

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 19, 2012

Stacy L. Evans #152040
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Evans, Stacy L. v. The State

Dear Mr. Evans:

Your counsel has submitted a Petition for Writ of Certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition & Appendix on April 18, 2012.

You may, within forty-five (45) days of the date of this letter, file with this Court a pro se response to the Petition filed by your counsel. In this response, you may raise and argue any issues you believe the Court should consider in this appeal. Upon receipt of your pro se response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

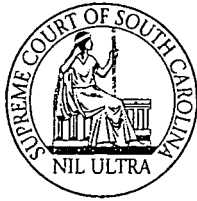
If you do decide to file a pro se response, the response must be either typewritten or legibly hand printed, and must have at least a one inch margin on all sides. Further, you will need to only submit one copy of your response, and this copy **should not** be stapled or bound in any manner.

Very truly yours,

Daniel E. Shearouse
35
CLERK

DES/jj

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General David Spencer



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 9, 2012

Appellate Defender Dayne C. Phillips
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: Evans, Stacy L. v. The State

Dear Counsel:

Enclosed is correspondence your client sent Chief Justice Toal. Since you represent him in this matter, no action will be taken on this *pro se* filing. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989).

Very truly yours,

CLERK

Enclosure

cc: Assistant Attorney General David Spencer
Mr. Stacy L. Evans, #152040

4-1-2012

RECEIVED

APR 5 2012

To Chief Justice Toal

S.C. SUPREME COURT
I'm am writing you concerning A critical issue in my case
MS Toal. I know you Tell me I need to get with my LAWER
You Tell me you cannot intervene Because I have A LAWER MS Toal
When I ask hem to call or writ you to see if you give A
consent order for the term of the grand jury in August of 2008
the 29 day MS Toal LAW say ther WAS NOT on term in AUGUSE that
WAS A off day en month the LAW SAY unber 145-780. MS Toal the first
indictment WAS nolle Prosequi the day I'm in court that WAS in
Decemer 8, 2008 The second indictment it WAS give to the Judge
it had the dat of November 20, 2008. MS Toal unber the LAW 145-780
the grand jury Did not have the right to meet with out A consent
order From you. When I ask my LAWER to see if MS Toal give A
consent order he tell me if it WAS not on the PCR TRANSCRIPT
~~He~~ He cannot raised Subject matter jurisdiction MS Toal you
telling me you cannot intervene why. ~~As~~ this LAWER is not
going the hepp me Subject matter jurisdiction can be raised
at any time if He would call you ask you for A copy of the
consent order OR A letter tell hem ther is on consent order
by you MS Toal he will not Do with I ask. This letter is very
important to my case MS Toal I know you hold the power to
extend the term of the grand jury term and I know you is
The only Person how can give extend term of the grand jury term
an it must be A consent order done Prior to the issue of the
indictment MS Chief Justice Toal I'm asking you to Plesse
intervine I'm in need of this letter or the document Please
help me can you writ BACK To me an let me know Please
seand me A copy of my letter BACK to me

STACY L. EVANS #152040 F2-151

McCormick Correctional INST

McCormick SIC 29899

Legal Mail

AMS

To Chief Justice Tol

The Supreme Court of Carolina

DANIEL E. SHEAROUSE CLERK OF COURT

Post office Box 11330

Columbia, South Carolina 29211

The Supreme Court of South Carolina

Stacy L. Evans,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Thomas A. Russo
Florence County
Trial Court Case No. 2010-CP-21-01258

ORDER

For good cause shown, the request for an extension until April 18, 2012 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

March 20, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General David Spencer

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Florence County
Thomas A. Russo, Circuit Court Judge

RECEIVED

MAR 19 2012

STACY L. EVANS,

PETITIONER, S.C. Supreme Court

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

(3)

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

Counsel for Stacy L. Evans respectfully requests an extension of a **final** 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, March 19, 2012.
2. Counsel for Mr. Evans 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. Counsel will be filing the petition for writ of certiorari and appendix in Cedric Perkins v. State on today. On March 13, 2012 counsel filed the petition for writ of certiorari and appendix in Billy S. Tucker v. State. On March 6, 2012, counsel filed the petition for writ of certiorari and appendix in Victor Brown

v. State. On February 16, 2012 counsel filed the petition for writ of certiorari and appendix in William Head v. State. On February 13, 2012 counsel had an oral argument in State v. Adrian Eaglin. On February 8, 2012 counsel filed the initial brief of appellant and designation of matter in Robert Lee Banks v. State. On February 2, 2012 counsel filed the initial brief of appellant and designation of matter in Dan Williams v. State.

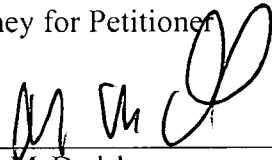
4. Counsel makes this request in good faith and not for purpose of delay.
5. As indicated by signature below, Andrew Johnson, of the South Carolina Attorney General's Office, does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final** 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,



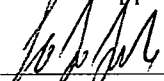
Dayne C. Phillips
Appellate Defender
Attorney for Petitioner



Robert M. Dudek
Chief Appellate Defender

March 19, 2012

I do not oppose:



Andrew Johnson

The Supreme Court of South Carolina

Stacy L. Evans,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Thomas A. Russo
Florence County
Trial Court Case No. 2010-CP-21-01258

ORDER

For good cause shown, the request for an extension until March 19, 2012 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. Shealy
Clerk

Columbia, South Carolina *Chief Deputy*

February 17, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General David Spencer

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Florence County
Thomas A. Russo, Circuit Court Judge

RECEIVED

FEB 16 2012

STACY L. EVANS,

S.C. Supreme Court
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

(2)

Counsel for Stacy L. Evans 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:

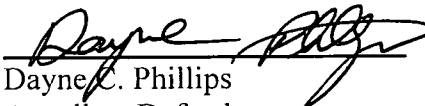
1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today, February 16, 2012.
2. Counsel for Mr. Evans respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.
3. Today, counsel will be filing the petition for writ of certiorari and appendix in William Head v. State. On February 13, 2012 counsel had an oral argument in State v. Adrian Eaglin.

On February 8, 2012 counsel filed the initial brief of appellant and designation of matter in Robert Lee Banks v. State. On February 2, 2012 counsel filed the initial brief of appellant and designation of matter in Dan Williams v. State. On January 26, 2012 counsel filed the petition for writ of certiorari and appendix in Joshua Manning v. State. On January 18, 2012 counsel filed the petition for writ of certiorari and appendix in Jeffrey Higgins v. State. On January 17, 2012 counsel filed the petitions for writ of certiorari and appendices in Billy James Lupo v. State and Stanley O. Williams v. State. On January 9, 2012 counsel filed the petitions for writ of certiorari and appendices in Joseph Samuel Whitt v. State and Edward Thompson v. State. On January 5, 2012 counsel filed the petition for rehearing in State v. Bradley Scott Senter. On January 3, 2012 counsel filed the petition for writ of certiorari and appendix in Willie James v. State.

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 Florence County
Thomas A. Russo, Circuit Court Judge

STACY L. EVANS,

PETITIONER,

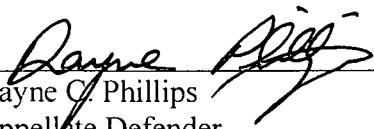
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

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 J. Rutledge Johnson, Esquire, this 16th day of February, 2012.


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 16th day
of February, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.

