

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
TUNZY A. SANDERS, Petitioner

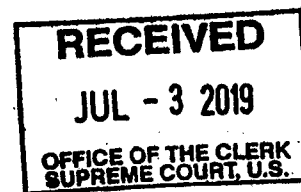
vs.

Warden-ALLENDAL CORRECTIONAL INSTITUTION, Respondent

**PETITIONER'S SECOND MOTION FOR AN EXTENSION OF  
TIME TO FILE MOTION FOR LEAVE TO PROCEED IN  
FORMA PAUPERIS AND PETITION FOR A WRIT  
OF CERTIORARI**

NOW COMES the Petitioner, Tunzy A. Sanders, a Pro Se Litigant, and moves this Honorable Supreme Court to grant an extension of time in which to adequately prepare and file a Second Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari pursuant to Supreme Court Rule 30 (2) and in support of same states as follows:

1. That the Petitioner's habeas corpus claims were denied by the 4<sup>th</sup> Circuit Court of Appeals on March 1, 2019.
2. That the Petitioner filed his first Motion for an Extension of Time to File his Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari on or about May 1, 2019.
3. That this Honorable Court granted an extension until June 29, 2019.
4. That at the time of the Petitioner's First Motion for an Extension of Time to File his Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari, the Petitioner had just been transferred to a new facility, Kershaw Correctional Facility, in Kershaw, South Carolina and confined in his cell for twenty-three (23) hours a day.



5. That the Petitioner remains locked down for twenty-three hours a day and has very limited access to the law library and the South Carolina Appellate Defender that has now entered his case to represent the Petitioner before the Court of Common Pleas of the Second Judicial Circuit on Case No. 2016-CP-06-0291.

6. That on May 31, 2019, the Court of Common Pleas of the Second Judicial Circuit granted the Petitioner's Motion to enter Consent Order to Vacate Order of Dismissal of the Petitioner's Post-Conviction Relief Petition. (See attached **Exhibit A**)

7. That the Petitioner's Third Petition for Post-Conviction Relief is now scheduled for a hearing before the Court of Common Pleas of the Second Judicial Circuit for the week of September 30, 2019 and the case has been placed on its docket for the General Session.

8. That the South Carolina Office of Appellate Defense has entered its Appearance on behalf of the Petitioner, Tunzy A. Sanders, for the September 30, 2019, General Session.

9. That the court is expected to complete the adjudication of the Petitioner's Third Petition for Post-Conviction Relief and render an expeditious decision in Petitioner's case.

10. That the Petitioner was previously denied habeas corpus relief, partly, because the U.S. District Court concluded that the Petitioner's Petition for Habeas Corpus Relief was untimely based on the calculation that the Petitioner's Post Conviction Relief Petition in the Second Judicial Circuit was a final judgment.

11. That the Petitioner argued in his Petition for Habeas Corpus Relief that the his habeas corpus claims should not be deemed untimely, because a Motion to Vacate the Order of Dismissal was pending that would have the legal effect of setting aside the final judgment.

12. That presently, it is the Petitioner's position that the entry of the Order to Vacate the Order of Dismissal should nullify and render void the original decision of the United States District Court relative to the untimeliness of the Petitioner's Habeas Corpus claims.

13. That a subsequent review of the Petitioner's habeas corpus claims may have a different result, inasmuch as, the Second Circuit has scheduled a hearing pursuant to the Petitioner's Third Post-Conviction Relief Petition and the Petitioner should be entitled to appellate review on his substantive claims for habeas corpus relief.

14. That the time for filing Petitioner's Habeas Corpus Petition should be tolled by the filing of Petitioner's "pending" Third Petition for Post-Conviction Relief.

15. That the determination that the Petitioner's Habeas Corpus claims are time-barred based on the above circumstances should be set aside.

16. That the Petitioner wishes to maintain an appeal to this Honorable Court and is requesting an additional 96 days to file his Motion for Leave to Proceed in Forma Pauperis and Petition for a Writ of Certiorari in this Honorable Court.

