



ALAN WILSON  
ATTORNEY GENERAL

April 17, 2012

RECEIVED

APR 17 2012

S.C. Supreme Court

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

**RE: Fernando Montes Saenz v. State of South Carolina**  
**2009-CP-37-0493**

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Kaelon E. May  
Assistant Attorney General

KEM/lp  
Enclosures

cc: Dayne C. Phillips, Esquire (2 copies)

# The Supreme Court of South Carolina

Fernando Montes Saenz,                      Petitioner,

v.

State of South Carolina,                      Respondent.

The Honorable R. Lawton McIntosh  
Oconee County  
Trial Court Case No. 2009-CP-37-00493

---

## ORDER

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For good cause shown, the request for an extension until April 27, 2012 to serve and file the Return to the Petition for Writ of Certiorari in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY 

\_\_\_\_\_  
Clerk

Columbia, South Carolina

March 29, 2012

cc: Appellate Defender Dayne C. Phillips  
Assistant Attorney General Kaelon E. May



ALAN WILSON  
ATTORNEY GENERAL

March 28, 2012

RECEIVED

MAR 28 2012

S.C. Supreme Court

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

(3)

RE: Fernando Montes-Saenz, #318934 v. State of South Carolina  
2009-CP-37-00493

Dear Mr. Shearouse:

The Return to the Petition for Writ of Certiorari in the above appeal is due to be served and filed today. However, this is to respectfully request a 30-day extension to serve and file this Return to the Petition of Writ of Certiorari.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload and is for good cause.

Sincerely,

Kaelon E. May  
Assistant Attorney General

In compliance with:

*In Re: Extensions in Criminal and Post-Conviction Relief Cases*, (S.C. Sup. Ct. order dated March 18, 2009) (Davis Adv. Sh. No. 13 at 1).

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

DAYNE C. PHILLIPS  
Attorney for Petitioner

# The Supreme Court of South Carolina

Fernando Montes Saenz,                      Petitioner,

v.

State of South Carolina,                      Respondent.

The Honorable R. Lawton McIntosh  
Oconee County  
Trial Court Case No. 2009-CP-37-00493

---

## ORDER

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For good cause shown, the request for an extension until March 28, 2012 to serve and file the Return to the Petition for Writ of Certiorari is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

February 28, 2012

cc: Appellate Defender Dayne C. Phillips  
Assistant Attorney General Kaelon E. May



ALAN WILSON  
ATTORNEY GENERAL

February 27, 2012

RECEIVED

FEB 27 2012

S.C. Supreme Court

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

(2)

RE: Fernando Montes-Saenz, #318934 v. State of South Carolina  
2009-CP-37-00493

Dear Mr. Shearouse:

The Return to the Petition for Writ of Certiorari in the above appeal is due to be served and filed today. However, this is to respectfully request a 30-day extension to serve and file this Return to the Petition of Writ of Certiorari.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload and is for good cause.

Sincerely,

Kaelon E. May  
Assistant Attorney General

cc: Dayne C. Phillips, Appellate Defender

# The Supreme Court of South Carolina

Fernando Montes Saenz,                      Petitioner,

v.

State of South Carolina,                      Respondent.

The Honorable R. Lawton McIntosh  
Oconee County  
Trial Court Case No. 2009-CP-37-00493

---

## ORDER

---

The request for an extension until February 27, 2012 to serve and file the Return to the Petition for Writ of Certiorari is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Arenda I. Shealy*  
Clerk

Columbia, South Carolina *Chief Deputy*

January 31, 2012

cc: Appellate Defender Dayne C. Phillips  
Assistant Attorney General Kaelon E. May



ALAN WILSON  
ATTORNEY GENERAL

January 27, 2012

RECEIVED

JAN 27 2012

S.C. Supreme Court

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

RE: Fernando Montes-Saenz, #318934 v. State of South Carolina  
2009-CP-37-00493

Dear Mr. Shearouse:

The Return to the Petition for Writ of Certiorari in the above appeal is due to be served and filed today. However, this is to respectfully request a 30-day extension to serve and file this Return to the Petition of Writ of Certiorari.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload and is for good cause.

Sincerely,

Kaelon E. May  
Assistant Attorney General

cc: Dayne C. Phillips, Appellate Defender

# The Supreme Court of South Carolina

Fernando Montes Saenz,                      Petitioner,

v.

State of South Carolina,                      Respondent.