The Supreme Court of South Carolina

Stacy L. Evans,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Thomas A. Russo
Florence County
Trial Court Case No. 2010-CP-21-01258

ORDER

The request for an extension until February 16, 2012 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.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Lorenda I. Shealy*
Clerk

Chief Deputy
Columbia, South Carolina

January 18, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General David Spencer



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

January 17, 2012

RECEIVED

JAN 17 2012

S.C. Supreme Court

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

Re: Stacy L. Evans v. State of South Carolina

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in the above-referenced case are due to be served and filed today. Because of my present workload, I respectfully request a thirty-day extension of this deadline. No prior extensions have been requested in this case.

By copy of this letter to Assistant Attorney General David Spencer, I am informing him of this request.

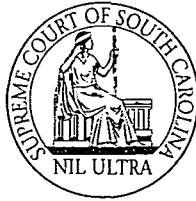
Thank you for your assistance in this matter.

Sincerely,

Dayne C. Phillips
Assistant Appellate Defender

DCP/fkb

cc: David Spencer, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 10, 2012

Stacy L. Evans #152040
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Evans, Stacy L. v. The State

Dear Mr. Evans:

This responds to your undated letter to Chief Justice Toal received by this office on January 6, 2012. Please be advised that the Chief Justice cannot intervene in your case. Since you are represented by counsel in this matter, no action will be taken on your pro se letter. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

Any concerns you have about this matter should be raised to the Division of Appellate Defense. The address for that Office is P.O. Box 11589, Columbia, SC 29211, and their phone number is 803-734-1343.

Very truly yours,



CLERK

DES/jj

cc: Appellate Defense
Assistant Attorney General David Spencer

M.S. Toal

I am writing you concerning a critical issue in my case
Ma'am. I WAS indicted on AUGUST 28, 2008 which WAS nolle
prosequi the day I'm in court on DECEMBER 8, 2008. The judge
WAS handed a second indictment with the date of November
20, 2008, M.S. Toal I do now under § 14-5-780, THE Terms
of court in twelfth circuit of FLORENCE county, Ma'am
I WAS never indicted by a properly established or constituted
grand jury which is mandatory in this STATE, Ma'am. I understand
when a STATUTE is penal in nature. It MUST be construed
strictly against the STATE and in favor of the defendant
and when the language of a STATUTE is clear and explicit a
court cannot rewrite the STATUTE and inject matter into it
which are NOT in the legislature's language, and there is no
need to resort to statutory interpretation or legislative intent to
determine its meaning. Ma'am. that can be found at [STATE v.
Leopard, 563 S.E.2d 342] Ma'am I understand you are the only
person that holds the power to extend the term of court and
it MUST be a consent order done prior to the issuing of
the indictment. Ma'am I am sending you copies of all documents
and I pray that you will intervene into this matter.

Thank you for your time

Respectfully Submitted

RECEIVED

JAN 08 2012

S.C. SUPREME COURT

1 and steaks.

2 MR. FOREMAN: We'll wait awhile.

3 THE COURT: You all are through for the week. Here's
4 the deal. Next thing is I sentence Mr. Evans. You can hang
5 around if you like but it's like life or so, it's not even an
6 option it's just like life. If you want to hang around you
7 can, if not you don't have to call back in. You are through
8 for the week. I believe Ms. O'Hara has your statement saying
9 where you have been, and the check will be in the mail. You
10 are through for the week.

11 MR. FOREMAN: Check is in the mail.

12 THE COURT: Will be in the mail, not in the mail yet.
13 If you all would like to go now is the time.

14 Okay. We need Ms. O'Hara to come then we can do it.

15 (Whereupon, the jury was dismissed at 5:35 p.m. on
16 December 18, 2008.)

17 THE COURT: We need for Ms. O'Hara to come back in,
18 and we can do it.

19 MOTIONS

20 MR. LAWSON: May it, please The Court. The Defense
21 would renew our Motion made at the end of The State's case.

22 Also, I would submit the verdict that Defense would be
23 entitled to a verdict not --- judgment not withstanding
24 verdict. Basis, it appears that it is a compromise verdict.
25 Based on the evidence, the Defense sees it that it was all or

REASONABLE DOUBT -
EVIDENCE DOES NOT SUPPORT VERD. 1

THE STATE V STACY LEE EVANS

419

1 (Whereupon, the jury enters the courtroom at 5:32 p.m.)

2 THE COURT: Mr. Foreman, has they jury reached a
3 verdict.

4 MR. FOREMAN: Yes, Your Honor, we have.

5 THE COURT: If you would just hand it --

6 CLERK OF COURT: I'll get it.

7 THE COURT: Okay.

8 VERDICT

9 CLERK OF COURT: The State versus Stacey Lee Evans.
10 Indictment 2008-GS-21-1827. We the jury find by unanimous
11 agreement find the Defendant, Stacey Lee Evans, count one,
12 kidnaping, guilty.

13 Count Two. Criminal sexual conduct, guilty.

14 Count Three. Criminal sexual conduct first degree, not
15 guilty.

16 Count four. Criminal sexual conduct first degree, not
17 guilty.

18 Signed, Charles Byrd. Dated December 10, 2008.

19 CLERK OF COURT: Members of the jury, if this your
20 verdict, please raise your right hand.

21 THE COURT: Okay, jurors --- anything else required of
22 the jurors from The State? -

23 MS: PARR: No, Your Honor.

24 MR. LAWSON: Nothing, Your Honor.

25 THE COURT: We were just before ordering those lobsters

1 and then we will start the trial, as I understand it. What
2 about the rest of the jurors, are they going to call in, or do
3 they have another trial or what?

4 MR. CLEMENTS: Your Honor, if they would call back after
5 six tonight.

6 THE COURT: All right. This is the Indictment that was
7 just handed to me that we are going to proceed on.

8 MS. PARR: That is Indictment 08-GS-21-1827

9 THE COURT: The Solicitor and the Defense Counsel asked
10 that I tell you that he has just Indictment for one charge.
11 They are not two different charges. There are just some typos
12 or something in the first Indictment?

13 MR. LAWSON: A charge was changed, Your Honor.

14 MS. PARR: Changed, Your Honor, inadvertently.

15 THE COURT: Inadvertently. But, it all arises out of
16 the alleged same transaction that occurred, or didn't occur on
17 February 23, 2008. Is that correct?

18 MR. LAWSON: That is correct.

19 THE COURT: So this Indictment alleges the same thing,
20 and it creates no inference of guilt against Mr. Evans, not
21 exactly the same thing in words, but the same charges. It
22 charges him with kidnaping. He is presumed innocent. There
23 is no burden on his part to prove that he is not guilty.

24 Count one alleges, that he kidnaped Gloria Williamson.
25 If you get on the jury, kidnaping will be explained to you,

1 doubt, that is they have got to convince twelve jurors
2 unanimously, beyond a reasonable doubt, that he committed one
3 or more of these crimes before he could be convicted.

4 Now, again the Indictment just contains allegations.

5 Count one of the Indictment alleges that Stacy Lee Evans,
6 back in February of this year committed the crime of
7 kidnaping; in that he kidnaped one Gloria Williamson.

8 Kidnaping, is just restraining, moving one person from
9 one place to another.

10 **MS. PARR:** Your Honor, I apologize. Can we approach?

11 **THE COURT:** You can do it.

12 (Whereupon, a bench conference was held in the presence
13 of the jury but out of the hearing of the jury.)

14 **THE COURT:** Apparently, they handed me the wrong
15 Indictment. Inefficiency, will not be tolerated.

