLINA SUPREME COURT. THE COURT ISSUED AN ORDER OF DISMISSAL WITH PREJUDICE DATED DECEMBER 28, 2011 AND FILED WITH THE CLERK OF COURT ON JANUARY 9, 2012. THE APPLICANT DID NOT RECEIVED THE DISMISSAL UNTIL JANUARY 24, 2012. THE RECORDS WOULD FURTHER REFLECT THAT ON JULY 15, 2010 THAT THE APPLICANT PROPERLY RAISED THE ABOVE ISSUES ON (PCR). THE APPLICANT DID REQUESTED THAT HIS COUNSEL

OF RECORD AARON WALSH ESQ, TO MOTION TO HAVE ISSUES FULLY  
HEARD IN A JULY 21, 2011 LETTER COUNSEL STILL DECLINED TO  
ASSIST APPLICANT.

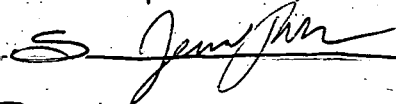
THE APPLICANT RECEIVED THE COURTS FINAL ORDER OF  
DISMISSAL ON APRIL 24<sup>TH</sup>, 2013 AT THE MRS CORMICK CORRECTIONAL  
INSTITUTION MAIL ROOM.

THE RESPONDENT BY WAY OF A LETTER STATED IT WOULD TAKE NO  
ACTION ON APPLICANTS PRO'SE MOTION TO ALTER OR AMEND  
JUDGMENT AS APPLICANT WAS REPRESENTED BY COUNSEL  
THIS PRO'SE MOTION TO ALTER OR AMEND WAS DATED JANUARY 30,  
2012 AND FILED WITH THE CLERK OF COURT ON JANUARY 31, 2012.

THEREAFTER COUNSEL FOR APPLICANT RECEIVED A COPY OF  
APPLICANTS PRO'SE MOTION TO ALTER OR AMEND JUDGMENT  
DATED FEBRUARY 2, 2012 }

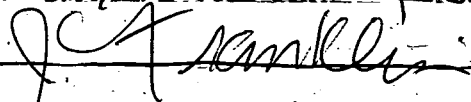
A HEARING WAS GRANTED AND HELD ON SEPTEMBER 20, 2012  
ON APPLICANTS PRO'SE RULE 59(E) MOTION TO ALTER OR AMEND  
AT THIS HEARING THE APPLICANT MADE A MOTION TO RELIEVE  
COUNSEL AND PROCEED PRO'SE WITH APPLICANTS RULE 59(E) MOTION  
(EXCRCP) THIS MOTION WAS GRANTED BY THE COURT.

RESPECTFULLY SUBMITTED



SWORN OR AFFIRMED BEFORE ME

THIS 13 DAY OF May 2013.



NOTARY PUBLIC FOR SOUTH CAROLINA

My COMMISSION EXPIRES 12-16-2019

{ STATE OF SOUTH CAROLINA }  
{ IN THE SUPREME COURT }

{ APPEAL FROM AIKEN COUNTY }  
{ THE HONORABLE W. JEFFERY YOUNG PRESIDING JUDGE }

1/A No. 2006-CP-02-147

JAMES PRATHER # 315663

Applicant

v

STATE OF SOUTH CAROLINA

Respondent

**RECEIVED**

MAY 16 2013

S.C. Supreme Court

{ PROOF OF SERVICE }

THE APPLICANT JAMES PRATHER # 315663 DOES HEREBY CERTIFY  
THAT HE HAS THIS 13 DAY OF MAY 2013 SERVED OPPOSING COUNSEL  
WITH A COPY OF THE NOTICE OF APPEAL BY DEPOSITING A COPY  
OF THE SAME IN THE UNITED STATES MAIL POSTAGE PREPAID  
AND ADDRESSED TO:

ALLEN WILSON ATTORNEY GENERAL  
POST OFFICE BOX 11549  
COLUMBIA, SOUTH CAROLINA

29211

RESPECTFULLY SUBMITTED

S. James Prather

JAMES PRATHER 315663

MCCORMICK S/F 2-B

386 REDEMPTION WAY

MCCORMICK, SOUTH CAROLINA

SWORN OR AFFIRMED BEFORE ME

29899

THIS 13 DAY OF May 2013

J. G. Miller

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES 12-16-2019

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

James Prather, #315663, )  
Applicant, )

Case No. 2009-CP-02-1417

v. )  
State of South Carolina, )  
Respondent. )

ORDER DENYING APPLICANT'S  
MOTION TO ALTER OR AMEND  
DENIAL OF PCR PETITION

This matter comes before this Court by way of the Applicant's "Motion for Rule 59(e) S.C.R.C.P." in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief.