The Honorable R. Lawton McIntosh  
Oconee County  
Trial Court Case No. 2009-CP-37-00493

---

## ORDER

---

For good cause shown, the request for an extension until December 14, 2011 to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY 

\_\_\_\_\_  
Clerk

Columbia, South Carolina

November 15, 2011

cc: Appellate Defender Dayne C. Phillips  
Assistant Attorney General Kaelon E. May

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Oconee County  
R. Lawton McIntosh, Circuit Court Judge

---

FERNANDO MONTEZ SAENZ,

PETITIONER, S.C. Supreme Court

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

MOTION FOR AN EXTENSION OF TIME  
IN WHICH TO FILE THE PETITION FOR WRIT OF  
CERTIORARI AND APPENDIX

---

ORIGINAL

RECEIVED

NOV 14 2011

(3)

Counsel for Fernando Montez Saenz respectfully requests an extension of thirty (30) days in which to file the petition for writ of certiorari and appendix in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a third request for an extension. In support of this request, counsel shows:

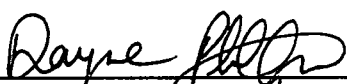
1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today, November 14, 2011.
2. Counsel for Mr. Sanez respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.
3. On November 7, 2011 counsel filed the petitions for writ of certiorari and appendices in Donald C. Brevard v. State and George Wigington v. State. On November 1, 2011 counsel had

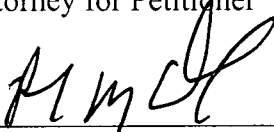
an oral argument at the Court of Appeals in the case of State v. Gerald Fripp. On October 17, 2011 counsel filed the initial brief of appellant and designation of matter in State v. James Tinsley in the Court of Appeals today, October 17, 2011. On October 12, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Joseph Paugh in the Court of Appeals and the petition for writ of certiorari and appendix in the case of Kevin Mellette v. State in this Court. On October 3, 2011, counsel had an oral argument in the case of Cookie Medlock v. State in the Court of Appeals.

4. Counsel makes this request in good faith and not for purpose of delay.
5. As indicated by signature below, Kaelon E. May, of the South Carolina Attorney General's Office, does not oppose this request.

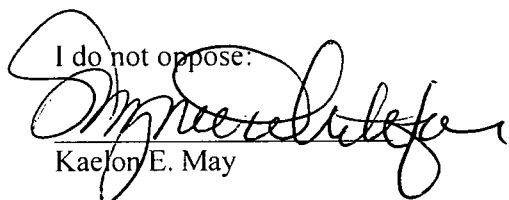
WHEREFORE, the undersigned counsel would respectfully request a thirty day extension, in which to file the petition for writ of certiorari and appendix in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the petition be held in abeyance pending a ruling on this motion.

Respectfully submitted,

  
\_\_\_\_\_  
Dayne C. Phillips  
Appellate Defender  
Attorney for Petitioner

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender

November 14, 2011

I do not oppose:  
  
\_\_\_\_\_  
Kaelon E. May

# The Supreme Court of South Carolina

Fernando Montes Saenz,                      Petitioner,

v.

State of South Carolina,                      Respondent.

The Honorable R. Lawton McIntosh  
Oconee County  
Trial Court Case No. 2009-CP-37-00493

---

## ORDER

---

For good cause shown, the request for an extension until November 14, 2011 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Brenda J. Shoaly*  
Clerk

Columbia, South Carolina

October 12, 2011

cc: Appellate Defender Dayne C. Phillips  
Assistant Attorney General Mary S. Williams

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Oconee County

R. Lawton McIntosh, Circuit Court Judge  
\_\_\_\_\_

FERNANDO MONTEZ SAENZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT  
\_\_\_\_\_  
\_\_\_\_\_

MOTION FOR AN EXTENSION OF TIME  
IN WHICH TO FILE THE PETITION FOR WRIT OF  
CERTIORARI AND APPENDIX  
\_\_\_\_\_

Counsel for Fernando Montez Saenz respectfully requests an extension of thirty (30) days in which to file the petition for writ of certiorari and appendix in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a second request for an extension. In support of this request, counsel shows:

1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today, October 12, 2011.
2. Counsel for Mr. Saenz respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.

ORIGINAL

RECEIVED

OCT 12 2011

S.C. Supreme Court

2

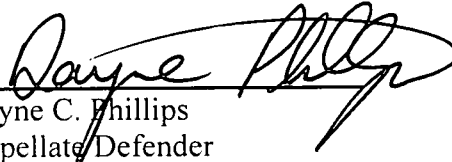
3. Counsel is preparing to file the initial brief of appellant and designation of matter in the case of State v. Joseph Paugh in the Court of Appeals and the petition for writ of certiorari and appendix in the case of Kevin Mellette v. State in this Court today, October 12, 2011. On October 3, 2011, counsel had an oral argument in the case of Cookie Medlock v. State in the Court of Appeals. On September 26 – 28, 2011, counsel attended the South Carolina Public Defenders Association Conference in Myrtle Beach, SC. On September 16, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Rushan Counts in the Court of Appeals. On September 6, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Marcus Addison in the Court of Appeals. On August 26, 2011, counsel filed the initial brief of appellant and designation of matter in the cases of State v. Donald Walls and State v. Scott Parker in the Court of Appeals. On August 8, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Marshall Collins in the Court of Appeals.