16 They have got to go and get another Indictment, and I
17 don't know what they call it, until they hand it to me jurors.
18 That is how it works.

19 Civil cases, the judge runs the docket.

20 (Whereupon, a bench conference was held in the presence
21 of the jury, but out of the hearing of the jury.)

22 **(PAUSE)**

23 **THE COURT:** Okay, just so the jury doesn't start
24 throwing things; what happens after we pick this jury? We are
25 going to pick this jury, and they are going to go to lunch,

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR KIDNAPPING
CRIMINAL SEXUAL CONDUCT 3 COUNTS WITH THE AFORESAID NAME(S) OF STACY LEE
EVANS SHOWN THEREON:

COUNT FOUR - CRIMINAL SEXUAL CONDUCT (FIRST DEGREE)

That STACY LEE EVANS did in FLORENCE County on or about February 23, 2008, violate Section 16-03-0652 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did commit, or attempt to commit, a sexual battery in and upon Gloria Williamson by using aggravated force and/or coercion upon Gloria Williamson, by having vaginal intercourse with the victim while committing the crime of kidnapping and by assaulting her and threatening to kill her, while possessing a knife.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E.L. Clement
CERTIFIED: A TRUE COPY
Maria Reel-Spencer
SOLICITOR
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

KIDNAPPING CRIMINAL SEXUAL CONDUCT 3
COUNTS

At a Court of General Sessions, convened on [NOVEMBER 20, 2008] the Grand Jurors of FLORENCE

County present upon their oath:

COUNT ONE - KIDNAPPING

That STACY LEE EVANS did in FLORENCE County on or about February 23, 2008, violate Sections 16-03-0910 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one Gloria Williamson by any means whatsoever, without authority of law and by the use of force.

COUNT TWO - CRIMINAL SEXUAL CONDUCT (FIRST DEGREE)

That STACY LEE EVANS did in FLORENCE County on or about February 23, 2008, violate Section 16-03-0652 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did commit, or attempt to commit, a sexual battery in and upon Gloria Williamson by using aggravated force and/or coercion upon Gloria Williamson, by having vaginal intercourse with the victim while committing the crime of kidnapping and by assaulting her and threatening to kill her, while possessing a knife.

COUNT THREE - CRIMINAL SEXUAL CONDUCT (FIRST DEGREE)

That STACY LEE EVANS did in FLORENCE County on or about February 23, 2008, violate Section 16-03-0652 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did commit, or attempt to commit, a sexual battery in and upon Gloria Williamson by using aggravated force and/or coercion upon Gloria Williamson, by forcing her to perform oral sex on him while committing the crime of kidnapping and by assaulting her and threatening to kill her while possessing a knife.

WITNESSES
LT. BRETT CAMP FCSO

Cain helen

PROS: PSP

D/O: 02-23-2008

ARREST WARRANT NO.

CAW08K002 (1); CAW08K003 (2);
CAW08K004 (3); CAW08K005 (4).

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2008 - GS - 21 - 01827

The State of South Carolina,

County of FLORENCE
PSP

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

THE STATE
vs.

STACY LEE EVANS

Indictment for

KIDNAPPING
CRIMINAL SEXUAL CONDUCT
3 COUNTS

CERTIFIED: A TRUE COPY
Christie Reed
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

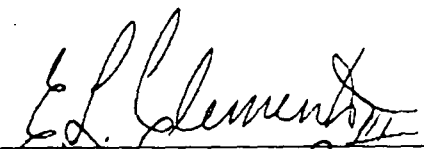
2008 NOV 20 PM 1:55
CLERK OF COURT
FLORENCE COUNTY, S.C.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR KIDNAPPING AND CRIMINAL SEXUAL CONDUCT (FIRST) (THREE COUNTS) WITH THE AFORESAID NAME(S) OF STACY LEE EVANS SHOWN THEREON:

COUNT FOUR - CRIMINAL SEXUAL CONDUCT (FIRST DEGREE)

That STACY LEE EVANS did in FLORENCE County on or about February 23, 2008, violate Section 16-03-0652 of the Code of Laws of South Carolina (1976), as amended, in that he did commit, or attempt to commit, a sexual battery in and upon Gloria Williamson, by using aggravated force and/or coercion upon Gloria Williamson, by forcing her to perform oral sex on him.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

CERTIFIED: A TRUE COPY
Maria Fel. Spaw
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

WITNESSES
LT. BRETT CAMP FCSO
Cain

PROS: PSP
D/O: 02-23-2008

ARREST WARRANT NO.
K272996 (1); K272997 (2); K272998 (3);
K272999 (4).

ACTION OF GRAND JURY

TRUE BILL

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date:

DOCKET NO. 2008 - GS - 21 - 01283

The State of South Carolina,

County of FLORENCE
PSP

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2008

THE STATE
vs.

STACY LEE EVANS

nothe pros. rendered
B. Bar
12/18/08

Indictment for

KIDNAPPING
AND
CRIMINAL SEXUAL CONDUCT (FIRST)
(THREE COUNTS)

CERTIFIED: A TRUE COPY
Annie Fed. Spain
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

1 THE COURT: But he's in jail so he's not going anyway.
2 You can bring him back Friday morning.

3 MR. LAWSON: Yes, sir.

4 THE COURT: Bring him back Friday morning, 9:30. That
5 is the proper time. Look up some law on that. He may have
6 you on that and it maybe he just gets thirty years, you know,
7 which is no small time anyway at his age. It's an 85%er.

8 MR. LAWSON: Correct, Your Honor.

9 THE COURT: But it's a little hope.

10 MR. LAWSON: That is correct.

11 MS. PARR: Thank you, Your Honor.

12 MR. LAWSON: Thank you.

13 THE COURT: All right.

14 MS. PARR: You want me to pull up his record on the
15 record on or do you want me to wait?

16 THE COURT: You might as well just wait.

17 MS. PARR: Okay.

18 THE COURT: Jurors, just for your edification. They
19 had served him with something called Life Without Parole on
20 that old indictment that they handed me to start with, that I
21 read. Well, they threw that one out and handed another one.
22 He represents they didn't serve him with Life Without Parole,
23 if he didn't it's just thirty, not life; which I don't know
24 off the top of my head, so we will do it Monday but it's
25 going to be the thirty or sixty or life, so there you go.

CERTIFICATE OF REPORTER

424

1 **THE COURT:** Okay, be back in the morning for whatever
2 you all got.

3 **MR. LAWSON:** Thank you, Your Honor.

4 **THE COURT:** All right.

5 (Whereupon, this trial was concluded at 5:40 p.m. on
6 Wednesday, December 10, 2008.)

7 **-- END OF TRANSCRIPT --**

1 nothing. And apparently that is not the way it turned out.

2 I would also reserve our right to file any additional
3 Motions within ten days of the verdict.

4 THE COURT: Yeah, certainly you can do that. Ms. Parr,
5 you agree with his Motion? She does not.

6 MR. LAWSON: I didn't think she would, Judge.

7 THE COURT: So I deny your Motion. The jury could of
8 easily found as they found, based upon the evidence. There is
9 no oral sex occurring. The State didn't prove the second
10 vaginal alleged penetration beyond a reasonable doubt, but
11 did the first one.

12 MR. LAWSON: Your Honor, additionally, I understand The
13 State originally filed a Notice of Life Without Parole.

14 MS. PARR: Yes.

15 MR. LAWSON: That filing was done under an indictment
16 that has now been non prossed, and no new filing was done. I
17 would submit that the filing is not appropriately before The
18 Court in relation to that issue for sentencing purposes.