17. That the Petitioner asserts that he has demonstrated facts which constitute "extraordinary circumstances" which would qualify him for an extension of time to file the within stated motions.

18. That the Petitioner gave prior permission, via his signature, for his family to file this instant Second Motion for Extension of Time to File a Motion for Leave to Proceed in Forma Pauperis and Petition for a Writ of Certiorari.

WHEREFORE, the Petitioner respectfully requests that this Honorable Court grant his Second Motion to Extend Time to File Motion for Leave to Proceed in Forma Pauperis and Petition for a Writ of Certiorari.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

Post Office Box 21787 – Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated Carolyn Sanders (Server) as his duly authorized agent for the purpose of making service on the below named individual.

STATE OF SOUTH CAROLINA )

COUNTY OF Lancaster )

**AFFIDAVIT OF PERSONAL SERVICE**

On this 28 day of June, 2019, I served the 6/28/19 Ltr., Petition for Writ of Certiorari, and Proof of Service on Inmate Tunzy Sanders **SCDC Inmate Number 255493** by delivering personally and leaving a copy of same at **Kershaw Correctional Institution**, Kershaw, SC. I am not a party to this action.

s/ Carolyn Sanders  
SCDC Server

**SWORN TO AND SUBSCRIBED BEFORE ME**

this 28<sup>th</sup> day of June, 2019.

Pamela Walters  
Notary Public for South Carolina  
My commission expires: 12/30/2026



**ACCEPTANCE OF SERVICE**

Service of a copy of the within Legal Pleadings is accepted at the South Carolina Department of Corrections (**Kershaw Correctional Institution**), Lancaster County, SC this 28 day of June, 2019.

s/ Tunzy A. Sanders #255493  
Inmate Tunzy Sanders  
SCDC Inmate Number 255493

# **EXHIBIT A**



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332

Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

June 7, 2019

Mr. Tunzy Sanders, #255493  
Kershaw Correctional Institution  
4848 Gold Mine Highway  
Kershaw, S.C. 29067

Re: Tunzy Sanders v. State of South Carolina  
2016-CP-06-0291

Dear Mr. Sanders:

I have enclosed a copy of the signed Consent Order to Vacate Order of Dismissal in your case. I expect the state will attempt to file another conditional order of dismissal. If they do so, I will file a return. I will send you copies of additional filings and orders as I receive them.

If you have any other concerns or questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Robert M. Dudek  
Chief Appellate Defender

RMD/csb

Enclosure

FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2016CP0600291

Tunzy A Sanders

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant  
☐ 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: \_\_\_\_\_
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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: \_\_\_\_\_

**Consent Order to Vacate Order of Dismissal**

INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

5/1 Clifton Newman  
Circuit Court Judge

2127  
Judge Code

6/3/2019  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on May 29, 2019, and a copy mailed first class or placed in the appropriate attorney's box on June 3, 2019, to attorneys of record or to parties (when appearing pro se) as follows:

Robert Michael Dudek PO Box 11589 Columbia, SC 29211

David A. Spencer PO Box 11549 Columbia, SC 29211

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter**

*Constance B. Carter*  
*Constance B. Carter* Deputy  
*Rhonda Dale McElveen* - Clerk of Court

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
COUNTY OF BARNWELL )  
TUNZY SANDERS, )  
APPLICANT )  
V. )  
STATE OF SOUTH CAROLINA, )  
RESPONDENT. )

COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

2016-CP-06-0291

CONSENT ORDER  
ORDER OF DISMISSAL

FILED FOR RECORD  
2019 MAY 31 AM 9:34  
CLERK OF COURT  
BARNWELL COUNTY, SC

1. This matter is before this Court by way of a Rule 60(b), SCRPC, consent motion to vacate the order of dismissal in this post-conviction relief action. The consent motion dated December 7, 2016, was filed by Petitioner's previous attorney, Appellate Defender John H. Strom. Former Assistant Attorney General Julie Coleman consented to the order of dismissal being vacated. A copy of that motion is attached to this order as Exhibit A.