4. Counsel makes this request in good faith and not for purpose of delay.

5. Counsel for the Attorney General's office has been informed of this request.

WHEREFORE, the undersigned counsel would respectfully request a thirty day extension, in which to file the petition for writ of certiorari and appendix in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the petition be held in abeyance pending a ruling on this motion.

Respectfully submitted,

  
Dayne C. Phillips  
Appellate Defender

Attorney for Petitioner

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Oconee County

R. Lawton McIntosh, Circuit Court Judge

---

FERNANDO MONTEZ SAENZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

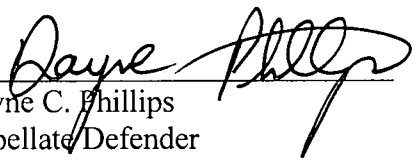
RESPONDENT

---

CERTIFICATE OF SERVICE

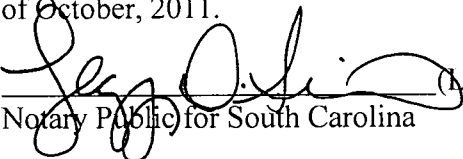
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I certify that a true copy of the motion for an extension of time in which to file the petition for writ of certiorari and appendix in the above case has been served upon Kaelon E. May, Esquire, this 12th day of October, 2011.

  
Dayne C. Phillips  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day  
of October, 2011.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: December 4, 2017.





# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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

September 12, 2011

RECEIVED

SEP 12 2011

S.C. Supreme Court

The Honorable Daniel E. Shearouse  
Clerk, S.C. Supreme Court  
P.O. Box 11330  
Columbia, SC 29211


Re: Fernando Montez Saenz v. The State

Dear Mr. Shearouse:

The Petition for Writ of Certiorari and accompanying appendix are due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the petition and accompanying appendix.

By copy of this letter, I am informing Kaelon E. May, Esquire, of the Attorney General's Office, of my request.

Sincerely,

  
Dayne C. Phillips  
Appellate Defender

DCP/lec

cc: Kaelon E. May, Esquire



# 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) 734-1343  
Facsimile: (803) 734-1397

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

July 14, 2011

The Honorable Daniel E. Shearouse  
Clerk, S.C. Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

RECEIVED

JUL 14 2011

S.C. Supreme Court

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Fernando Montez Saenz v. State of South Carolina

7/13/2011

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Loriene French  
Legal Services Coordinator



# 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 13, 2011

**RECEIVED**

JUN 13 2011

**S.C. Supreme Court**

Ms. Renee H. Tollison  
Circuit Court Reporter  
Post Office Box 4321  
Anderson, SC 29622

Dear Ms. Tollison:

Please provide us with the following transcript:

Fernando Montez Saenz v. State of South Carolina      Case #:      09-CP-37-00493

County: Oconee      Date of Trial: March 14, 2011

Presiding Judge: R. Lawton McIntosh

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Sharon A. Graham  
Administrative Coordinator

cc: S.C. Supreme Court  
Attorney General's Office

# The South Carolina Court of Appeals

Fernando Montes-Saenz, #318934,

Appellant,

v.

State of South Carolina,

Respondent.

The Honorable George E. Brown  
Oconee County  
Trial Court Case No. 2009-CP-37-00493

RECEIVED

JUN -9 2011

S.C. Supreme Court

RECEIVED

JUN 09 2011

S.C. SUPREME COURT

ORDER

The appeal in the above captioned matter is transferred to the South Carolina Supreme Court under the filing provisions of Rule 243 of the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE  
For The Court

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc: Tjay M. Bagwell, Esq.  
Chief Appellate Defender Robert M. Dudek  
Assistant Attorney General Adam West Lee  
The Honorable Daniel Shearouse

FILED

6/8/11

**Tjay M. Bagwell  
Attorney at Law**

---

PO Box 238  
314 B East Main Street  
Walhalla, Sc 29691

Phone 864-638-5134  
Fax 864-638-9974  
[bagwelllawfirm@yahoo.com](mailto:bagwelllawfirm@yahoo.com)

May 31, 2011

**RECEIVED**

JUN - 9 2011

FORM 8  
LETTER TO THE APPELLATE COURT CLERK  
FILING THE NOTICE OF APPEAL

**S.C. Supreme Court**

The Honorable Jeanette Barber  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

**RECEIVED**

JUN 07 2011

**SC Court of Appeals**

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court for South Carolina  
Supreme Court Building  
P.O. Box 11330  
Columbia, SC 29211

**RECEIVED**

JUN 09 2011

**S.C. SUPREME COURT**

Re: Fernando Montes-Saenz vs. County of Oconee  
Case Number 2009-CP-37-00493


Dear Mrs. Barber [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.
2. A Copy of the order which is to be challenged on the appeal.
3. Under Rule 203(d)(2)(B)(iii), SCACR, a filing fee is not required if the appeal is from a criminal case including juvenile delinquency matters, or if the appeal is taken by the state of South Carolina, its departments or agencies. Further, no filing fees are required in post-conviction relief cases. Rule 240(d), ACACR
4. This appeal is being filed with the Supreme Court because this is an appeal of an

order (judgment) of a Post-Conviction Relief case, which is to be appealed directly to the Supreme Court of South Carolina.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Bagwell', written over the typed name.