19 MS. PARR: Your Honor, that was a --- I just noticed
20 --- I did not refile it again that Motion. It was filed
21 under the older indictment.

22 But, it is our position that Defense knew and had notice
23 that I had an affidavit of service were they were served.
24 They know that he had had a prior conviction for voluntarily
25 manslaughter as well. And that according to the [statute,]

Note She is referring to the statute, however she is in violation of the statute dealing with the indictment proceeding ~~and~~ altogether.

1 this was --- So, it is our position that they had sufficient

2 --

3 ^{Key} * THE COURT: * -- I don't know. You will have to do a
4 little research on that, didn't she. Just bring it back
5 in the morning. I don't know that off the top of my head
6 or not. Once you serve him with Notice of Life Without
7 Parole --

8 MS. PARR: -- For these same charges.

9 THE COURT: I understand, but it's different
10 indictments, his position. So --

11 MR. LAWSON: Your Honor, I must raise it.

12 THE COURT: Anyway, let's just look it up rather than
13 use make a clear mistake here, because we're got time.

14 Just bring him back Friday morning 9:30. That is plenty
15 of time to have that. We may not be right on it whatever we
16 do Friday morning, but that will be it. If it's not that,
17 what is it, up to thirty something like that?

18 MS. PARR: Up to thirty on both, Your Honor.

19 THE COURT: What he's looking at is a maximum of thirty
20 and thirty is sixty, if I gave him the max, which I don't
21 know.

22 MR. LAWSON: Yes, sir.

23 THE COURT: If he was not served LWOP under this
24 particular indictment.

25 MR. LAWSON: Correct, Your Honor.

MR. STACY EVANS #152040 # F2B ROOM 151

MC CORMICK CORRECTIONAL INSTITUTION

386 REDEMPTION WAY

MC CORMICK, SC 29899

LEGAL MAIL

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THE SUPREME COURT OF SOUTH CAROLINA

JEAN. H. TOTAL

P.O. BOX 11330

COLUMBIA, SOUTH CAROLINA 29211



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

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NOV 21 2011

November 21, 2011

S.C. Supreme Court

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

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.

Stacy L. Evans v. State of South Carolina

11/18/2011

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

SUPREME COURT OF SOUTH CAROLINA

5-4-11

DANIEL E. SHEAROUSE, CLERK

P.O. BOX 11330

COLUMBIA S.C. 29211

RE: STACY EVANS U.
THE STATE

CLERK;

I FILED MY NOTICE OF APPEAL WITH MY FINAL ORDER INCLUDED. THIS WAS MY ORIGINAL COPY. WILL YOU PLEASE SEND ME A COPY OF THIS ORDER FROM THE ORIGINAL I SENT YOU FOR APPEAL PURPOSES. I DON'T HAVE ANOTHER COPY. YOUR HELP WILL BE APPRECIATED IN THIS MATTER.

RECEIVED

MAY 12 2011

S.C. SUPREME COURT

Sincerely,

STACY EVANS #152040
MC CORMICK C.I.
386 REDEMPTION WAY
MC CORMICK S.C.

29855

mailed copy of
order 5/12/11
(2)



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

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APR 28 2011

S.C. Supreme Court

April 28, 2011

Ms. Kiesha T. Reed
Circuit Court Reporter
P.O. Box 12190
Florence, SC 29504-2190

Dear Ms. Reed:

Please provide us with the following transcript:

Stacy L. Evans v. State of South Carolina Case #: 10-CP-21-1258

County: Florence Date of Trial: February 7, 2011

Presiding Judge: Thomas A. Russo

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.

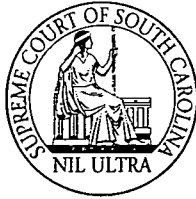
Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

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,


Lorie French
Legal Services Coordinator

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



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 29, 2011

Mr. Stacy L. Evans #152040
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Evans, Stacy L. v. The State

Dear Mr. Evans:

This responds to your letter dated April 28, 2011. Please be advised that you are now represented by the Division of Appellate Defense. You may contact that office by phone at 803-734-1343 or by mail at P.O. Box 11589, Columbia, SC 29211.

Very truly yours,



CLERK

cc: Appellate Defense
Assistant Attorney General David Spencer

SUPREME COURT OF SOUTH CAROLINA

473-11

DANIEL E. SHEAROUSE

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APR 21 2011

P.O. BOX 11330

COLUMBIA S.C. 29211

RE: CASE NO. 2010-CO-21-
S.C. SUPREME COURT
1258

Clerk,

I DO NOT INTEND TO DISMISS MY APPEAL I ONLY WAITED UNTIL I RECEIVED A RULING ON MY MOTIONS FOR MOTION TO RELIEVE COUNSEL FOR CONFLICT OF INTEREST AND MY SIDE MOTION. BOTH WERE DENIED IN THE LOWER COURTS. I INTEND TO APPEAL ALL MOTIONS IN MY "WRIT OF CERTIORARI". I ASK YOU APPOINT ME APPELLATE COUNSEL TO APPEAL MY PCR AND MY DENIAL OF MOTIONS I MADE IN THE LOWER COURTS.

Sincerely,

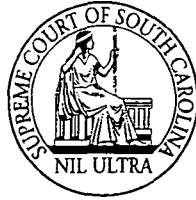
STACY L EVANS # 152040

McCormick C.F.

386 REDEMPTION WAY

McCormick S.C.

29855



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 8, 2011

Mr. Stacy Evans, #152040
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Evans, Stacy L. v. The State, 2010-CP-21-1258

Dear Mr. Evans:

This responds to your pro se letter requesting that the appeal in this matter be disregarded. Since Mr. Brooks represents you in this matter, no action will be taken on this pro se filing. Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989). Instead, any motion to dismiss this appeal will need to be made by your counsel.¹

Very truly yours,



CLERK

cc: Appellate Defense
Assistant Attorney General David Spencer
Charles Thomas Brooks, Esquire (with copy of letter)

¹ I am aware that you have made a motion to relieve Mr. Brooks as your counsel in the lower court. He is, however, your counsel of record before this Court. Rule 264(b), SCACR ("An attorney of record in a matter pending before an appellate court may not withdraw from representation of his client without justifiable cause, or the consent of his client; and then only after proper written notice to his client, on petition to and by written order of the appellate court, and with notice to the adverse party.")

SUPREME COURT S. TH CAROLINA
CLERK, DANIEL E. SHEAROUSE
P.O. BOX 11330
COLUMBIA S.C. 29210

3-28-11

CLERK,

I NEED A DISPOSITION CONCERNING MY APPEAL
AND IF IT HAS BEEN STAYED UNTIL MY POST-TRIAL
MOTIONS FOR REMOVAL OF COUNSEL AND SS(E) ARE
RESOLVED. YOUR HELP WILL BE APPRECIATED IN THIS
MATTER.

SINCERELY,

STACY EVANS #152040
MCCORMICK C.F.
F-1-A SIDE
386 REDEMPTION WAS
MCCORMICK S.C.
29855

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APR 04 2011
S.C. SUPREME COURT

SUPREME COURT SOUTH CAROLINA

3-29-11

CLERK, DANIEL F. SHEAROUSE

P.O. BOX 11330

COLUMBIA S.C. 29211

RE: NOTICE OF APPEAL

CA/MS: 2010-CP-21-1258

CLERK,
ENCLOSED IS THE FOLLOWING FOR FILING:

1. NOTICE OF INTENT TO APPEAL FINAL ORDER OF DENIAL OF PCR
2. NOTICE OF INTENT TO APPEAL DENIAL OF MOTIONS TO RELIEVE COUNSEL TO PROCEED PRO-SE AND TO FILE A JS(E) MOTION FOR RECONSIDERATION ON ALL UNHEARD ISSUES.
3. COPIES OF BOTH FINAL ORDERS
4. CERTIFICATE OF SERVICE ON ALL PARTIES.