**I. Procedural History**

Applicant filed an application for post-conviction relief on June 19, 2009. Respondent made its return on October 3, 2009. An evidentiary hearing on this application was held before this Court on July 15, 2010 at the Aiken County Courthouse. Applicant was present and represented by Aaron Walsh, Esquire. Respondent was represented by Assistant Attorney General Mary S. Williams of the South Carolina Attorney General's Office. Following the hearing, this Court left the record open for supplementation of a post-trial motion transcript and requested both parties submit memoranda to this Court. Thereafter, this Court issued an Order of Dismissal with Prejudice, dated December 28, 2011, and filed with the clerk on January 9, 2012.

Applicant submitted a *pro se* Motion to Alter or Amend dated January 30, 2012, and filed with the clerk on January 31, 2012. Respondent responded by way of a letter dated February 2, 2012, stating that it would take no action on this *pro se* document.



1 of 3

4-18  
Liz Godard  
RECORDS  
Shannon Groves 120

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

APR 18 2013  
Liz Godard  
C.C.C.P. & G. S., Aiken County, S.C.  
Shannon Groves  
Deputy Clerk

pursuant to Rule 11, SCRPC, as Applicant was represented by counsel. Thereafter, Counsel for Applicant filed a copy of Applicant's *Pro Se* Motion on February 2, 2012. The Respondent made its Return to this motion on February 21, 2012, asking that the motion be denied and dismissed.

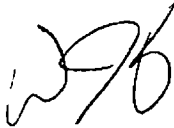
A hearing on this motion was held before this Court on September 20, 2012 at the Sumter County Courthouse. Applicant was present, as was his appointed counsel Aaron Walsh, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. At this hearing, Applicant made a motion to relieve his counsel and proceed *pro se* with this motion, which was granted by this Court.

## II. Findings of Fact and Conclusions of Law

This Court has reviewed Applicant's motion, the State's return and the record in this matter and finds the following:

This Court finds that Applicant's motion is not timely filed and must be dismissed. "A motion to alter or amend the judgment shall be served not later than ten days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. This Court's Order of Dismissal was mailed to counsel of record on January 9, 2012. Therefore, whether this court considers the January 31, 2012, filing or the February 2, 2012, filing, the Motion is untimely and must be dismissed.

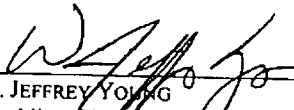
Additionally, this Court finds that the Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRPC. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

A handwritten signature in black ink, appearing to be 'WJ/6', is written over the text of the final paragraph.

Therefore, based upon a careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and supporting testimony, this Court is not persuaded to alter or amend the judgment.

IT IS THEREFORE ORDERED that the Applicant's Rule 59(e) Motion to Alter or Amend is **DENIED**.

AND IT IS SO ORDERED this 11 day of April, 2013.

  
W. JEFFREY YOUNG  
Presiding Circuit Court Judge  
Second Judicial Circuit

Sumter, South Carolina



ALAN WILSON  
ATTORNEY GENERAL

April 16, 2013

The Honorable Liz Godard  
Clerk of Court, Aiken County  
Post Office Box 583  
Aiken SC 29802-0583

Re: James Prather, 315663 v. State of South Carolina  
2009-CP-02-1417

Dear Ms. Godard:

Enclosed please find the original **Order Denying Applicant's Motion to Alter or Amend Denial of PCR Petition** signed by The Honorable W. Jeffrey Young, in the above-captioned case, for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,

Megan E. Harrigan  
Assistant Attorney General

MEH/lm  
Enclosure

4-18-13  
  
Liz Godard  
Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

James Prather, 315663,  
 Plaintiff

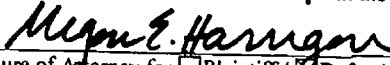
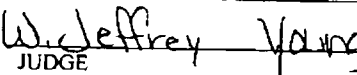
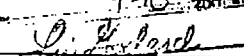
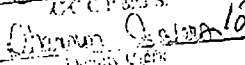
v.

State Of South Carolina  
 Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.  
2009-CP-02-1417

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney: James Prather, 315663, Bar No. Address: MCI 386 Redemption Way McCormick SC 29899 phone:        fax: e-mail:        other:	Defendant's Attorney: Megan E. Harrigan, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail:        other:
<input 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 checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed:        Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">             Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant         </div> <div style="text-align: center;">           April 10, 2013            Date submitted         </div> </div>	
<b>SECTION III: Motion Fee</b>	
<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:	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	<div style="text-align: center;">             W. Jeffrey Young            JUDGE            CODE: 2156    Date: 4-11-13         </div>
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	Date Filed: _____ <div style="text-align: center;">           4-10-13              Clerk              Clerk         </div>

86 REDEMPTION WAY  
15 CORMICK, SOUTH CAROLINA

29899

THE HONORABLE CLERK OF COURT  
SOUTH CAROLINA SUPREME COURT  
POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA

29211

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MAY 13 2013

MCCI  
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29211

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