Tjay M. Bagwell, Attorney at Law  
PO Box 238(314 B. East Main Street)  
Walhalla, SC 29691

cc: South Carolina Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

Office of Indigent Defense  
PO Box 11433  
Columbia, SC 29211-1433

FORM 1  
NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

RECEIVED

JUN -9 2011

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

S.C. Supreme Court

George E. Brown, Circuit Court Judge

Case No. 2009-CP-37-00493

RECEIVED

JUN 07 2011

FERNANDO MONTES-  
SAENZ #318934,

Respondent,

SC Court of Appeals

v.


STATE OF SOUTH  
CAROLINA,

Appellant.

NOTICE OF APPEAL

Fernando Montes-Saenz appeals the order [judgment] of the Honorable J. Michael Baxley, dated May 31, 2011. Appellant received written notice of entry of this order [judgment] on May 31, 2011.

May 31, 2011



Tjay M. Bagwell, Attorney at Law  
Post Office Box 238  
Walhalla, South Carolina 29691  
(864) 638-5134  
Attorney for Appellant

Other Counsel of Record:  
Adam West Lee  
Post Office Box 11549  
Columbia, South Carolina 29211  
Attorney for Respondent

**FORM 7  
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

George E. Brown, Circuit Court Judge

Case No. 2009-CP-37-00493

FERNANDO MONTES-  
SAENZ # 618934,

Respondent,

**RECEIVED**

v.

JUN - 9 2011

STATE OF SOUTH  
CAROLINA

Appellant.

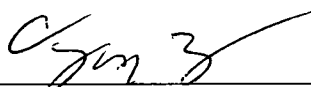
**S.C. Supreme Court**

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on, The Honorable Jeanette Barber, Clerk, Supreme Court for South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on May 31, 2011, addressed as follows:

Supreme Court Building  
P.O. Box 11330  
Columbia, SC 29211

May 31, 2011



Tjay M. Bagwell, Attorney at Law  
Post Office Box 238  
Walhalla, South Carolina 29691  
(864) 638-5134  
Attorney for Appellant

**FORM 7  
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

George E. Brown, Circuit Court Judge

Case No. 2009-CP-37-00493

**RECEIVED**

**JUN - 9 2011**

**S.C. Supreme Court**

FERNANDO MONTES-  
SAENZ #318934,

Respondent,

v.

STATE OF SOUTH  
CAROLINA

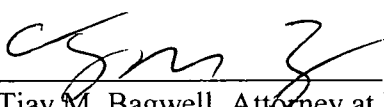
Appellant.

**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal on, South Carolina Attorney General, by depositing a copy of it in the United States Mail, postage prepaid, on May 31, 2011, addressed as follows:

P.O. Box 11549  
Columbia, S.C. 29211

May 31, 2011

  
\_\_\_\_\_  
Tjay M. Bagwell, Attorney at Law  
Post Office Box 238  
Walhalla, South Carolina 29691  
(864) 638-5134  
Attorney for Appellant

**FORM 7**  
**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

---

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

George E. Brown, Circuit Court Judge

---

Case No. 2009-CP-37-00493

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FERNANDO MONTES-  
SAENZ #318934,

Respondent,

v.

STATE OF SOUTH  
CAROLINA

Appellant.

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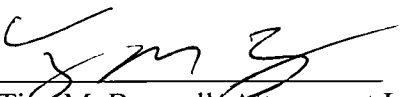
PROOF OF SERVICE

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I certify that I have served the Notice of Appeal on, The Honorable Daniel E. Shearouse, Clerk, Supreme Court for South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on May 31, 2011, addressed as follows:

Supreme Court Building  
P.O. Box 11330  
Columbia, SC 29211

May 31, 2011

  
\_\_\_\_\_  
Tjay M. Bagwell, Attorney at Law  
Post Office Box 238  
Walhalla, South Carolina 29691  
(864) 638-5134  
Attorney for Appellant

**RECEIVED**

JUN - 9 2011

**S.C. Supreme Court**

**FORM 7  
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

George E. Brown, Circuit Court Judge

Case No. 2009-CP-37-00493

RECEIVED

JUN - 9 2011

S.C. Supreme Court

FERNANDO MONTES-  
SANEZ #318934,

Respondent,

v.