PLEASE SEND ME A STAMPED (clocked) COPY FOR MY RECORDS ONCE FILED.

RECEIVED

APR 04 2011

S.C. SUPREME COURT

APPELLANT
"PRO-SE"

SINCERELY,

~~STACY L. EVANS~~

STACY L. EVANS #152040

M^C CORMICK C.F.

386 REDEMPTION WAY

M^C CORMICK S.C.

29899

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS

HONORABLE THOMAS A. BUSSO, CIRCUIT COURT
JUDGE

CA/NO: 2010-CP-21-1258

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS

HONORABLE MICHAEL NETTLES, CIRCUIT COURT
JUDGE

RECEIVED

APR 04 2011

S.C. SUPREME COURT

STACY L. EVANS APPELLANT,
SCDC#152040

v.

THE STATE RESPONDENT

NOTICE OF APPEAL

STACY L. EVANS, APPEALS HIS DENIAL FOR POST CONVICTION RELIEF IMPOSED BY THE HONORABLE THOMAS A. BUSSO, FEB. 18, 2011 AND APPEALS THE DENIAL OF HIS MOTION TO RELIEVE COUNSEL AND MOTION TO FILE A 59(E) FOR REHEARING ON ALL UNHEARD ISSUES IMPOSED ON MARCH 23, 2011 FROM HIS MOTION FILED ON FEB 25, 2011.

APPELLANT
"PRO SE"

STACY EVANS
STACY L. EVANS #152040
MCCORMICK C.I.
386 REDEMPTION WAY
MCCORMICK S.C. 29899

THE STA. OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS

HONORABLE THOMAS A. RUSSO, CIRCUIT COURT
JUDGE

HONORABLE, MICHAEL NETTLES, CIRCUIT COURT
JUDGE

CA/NO: 2010-CP-21-1258

STACY EVANS APPELLANT.

v,

THE STATE RESPONDENT.

CERTIFICATE OF SERVICE

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT ON THIS 29 DAY OF MARCH, 2011, I SERVED THE FOREGOING NOTICE OF APPEAL, ORDER OF DISMISSALS, AS WELL AS A CERTIFICATE OF SERVICE BY DEPOSITING A COPY IN THE U.S. MAIL POSTAGE PREPAID ADDRESSED TO THE FOLLOWING:

SOUTH CAROLINA SUPREME COURT
P.O. BOX 11330
COLUMBIA S.C. 29211

OFFICE OF ATTORNEY GENERAL
DAVID SPENCER, ESQUIRE
P.O. BOX 11549
COLUMBIA S.C. 29211

"APPELLATE"
"PRO SE"

SOUTH CAROLINA OFFICE
OF APPELLATE DEFENSE
1330 LADY ST., SUITE 401
P.O. BOX 11549
COLUMBIA S.C. 29211

STACY EVANS
STACY L. EVANS #152040
MCCORMICK C.F.
386 REDEMPTION WAY
MCCORMICK S.C. 29859

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-21-1258

STACY EVANS

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

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 The Court is in receipt of Defendant's Motion filed on February 25, 2011. The Motion has been considered and is hereby denied, without the necessity of a hearing.
- 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.

CERTIFIED A TRUE COPY
Miss. Fed. - Spencer
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

IT IS ORDERED AND ADJUDGED: See attached order. (Formal order to follow)
 Statement of Judgment by the Court:

Dated at Florence, South Carolina, this 23rd day of March, 2011.

Michael J. [Signature]
PRESIDING JUDGE

This judgment was entered on the 23 day of March, 2011, and a copy mailed first class this 24 day of March, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Charles T. Brooks, III
PO Box 3512
Sumter, SC 29151
ATTORNEY(S) FOR PLAINTIFF

David Spencer
PO Box 11549
Columbia, SC 29211
ATTORNEY(S) FOR DEFENDANT

Stacy Evans # 152040
386 Redemption way
McCormick, SC 29899

CLERK OF COURT

FILED
MAR 23 PM 1:34
CLERK OF COURT
FLORENCE COUNTY, SC

EXHIBIT - 11(A)

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
Stacy L. Evans,)
S.C.D.C. No. 152040,)
)
Applicant,)
)
VS.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. NO. 10-CP-21-1258

ORDER OF DISMISSAL

2011 FEB 22 AM 11:15
CONNIE REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, S.C.

FILED

This matter is before this Court by way of an application for post conviction relief (PCR) filed April 29, 2010. The State filed its return on September 3, 2010. A hearing was held before this Court at the Florence County Courthouse. Applicant was present and represented by Charles T. Brooks, III, Esquire. The State was represented by Assistant Attorney General David Spencer of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf and also called his trial counsel, Jack Lawson, Esquire, as a witness. This Court also had before it the PCR Application, the State's return, the transcript of Applicant's trial, the Clerk of Court's records regarding the subject convictions, and the records of Applicant's appeal to the Court of Appeals.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the December, 2008 term of the Florence County Grand Jury for kidnapping and three counts of criminal sexual

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Connie Reel Shearin
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

conduct in the first degree. Jack Lawson, Esquire, represented the Applicant. On December 8, 2008, Applicant was convicted of kidnapping and one count of criminal sexual conduct, and found not guilty of the other two counts of criminal sexual conduct. The Honorable Judge J. Ernest Kinard sentenced Applicant to life without parole. Applicant appealed his conviction.

Applicant was represented on appeal by Lanelle C. Durant, Esquire, who perfected the appeal by filing an Anders brief. Applicant then voluntarily withdrew the appeal and the Court of Appeals dismissed by order dated March 12, 2010 with remittitur issued the same day.

ALLEGATIONS

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Conflict of interest;
3. Prosecutorial misconduct;
4. Clear court error.

The second and third allegations seem to simply restate allegations of ineffective assistance of counsel and the fourth allegation would allege direct appeal issues that are not proper to consider in PCR. At the hearing, Applicant only brought allegations of ineffective assistance of counsel. This Court considers all other issues waived.

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 presented 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 (2003).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address each allegation of ineffective assistance of trial counsel below:

Advice not to testify

Applicant alleges that counsel was ineffective in his advice not to testify. Applicant alleges

counsel was ineffective in advising him that his criminal record would potentially come into evidence because some of his convictions were more than ten years old.

Under Rule 609(b), SCRE, evidence of a conviction otherwise admissible under Rule 609(a), SCRE, is restricted as follows:

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is a later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. . . .

Applicant testified that he was convicted of Criminal Sexual Conduct in the Third Degree in 1985, in which he received a probationary sentence of three years; a conviction for Voluntary Manslaughter in 1988, from which he was released in 2001; and three convictions for Spousal Sexual Battery in 2001. Of course, the Spousal Sexual Battery conviction falls within the time limit. Further, contrary to Applicant's testimony, the ten year limitation would not apply to the Voluntary Manslaughter conviction as Applicant was not released from custody until 2001.