2. As seen, in the consent motion to vacate the order of dismissal, Petitioner Sanders, through Appellate Defender Strom, filed his current application for post-conviction relief on July 1, 2016. Petitioner alleged, inter alia, that he was entitled to a new trial on the basis of after-discovered evidence.

3. Respondent originally filed a Return and Motion to Dismiss this post-conviction relief application on November 7, 2016. However, respondent did not serve petitioner's attorney, Appellate Defender John H. Strom, with the Return and Motion to Dismiss as required by Rule 5. SCRPC.


4. This Court granted Respondent's Motion to Dismiss and issued an Order of Dismissal on November 10, 2016.

5. Appellate Defender Strom and Assistant Attorney General Coleman then agreed that the Order of Dismissal should be vacated because Respondent had inadvertently failed to serve counsel with the Return and Motion to Dismiss.

6. Although the Consent Motion to Vacate the Order of Dismissal was filed personally with the Barnwell County Clerk of Court, an Order vacating the Order of Dismissal pursuant to the consent motion was never issued. Appellate Defender John H. Strom has stated in his attached affidavit that his practice would have been to forward the consent motion to vacate the order of dismissal pursuant to Rule 60(b), SCRCP, to the PCR court, along with a proposed order of dismissal. However, Appellate Defender John H. Strom has since accepted employment in Washington, D.C., and Assistant Attorney General Julie Coleman is also no longer with the South Carolina Attorney General's Office. Regardless, it appears that the failure to ensure that the Court issued a consent order to vacate the order of dismissal was due to inadvertence. The affidavit of John H. Strom, Esquire is attached as Exhibit B.

7. Consequently, this Court now vacates the prior order of dismissal pursuant to the consent motion and order.

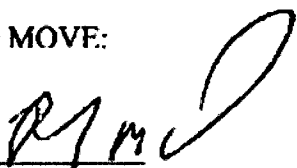
WHEREFORE, the Order of Dismissal dated November 10, 2016, in this case is vacated. Respondent is granted leave to submit a proposed conditional order of dismissal and serve it upon Petitioner's counsel as required by the rules once this consent order is filed and served.

  
Clifton Newman  
Chief Administrative Judge  
Second Judicial Circuit

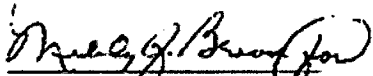
IT IS SO ORDERED

~~March~~ <sup>May</sup> 29, 2019.

I SO MOVE:

  
Robert M. Dudek, Esquire

I CONSENT:

  
David Spencer, Esquire

September ▼ 2019 ▼

Search

## Terms of Circuit and Family Court September 2019

Holiday:  
Mon Sep 02, Labor Day

Circuit Number	9/2/2019	9/9/2019	9/16/2019	9/23/2019	9/30/2019
<u>2</u>	General Sessions Aiken Newman, Clifton	Common Pleas/Common Pleas Nonjury Aiken Murphy, Maite  General Sessions Barnwell Hughston, Thomas		Administrative Week Newman, Clifton  Common Pleas Non- Jury Addy, Frank	Common Pleas Non- Jury/PCR Clyburn Pope, Courtney  General Sessions Aiken Newman, Clifton
	Family Court Aiken Snelgrove, Vicki J.	Family Court Aiken Rucker, John M.		Family Court Aiken Snelgrove, Vicki J.	Family Court Barnwell Snelgrove, Vicki J.
	Family Court Barnwell Abstance, Angela W.	Family Court Bamberg Snelgrove, Vicki J.  Administrative Week Abstance, Angela W.		Family Court 24, 25, 26, 27 Aiken Abstance, Angela W.	Family Court Aiken Hurley, Michelle M.

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