STATE OF SOUTH  
CAROLINA

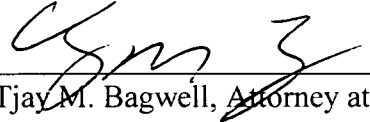
Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on, Office of Indigent Defense, by depositing a copy of it in the United States Mail, postage prepaid, on May 31, 2011, addressed as follows:

PO Box 11433  
Columbia, SC 29211-1433

May 31, 2011

  
Tjay M. Bagwell, Attorney at Law  
Post Office Box 238  
Walhalla, South Carolina 29691  
(864) 638-5134  
Attorney for Appellant

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF OCONEE )  
 )  
 Fernando Montes Saenz, #318934, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2009-CP-37-0493

**ORDER OF DISMISSAL**

FILED OCONEE, SC  
 BEVERLY H. WHITFIELD  
 CLERK OF COURT  
 2011 MAY 25 P 4:12

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 20, 2009. The Respondent made its Return on or about October 1, 2009. An evidentiary hearing into the matter was convened on March 14, 2011, at the Oconee County Courthouse. The Applicant was present at the hearing and was represented by Tjay Bagwell, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf.<sup>1</sup> Also testifying was David Almaraz, Esquire ("Counsel").<sup>2</sup> This Court had before it the records of the Oconee County Clerk of Court, the trial transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

**PROCEDURAL HISTORY**

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Oconee County Clerk of Court. Applicant was indicted Trafficking in Cocaine, Greater than 400 grams (2006-GS-37-0406). David

<sup>1</sup> An interpreter assisted with the hearing, translating the proceedings for Applicant and translating Applicant's testimony.  
<sup>2</sup> Counsel is a member of the Texas Bar and resides in Texas. His testimony was taken by telephone in open court.

*cert. denied by Gen.*

Almaraz, Esquire, represented him.<sup>3</sup> On November 27-28, 2006, a bench trial was conducted before the Honorable Howard P. King. Applicant was found guilty and sentenced to thirty (30) years imprisonment and a fine of \$200,000.00.

A Notice of Appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Montes-Saenz, Op. No. 2008-UP-548 (S.C. Ct. App. filed October 9, 2008). The Remittitur was sent on October 27, 2008.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. Failed to investigate, research, and familiarize himself with the facts and circumstances of the traffic stop before moving to suppress.
  - b. Failure to challenge "an indictment obtained through acts of perjury and gross prosecutorial misconduct."
2. "Due Process Violation."

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

#### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

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<sup>3</sup> Counsel was admitted pro hac vice, and Beattie Ashmore, Esquire, served as local counsel.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

#### *Failure to Adequately Argue Motion to Suppress*

Applicant asserts that Counsel was ineffective in failing to adequately challenge the traffic stop. At PCR hearing, Applicant testified to the facts surrounding the traffic stop. Applicant's PCR testimony was similar to his trial testimony. (Tr. pp. 124-138.) Counsel testified that his motion to

suppress was heard over the course of two days, the majority of the bench trial. Counsel stated that he also filed extensive memoranda prior to the trial on the issue of the traffic stop. Counsel stated and the transcript reflects that Counsel conducted extensive cross-examination of the arresting officer. Counsel's performance in this regard was within reasonable professional norms. Further, the issue of whether the trial court erred in denying Applicant's motion to suppress on 4<sup>th</sup> Amendment grounds was raised on appeal, and the South Carolina Court of Appeals affirmed the trial court's decision.

Applicant asserts that Counsel should have made a better argument in his motion to suppress. Applicant specifically points to State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010). In Tindall, the South Carolina Supreme Court found that the trial court erred in denying a motion to suppress where, after the dispatcher reported no problems with the license or vehicle and the officer informed Tindall he would be receiving a warning ticket, the officer did not write the ticket but continued to question Tindall for an additional six to seven minutes. The Court found that the officer lacked probable cause to extend Tindall's detention at the time the purpose for the traffic stop ended. In contrast, in Applicant's case, the facts giving rise to the experienced officer's reasonable suspicion to conduct a dog sniff came forth during the normal course of the stop and prior to the issuance of the warning (e.g. inconsistency as to whose car he was driving, Georgia tags displayed but paper tags in the back seat, lack of driver's license, sweating in cold weather, dry mouth, pulsing carotid artery, origination from a drug area, lack of registration, type of car known to be used in drug trafficking with concealed compartments, air freshener in car, nervousness did not abate when told he would receive a warning). See State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (2011) (officer had reasonable suspicion to continue detention after conclusion of traffic stop); State v. Wallace, 707 S.E.2d 451 (Ct. App. 2011)

(officer had reasonable suspicion justifying extension of detention for dog sniff). As evidenced by the Court of Appeals' decision in Applicant's case and the foregoing, further argument on this issue would not have changed the outcome at trial.