At the PCR hearing, Applicant testified he wanted to take the stand at his trial based on his contention he had consensual sex with the victim. Applicant testified he was at a bar when Victim's friend, Legrand Poston approached him and indicated he knew Applicant. According to Applicant, he did not know Poston, but that Poston must have known him from when they both were previously incarcerated. Poston introduced Victim to Applicant. Applicant testified Victim then discussed having Applicant murder her husband. Victim and her husband were divorcing. Apparently,

Applicant took her idea seriously and did not immediately refuse. According to Applicant, he asked her why she did not ask Poston to do it and she did not think Poston was capable of it. According to Applicant, he refused her only when Victim admitted she did not have any money to pay him. According to Applicant, they left the bar together, and in the parking lot, decided to have sex. They both got in Victim's car and Applicant drove. Applicant testified that he did not want to go to her apartment, so they drove to a field and engaged in consensual sexual activity. He denied that Victim's clothes or the inside of Victim's car got muddy. He denied raping Victim.

Counsel testified that the ten year limit in Rule 609(b), SCRE would not apply to Applicant's spousal sexual battery convictions or Applicant's voluntary manslaughter conviction. Counsel testified that even if Counsel could successfully keep the State from admitting evidence of Applicant's convictions under Rule 609, SCRE, Applicant likely would have opened the door to the voluntary manslaughter conviction as an explanation of why Victim would approach Applicant for a murder-for-hire proposal. Further, Counsel did not think that testimony regarding Applicant and Victim's alleged discussion of murder-for-hire would have been favorable for the jury to hear. Additionally, Counsel testified that there was a strategic advantage in not presenting evidence, so as to gain the last closing argument. Counsel testified that part of his trial strategy was to challenge Victim's credibility. Had Applicant testified, the jury would be comparing the relative credibility of Applicant versus Victim, instead of merely considering Victim's credibility. Counsel testified that in his view, Applicant would not make a good witness regardless of the admissibility of the prior convictions.

This Court finds that Counsel was not ineffective in his advice and strategy concerning

whether Applicant should testify on his own behalf. This Court finds Counsel's advice on whether to testify was not deficient. Further, Counsel's strategy of not presenting a defense was reasonable trial strategy, in light of the strategic advantage of last closing argument and his valid assessment of Applicant's ability to convince a jury of his innocence through testifying. Finally, this Court does not find Applicant's proposed trial testimony probative or helpful in altering the outcome of the trial, nor does this Court find that Applicant is a credible witness. Accordingly, this Court finds Applicant did not meet his burden of showing prejudice from the alleged deficiency of counsel. This allegation is denied.

Photograph

Applicant makes an allegation that Counsel was ineffective because Victim testified she was scratched above her right eye during the assault while a photograph depicts a scratch above her left-eye. Counsel testified that he cross-examined the Victim on this discrepancy. See tr. pp. 109-110. This Court would also note he argued the inconsistency during closing argument. Tr. pp. 399-400. Applicant failed to prove counsel's performance was deficient or that Applicant was prejudiced by the alleged defect. This allegation is denied.

Medical Records

Applicant alleges Counsel was ineffective for failing to attain Victim's medical records. Counsel testified that he tried to find any medical records he could. Applicant did not provide any medical records to this Court. This Court finds that Applicant has not met his burden of proving either prong of Strickland and finds that Counsel was not ineffective in this regard.

Potential Witnesses

Applicant alleges Counsel was ineffective for failing to find any witnesses that could testify that Applicant and Victim left the bar together. Applicant did not call any witnesses at the PCR hearing and therefore failed to produce any evidence of prejudice. Further, Counsel testified that investigators working for his office searched extensively for favorable witnesses and found none. This Court finds counsel's testimony credible and finds his performance was not deficient. This Court finds that Applicant failed to meet his burden of proving prejudice from any alleged deficiency and denies this allegation.

Criminal records of State's witnesses

Applicant alleges Counsel should have attained criminal records of all the State's witnesses. Counsel testified that he did so and Applicant has failed to make any more specific allegation of which witnesses testified without making admissible prior convictions known to the jury. Applicant has failed to prove either prong of the Strickland test. Therefore, this allegation is denied.

CONCLUSION

Based on 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.

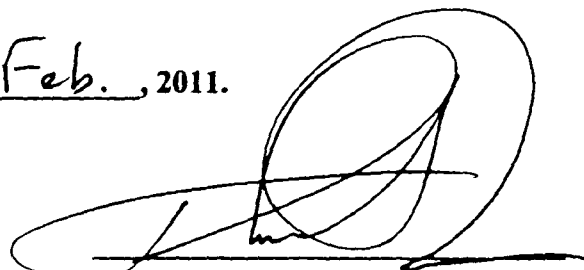
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes

that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

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 ^{18th} day of Feb., 2011.



Thomas A. Russo
Presiding Judge
Twelfth Judicial Circuit

Alexander South Carolina

SOUTH CAROLINA SUPREME COURT
P.O. BOX 11330
COLUMBIA S.C. 29211

3-8-11

(CA/NO. 2010-CP-21-1258)

Clerk,

A NOTICE OF APPEAL WAS FILED ON OR ABOUT FEB 25, 2011. I ASK YOU DISREGARD THIS NOTICE OF APPEAL BECAUSE IT IS IMPROPER. I ADVISED MY ATTORNEY I WAS BELIEVING HIM A) COUNSEL AFTER MY PCR AND I SPECIFICALLY TOLD HIM NOT TO FILE THIS APPEAL. I TIMELY FILED A MOTION TO REMOVE COUNSEL AFTER MY PCR AND REQUESTED A NEW HEARING FOR ABUSE OF DISCRETION AND CONFLICT OF INTEREST. I FILED MY MOTION ON FEB. 14 TH, 2011 TELLING MY ATTORNEY I WAS FILING THIS MOTION. THE CLERK HAS TIMELY FILED MY MOTIONS. PLEASE DISMISS THIS APPEAL UNTIL MY POST-TRIAL MOTIONS ARE HEARD.

RECEIVED
MAR 11 2011
S.C. SUPREME COURT

Sincerely,
STACY EVANS #152040
McCORMICK C.F.
386 REDEMPTION WAY
McCORMICK S.C.
29859

CLERK OF COURT

2-22-11

FLORENCE COUNTY

FILED

CONNIE REEL SHEARIN

2011 FEB 25 PM 12:37

CITY-COUNTY COMPLEX

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

180 N. IRBY ST. MSC
FLORENCE S.C. 29501

RE: 59(E)

MOTION TO RELIEVE
COUNSEL.

CLERK,

WILL YOU PLEASE FILE MY MOTIONS AND SEND ME
A STAMPED CLOCKED COPY TO MY ADDRESS BELOW
AND FORWARD A COPY TO THE ATTORNEY GENERAL.

Sincerely,

STACY EDWARDS #152040
MCCORMICK C.I.

RECEIVED

MAR 11 2011

S.C. SUPREME COURT

CERTIFIED: A TRUE COPY

Connie Reel Shearin

CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

STACY EVANS #152040
APPLICANT,

VS.

STATE OF SOUTH CAROLINA
RESPONDENT

CA/NO: 2010-CP-21-1258

MOTION TO RELIEVE COUNSEL

MOTION TO PROCEED "PRO SE"

MOTION TO ALTER OR AMEND
OR RECONSIDERATION

Spec. 59(E) S.C.R. CIV. P.

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
JUL 25 PM 12:31
CLERK OF COURT
FLORENCE COUNTY, S.C.