**Other Allegations**

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

**CONCLUSION**

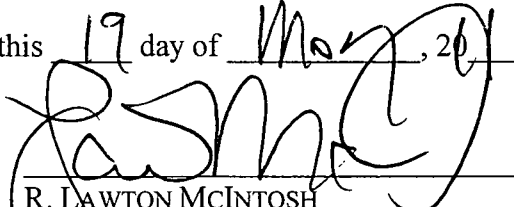
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of May, 2011.

  
 \_\_\_\_\_  
 R. LAWTON MCINTOSH  
 Presiding Judge  
 Tenth Judicial Circuit

Anderson, South Carolina.

FILED O'CONNOR, SC  
 BEVERLY H. WHITFIELD  
 CLERK OF COURT  
 2011 MAY 25 P 4:12

STATE OF SOUTH CAROLINA )

COUNTY OF OCONEE )

Fernando Montes Saenz, 318934 )

Plaintiff )

v. )

State Of South Carolina )

Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
2009-CP-37-0493

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney: Tjay Bagwell, Bar No. Address: Post Office Box 238 Walhalla, SC 29691-0238 phone: (864) 638-5134 fax: (864) 638-9974 e-mail:            other:	Defendant's Attorney: Mary S. Williams, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 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**

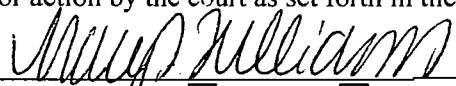
Nature of Motion:

Estimated Time Needed:            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

May 13, 2011  
 \_\_\_\_\_  
 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: EXEMPT

Date Filed:

- MOTION FEE COLLECTED: \_\_\_\_\_  
 CONTESTED – AMOUNT DUE: \_\_\_\_\_

FILED OCONEE, SC  
 BEVERLY H. WHITFIELD  
 CLERK OF COURT  
 2011 MAY 25 PM 4:12

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF OCONEE

CASE NO: 2009CP3700493

IN THE COURT OF COMMON PLEAS

**Fernando Montes-Saenz vs. South Carolina-State Of**

**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), 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;  Statement of Judgment by the Court: \_\_\_\_\_

**Order of Dismissal**

Dated at Walhalla, South Carolina, this 19th day of May, 2011.

Court Reporter:

S/ R. LAWTON McINTOSH

PRESIDING JUDGE - R Lawton McIntosh

This <sup>Order</sup> judgment was entered on the 25th day of May, 2011, and a copy mailed first class this 25th day of May, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Tjay Bagwell Attorney at Law PO Box 238,  
Walhalla, SC 29691

Mary S Williams Attorney General's Office P. O.  
Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield

Beverly H. Whitfield - Clerk of Court / *HL*

**Tjay M. Bagwell**  
**Attorney at Law**

---

PO Box 238  
314 B East Main Street  
Walhalla, Sc 29691

Phone 864-638-5134  
Fax 864-638-9974  
[bagwelllawfirm@yahoo.com](mailto:bagwelllawfirm@yahoo.com)

May 31, 2011

FORM 8  
LETTER TO THE APPELLATE COURT CLERK  
FILING THE NOTICE OF APPEAL

The Honorable Jeanette Barber  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court for South Carolina  
Supreme Court Building  
P.O. Box 11330  
Columbia, SC 29211

**RECEIVED**

JUN 07 2011

**S.C. SUPREME COURT**

Re: Fernando Montes-Saenz vs. County of Oconee  
Case Number 2009-CP-37-00493

Dear Mrs. Barber [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.
2. A Copy of the order which is to be challenged on the appeal.
3. Under Rule 203(d)(2)(B)(iii), SCACR, a filing fee is not required if the appeal is from a criminal case including juvenile delinquency matters, or if the appeal is taken by the state of South Carolina, its departments or agencies. Further, no filing fees are required in post-conviction relief cases. Rule 240(d), ACACR
4. This appeal is being filed with the Supreme Court because this is an appeal of an

order (judgment) of a Post-Conviction Relief case, which is to be appealed directly to the Supreme Court of South Carolina.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tjay M. Bagwell', with a long horizontal flourish extending to the right.

Tjay M. Bagwell, Attorney at Law  
PO Box 238(314 B. East Main Street)  
Walhalla, SC 29691

cc: South Carolina Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

Office of Indigent Defense  
PO Box 11433  
Columbia, SC 29211-1433

**FORM 1**  
**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA

~~In The Court of Appeals~~

[In The Supreme Court]

*O'Connell*

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

George E. Brown, Circuit Court Judge

Case No. 2009-CP-37-00493

FERNANDO MONTES-  
SAENZ #318934,

Respondent,

v.

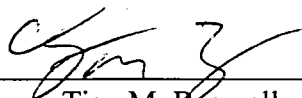
STATE OF SOUTH  
CAROLINA,

Appellant.

NOTICE OF APPEAL

Fernando Montes-Saenz appeals the order [judgment] of the Honorable J. Michael Baxley, dated May 31, 2011. Appellant received written notice of entry of this order [judgment] on May 31, 2011.

May 31, 2011



Tjay M. Bagwell, Attorney at Law  
Post Office Box 238  
Walhalla, South Carolina 29691  
(864) 638-5134  
Attorney for Appellant

Other Counsel of Record:  
Adam West Lee  
Post Office Box 11549  
Columbia, South Carolina 29211  
Attorney for Respondent

**RECEIVED**

JUN 07 2011

S.C. SUPREME COURT

**FORM 7**  
**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

---

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

George E. Brown, Circuit Court Judge

---

Case No. 2009-CP-37-00493

---

FERNANDO MONTES-  
SAENZ #318934,

Respondent,

v.

STATE OF SOUTH  
CAROLINA

Appellant.

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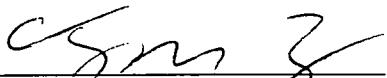
PROOF OF SERVICE

---

I certify that I have served the Notice of Appeal on, South Carolina Attorney General, by depositing a copy of it in the United States Mail, postage prepaid, on May 31, 2011, addressed as follows:

P.O. Box 11549  
Columbia, S.C. 29211

May 31, 2011

  
\_\_\_\_\_  
Tjay M. Bagwell, Attorney at Law  
Post Office Box 238  
Walhalla, South Carolina 29691  
(864) 638-5134  
Attorney for Appellant

**FORM 7**  
**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

---

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

George E. Brown, Circuit Court Judge

---

Case No. 2009-CP-37-00493

---

FERNANDO MONTES-  
SANEZ #318934,

Respondent,

v.

STATE OF SOUTH  
CAROLINA

Appellant.

---

PROOF OF SERVICE

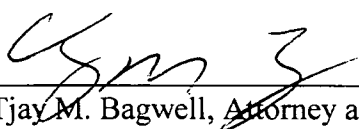
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PO Box 11433  
Columbia, SC 29211-1433

May 31, 2011

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Tjay M. Bagwell, Attorney at Law  
Post Office Box 238  
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(864) 638-5134  
Attorney for Appellant

**FORM 7**  
**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

George E. Brown, Circuit Court Judge

Case No. 2009-CP-37-00493

FERNANDO MONTES-  
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STATE OF SOUTH  
CAROLINA

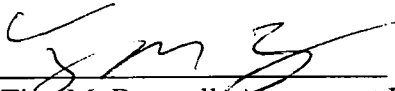
Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on, The Honorable Daniel E. Shearouse, Clerk, Supreme Court for South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on May 31, 2011, addressed as follows:

Supreme Court Building  
P.O. Box 11330  
Columbia, SC 29211

May 31, 2011

  
\_\_\_\_\_  
Tjay M. Bagwell, Attorney at Law  
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Attorney for Appellant

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

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Court of Common Pleas

George E. Brown, Circuit Court Judge

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Case No. 2009-CP-37-00493

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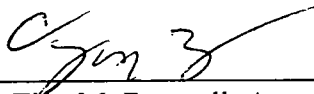
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Tjay M. Bagwell, Attorney at Law  
Post Office Box 238  
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(864) 638-5134  
Attorney for Appellant

STATE OF SOUTH CAROLINA )  
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 COUNTY OF OCONEE )  
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 Fernando Montes Saenz, #318934, )  
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 Applicant, )  
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 v. )  
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 State of South Carolina, )  
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 Respondent. )

IN THE COURT OF COMMON PLEAS

2009-CP-37-0493

**ORDER OF DISMISSAL**

FILED OCONEE, SC  
 BEVERLY H. WHITFIELD  
 CLERK OF COURT  
 2011 MAY 25 P 4: 12

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*cert. denied*

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Applicant asserts that Counsel was ineffective in failing to adequately challenge the traffic stop. At PCR hearing, Applicant testified to the facts surrounding the traffic stop. Applicant's PCR testimony was similar to his trial testimony. (Tr. pp. 124-138.) Counsel testified that his motion to

suppress was heard over the course of two days, the majority of the bench trial. Counsel stated that he also filed extensive memoranda prior to the trial on the issue of the traffic stop. Counsel stated and the transcript reflects that Counsel conducted extensive cross-examination of the arresting officer. Counsel's performance in this regard was within reasonable professional norms. Further, the issue of whether the trial court erred in denying Applicant's motion to suppress on 4<sup>th</sup> Amendment grounds was raised on appeal, and the South Carolina Court of Appeals affirmed the trial court's decision.