APPLICANT NOW MOVES THIS COURT TO BELIEVE COUNSEL
RECORD CHARLES T. BROOKS FOR A CONFLICT OF INTEREST
PURSUANT TO INEFFECTIVE ASSISTANCE OF PCR COUNSEL
FAILURE TO RAISE ALL AVAILABLE ISSUES AND THAT APPLICANT
WAS PREJUDICED BECAUSE HE CAN NOT READ AND WRITE. SEE
UNITED STATES V. GARCIA, 517 F.2d 272 (5TH CIR. 1975) AND
U.S. V. SIMEONOV, 252 F.3d 238 (2ND CIR. 2001). APPLICANT
REQUESTED TO PROCEED "PRO SE" AT HIS PCR HEARING AND WAS
DENIED HIS RIGHT TO REPRESENT HIMSELF UNDER THE U.S.
CONSTITUTION FERETTA V. CALIFORNIA, 422 U.S. 806, 821
(1975). ALSO SEE MOORE V. CALDERON, 108 F.3d 261, 264
9TH CIR. 1997) (6TH AMENDMENT RIGHT TO SELF-REPRESENTATION
VIOLATED WHEN COURT DENIED DEFENDANT'S TIMELY REQUEST
TO PROCEED "PRO SE" AFTER KNOWING AND INTELLIGENT WAIVER.
ALSO SEE MYERS V. COLLINS, 8 F.3d 249, 252 (5TH CIR. 1993)
STATE CRIMINAL DEFENDANT HAS RIGHT TO PRESENT "PRO SE" MOTIONS
AND BRIEFS ON APPEAL. APPLICANT REQUESTED TO REMOVE COUNSEL
AND WAS DENIED IMMEDIATELY BY PCR JUDGE NETTLES WITH
NO LEGAL REASON AND VIOLATED APPLICANT'S 6TH AMENDMENT

RIGHTS TO SELF REPRESENTATION SO HE COULD PRESENT ALL AVAILABLE ISSUES. UNDER 71.7 COUNSEL HAD AN OBLIGATION TO PRESENT ALL ISSUES TO BE RULED UPON BY THE PCR JUDGE.

APPLICANT NOW MOVES THIS COURT FOR A NEW PCR HEARING TO BE ALLOWED TO PRESENT ALL ISSUES ^{NOT} RAISED IN HIS PCR APPLICATION. HE WAS DENIED BY THE COURT TO VERBALLY PRESENT HIS ISSUES AND PCR COUNSEL REFUSED TO RAISE AND ARGUE HIS ISSUES. APPLICANT IS PREJUDGED BECAUSE HE WAS NOT ALLOWED HIS FULL BITE OF THE APPLE, AND ALL HIS ISSUES ARE NOT PROPERLY PRESERVED FOR APPEAL.

APPLICANT CONTENDS THE PCR JUDGE ABUSED HIS DISCRETION IN REFUSING TO DISMISS HIS PCR COUNSEL FOR CONFLICT OF INTEREST AND DENYING HIM A CONTINUANCE ON THOSE GROUNDS.

APPLICANT MOVES THIS COURT TO REMOVE HIS PCR COUNSEL CHARLES T. BROWNE, III, ALLOW HIM TO PROCEED "PRO SE", GRANT A NEW HEARING TO ALLOW APPLICANT TO PROPERLY RAISE ALL AVAILABLE ISSUES TO PRESERVE FOR APPELLATE REVIEW. APPLICANT BRINGS THIS MOTION PURSUANT TO 59(E) S.C.R. CIV.P. AND STATES THAT PCR COUNSEL NOT BE ALLOWED TO FILE A NOTICE OF INTENT TO APPEAL UNTIL THIS MOTION IS RESOLVED.

2-22-11
DATE:

RESPECTFULLY SUBMITTED
XST HORTON
STACY EVANS #152040
M^{rs} CORMICK C.F. - F-1 - A
386 REDEMPTIONS WAY
M^{rs} CORMICK S.C. 29099

(2)

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT STACY EVANS #152040 DID MAIL TO THE CLERK OF COURT, FLORENCE COUNTY, CONNIE REEL SHEARIN, AT CITY-COUNTY COMPLEX, 196 IRBY ST., MSC-E, FLORENCE, S.C. 29501 HIS MOTION TO RELIEVE COUNSEL, MOTION TO PROCEED PRO SE AND MOTION TO ALTER OR AMEND JUDGEMENT OR RECONSIDERATION 59(E). PLACED IN THE MAIL ON THE 23 DAY OF FEB, 2011 WITH POSTAGE PREPAID.

SWORN AND SUBSCRIBED BEFORE ME
THIS 23 DAY OF FEB, 2011

Clayce L. Young
NOTARY PUBLIC SOUTH CAROLINA
MY COMMISSION EXPIRES
8 28 2011

STACY EVANS
X STACY EVANS
STACY EVANS #152040
MCCORMICK C.F.
386 REDENBACH WAY
MCCORMICK

FILED
2011 FEB 25 PM 12:31
CLERK OF COURT
CONNIE REEL SHEARIN
FLORENCE COUNTY, S.C.

The Brooks Law Offices, LLC

Charles T. Brooks, III
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
Post Office Box 291226, Columbia, SC 29229
OFFICE: (803) 418-5708
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792
Email: cbrooks@ctbrooks.com

Irma R. Brooks
Attorney

February 25, 2011

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Stacy L. Evans v State of South Carolina
Case No. 2010-CP-21-1258


Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/jlb

Enclosed as stated

Cc: David Spencer, Office of Attorney's General
South Carolina Office of Appellate Defense
Stacy L. Evans, 152040

RECEIVED

MAR 07 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Honorable Thomas A. Russo, Circuit Court Judge

Case No: 2010-CP-21-1258

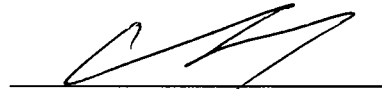
Stacy L. Evans.....Appellant
S.C.D.C. 152040

v.

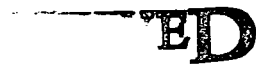
The State Respondent

NOTICE OF APPEAL

Stacy L. Evans, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Thomas A. Russo, February 18, 2011, which I, Charles T. Brooks, III, received on February 23, 2011.



Charles T. Brooks, III
309 Broad Street
Post Office Box 3512
Sumter, South Carolina, 29151
(803) 418-5708
Attorney for Appellant



FEB 27 2011

S.C. SUPREME COURT

Other Counsel on Record:
David Spencer, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3970

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY

Court of Common Pleas
Honorable Thomas A. Russo, Circuit Court Judge

Case No: 2010-CP-21-1258

Stacy L. Evans.....Appellant

S.C.D.C. 152040

v.

The State Respondent

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 25th day of February 2011, I served the foregoing Notice of Appeal, Order of Dismissal , as well as Certificate of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on February 25, 2011, addressed to the following as indicated below:


South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: David Spencer, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Jamel Alexandrette, 32631
McCormick Correctional Institution
386 Redemption Way
McCormick, South Carolina, 29899

Dated: February 25, 2011



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Stacy L. Evans,)
 S.C.D.C. No. 152040,)
)
 Applicant,)
)
 VS.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. NO: 10-CP-21-1258

ORDER OF DISMISSAL

FILED
 2011 FEB 22 AM 11:15
 CONNIE REEL-SHEARIN
 CCCP & GS
 FLORENCE COUNTY, SC

This matter is before this Court by way of an application for post conviction relief (PCR) filed April 29, 2010. The State filed its return on September 3, 2010. A hearing was held before this Court at the Florence County Courthouse. Applicant was present and represented by Charles T. Brooks, III, Esquire. The State was represented by Assistant Attorney General David Spencer of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf and also called his trial counsel, Jack Lawson, Esquire, as a witness. This Court also had before it the PCR Application, the State's return, the transcript of Applicant's trial, the Clerk of Court's records regarding the subject convictions, and the records of Applicant's appeal to the Court of Appeals.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the December, 2008 term of the Florence County Grand Jury for kidnapping and three counts of criminal sexual

CERTIFIED: A TRUE COPY
Connie Reel Shearin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

conduct in the first degree. Jack Lawson, Esquire, represented the Applicant. On December 8, 2008, Applicant was convicted of kidnapping and one count of criminal sexual conduct, and found not guilty of the other two counts of criminal sexual conduct. The Honorable Judge J. Ernest Kinard sentenced Applicant to life without parole. Applicant appealed his conviction.