Applicant asserts that Counsel should have made a better argument in his motion to suppress. Applicant specifically points to State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010). In Tindall, the South Carolina Supreme Court found that the trial court erred in denying a motion to suppress where, after the dispatcher reported no problems with the license or vehicle and the officer informed Tindall he would be receiving a warning ticket, the officer did not write the ticket but continued to question Tindall for an additional six to seven minutes. The Court found that the officer lacked probable cause to extend Tindall's detention at the time the purpose for the traffic stop ended. In contrast, in Applicant's case, the facts giving rise to the experienced officer's reasonable suspicion to conduct a dog sniff came forth during the normal course of the stop and prior to the issuance of the warning (e.g. inconsistency as to whose car he was driving, Georgia tags displayed but paper tags in the back seat, lack of driver's license, sweating in cold weather, dry mouth, pulsing carotid artery, origination from a drug area, lack of registration, type of car known to be used in drug trafficking with concealed compartments, air freshener in car, nervousness did not abate when told he would receive a warning). See State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (2011) (officer had reasonable suspicion to continue detention after conclusion of traffic stop); State v. Wallace, 707 S.E.2d 451 (Ct. App. 2011)

(officer had reasonable suspicion justifying extension of detention for dog sniff). As evidenced by the Court of Appeals' decision in Applicant's case and the foregoing, further argument on this issue would not have changed the outcome at trial.

### Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

### CONCLUSION

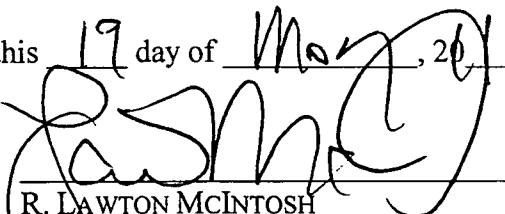
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

### IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of May, 2011.

  
R. LAWTON MCINTOSH  
Presiding Judge  
Tenth Judicial Circuit

Anderson, South Carolina.

FILED O'CONNOR, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT  
2011 MAY 25 P 4:12

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Fernando Montes Saenz, 318934

Plaintiff

v.

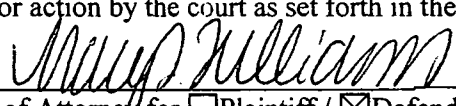
State Of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.  
2009-CP-37-0493

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney: Tjay Bagwell, Bar No. Address: Post Office Box 238 Walhalla, SC 29691-0238 phone: (864) 638-5134 fax: (864) 638-9974 e-mail: other:	Defendant's Attorney: Mary S. Williams, 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.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	
Date submitted: <u>May 13, 2011</u>	
<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, SCRCF) <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:	JUDGE _____ CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: <u>EXEMPT</u> <input type="checkbox"/> MOTION FEE COLLECTED: <input type="checkbox"/> CONTESTED - AMOUNT DUE:	Date Filed: _____

FILED OCONEE, SC  
 BEVERLY H. WHITFIELD  
 CLERK OF COURT  
 2011 MAY 25 P 4: 12

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF OCONEE

CASE NO: 2009CP3700493

IN THE COURT OF COMMON PLEAS

**Fernando Montes-Saenz vs. South Carolina-State Of**

**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), 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;  Statement of Judgment by the Court:

**Order of Dismissal**

Dated at Walhalla, South Carolina, this 19th day of May, 2011.

Court Reporter:

**S/ R. LAWTON McINTOSH**

**PRESIDING JUDGE - R Lawton McIntosh**

This <sup>Order</sup> judgment was entered on the 25th day of May, 2011, and a copy mailed first class this 25th day of May, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

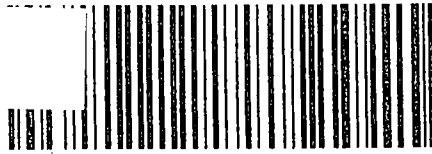
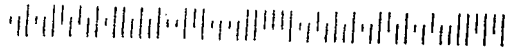
Tjay Bagwell Attorney at Law PO Box 238,  
Walhalla, SC 29691

Mary S Williams Attorney General's Office P. O.  
Box 11549 Columbia, SC 29211

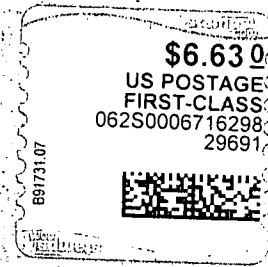
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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

Beverly H. Whitfield  
Beverly H. Whitfield - Clerk of Court / *tel*



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*Fernando  
Montes - Saeny*

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court for South Carolina  
Supreme Court Building  
P.O. Box 11330  
Columbia, SC 29211