Applicant was represented on appeal by Lanelle C. Durant, Esquire, who perfected the appeal by filing an Anders brief. Applicant then voluntarily withdrew the appeal and the Court of Appeals dismissed by order dated March 12, 2010 with remittitur issued the same day.

ALLEGATIONS

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Conflict of interest;
3. Prosecutorial misconduct;
4. Clear court error.

The second and third allegations seem to simply restate allegations of ineffective assistance of counsel and the fourth allegation would allege direct appeal issues that are not proper to consider in PCR. At the hearing, Applicant only brought allegations of ineffective assistance of counsel. This Court considers all other issues waived.

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 presented 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 (2003).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address each allegation of ineffective assistance of trial counsel below:

Advice not to testify

Applicant alleges that counsel was ineffective in his advice not to testify. Applicant alleges

counsel was ineffective in advising him that his criminal record would potentially come into evidence because some of his convictions were more than ten years old.

Under Rule 609(b), SCRE, evidence of a conviction otherwise admissible under Rule 609(a), SCRE, is restricted as follows:

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is a later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. . . .

Applicant testified that he was convicted of Criminal Sexual Conduct in the Third Degree in 1985, in which he received a probationary sentence of three years; a conviction for Voluntary Manslaughter in 1988, from which he was released in 2001; and three convictions for Spousal Sexual Battery in 2001. Of course, the Spousal Sexual Battery conviction falls within the time limit. Further, contrary to Applicant's testimony, the ten year limitation would not apply to the Voluntary Manslaughter conviction as Applicant was not released from custody until 2001.

At the PCR hearing, Applicant testified he wanted to take the stand at his trial based on his contention he had consensual sex with the victim. Applicant testified he was at a bar when Victim's friend, Legrand Poston approached him and indicated he knew Applicant. According to Applicant, he did not know Poston, but that Poston must have known him from when they both were previously incarcerated. Poston introduced Victim to Applicant. Applicant testified Victim then discussed having Applicant murder her husband. Victim and her husband were divorcing. Apparently,

Applicant took her idea seriously and did not immediately refuse. According to Applicant, he asked her why she did not ask Poston to do it and she did not think Poston was capable of it. According to Applicant, he refused her only when Victim admitted she did not have any money to pay him. According to Applicant, they left the bar together, and in the parking lot, decided to have sex. They both got in Victim's car and Applicant drove. Applicant testified that he did not want to go to her apartment, so they drove to a field and engaged in consensual sexual activity. He denied that Victim's clothes or the inside of Victim's car got muddy. He denied raping Victim.

Counsel testified that the ten year limit in Rule 609(b), SCRE would not apply to Applicant's spousal sexual battery convictions or Applicant's voluntary manslaughter conviction. Counsel testified that even if Counsel could successfully keep the State from admitting evidence of Applicant's convictions under Rule 609, SCRE, Applicant likely would have opened the door to the voluntary manslaughter conviction as an explanation of why Victim would approach Applicant for a murder-for-hire proposal. Further, Counsel did not think that testimony regarding Applicant and Victim's alleged discussion of murder-for-hire would have been favorable for the jury to hear. Additionally, Counsel testified that there was a strategic advantage in not presenting evidence, so as to gain the last closing argument. Counsel testified that part of his trial strategy was to challenge Victim's credibility. Had Applicant testified, the jury would be comparing the relative credibility of Applicant versus Victim, instead of merely considering Victim's credibility. Counsel testified that in his view, Applicant would not make a good witness regardless of the admissibility of the prior convictions.

This Court finds that Counsel was not ineffective in his advice and strategy concerning

whether Applicant should testify on his own behalf. This Court finds Counsel's advice on whether to testify was not deficient. Further, Counsel's strategy of not presenting a defense was reasonable trial strategy, in light of the strategic advantage of last closing argument and his valid assessment of Applicant's ability to convince a jury of his innocence through testifying. Finally, this Court does not find Applicant's proposed trial testimony probative or helpful in altering the outcome of the trial, nor does this Court find that Applicant is a credible witness. Accordingly, this Court finds Applicant did not meet his burden of showing prejudice from the alleged deficiency of counsel. This allegation is denied.

Photograph

Applicant makes an allegation that Counsel was ineffective because Victim testified she was scratched above her right eye during the assault while a photograph depicts a scratch above her left-eye. Counsel testified that he cross-examined the Victim on this discrepancy. See tr. pp. 109-110. This Court would also note he argued the inconsistency during closing argument. Tr. pp. 399-400. Applicant failed to prove counsel's performance was deficient or that Applicant was prejudiced by the alleged defect. This allegation is denied.

Medical Records

Applicant alleges Counsel was ineffective for failing to attain Victim's medical records. Counsel testified that he tried to find any medical records he could. Applicant did not provide any medical records to this Court. This Court finds that Applicant has not met his burden of proving either prong of Strickland and finds that Counsel was not ineffective in this regard.

Potential Witnesses

Applicant alleges Counsel was ineffective for failing to find any witnesses that could testify that Applicant and Victim left the bar together. Applicant did not call any witnesses at the PCR hearing and therefore failed to produce any evidence of prejudice. Further, Counsel testified that investigators working for his office searched extensively for favorable witnesses and found none. This Court finds counsel's testimony credible and finds his performance was not deficient. This Court finds that Applicant failed to meet his burden of proving prejudice from any alleged deficiency and denies this allegation.

Criminal records of State's witnesses

Applicant alleges Counsel should have attained criminal records of all the State's witnesses. Counsel testified that he did so and Applicant has failed to make any more specific allegation of which witnesses testified without making admissible prior convictions known to the jury. Applicant has failed to prove either prong of the Strickland test. Therefore, this allegation is denied.

CONCLUSION

Based on 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.

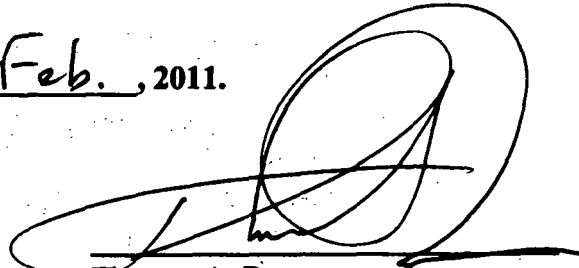
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes

that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

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 ^{18th} day of Feb., 2011.



Thomas A. Russo
Presiding Judge
Twelfth Judicial Circuit

Alerame South Carolina

CHARLES T. BROOKS, III
THE BROOKS' LAW OFFICES, LLC
309 BROAD STREET
POST OFFICE BOX 3512
SUMTER, SOUTH CAROLINA, 29151

Stacy L. Evans

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211



2921131330 8099

