

The Supreme Court of South Carolina

Michael E. Murray, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Kristi Lea Harrington
Berkeley County
Trial Court Case No. 2009-CP-08-00317

ORDER

For good cause shown, the request for an extension until May 18, 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 *Drenda J. Stealy*
Clerk
Chief Deputy

Columbia, South Carolina

April 19, 2012

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Kaelon E. May



ALAN WILSON
ATTORNEY GENERAL

April 18, 2012

RECEIVED

APR 18 2012

S.C. Supreme Court

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

RE: Michael Murray v. State of South Carolina
2009-CP-08-317

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: Kathrine H. Hudgins, Appellate Defender



March 28, 2012

ALAN WILSON
ATTORNEY GENERAL

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

RECEIVED

MAR 28 2012

S.C. Supreme Court

RE: Michael E. Murray v. State of South Carolina
2009-CP-08-00317

Dear Mr. Shearouse:

Please be advised that I will be representing the State in this PCR appeal in place of Mr. Matthew J. Friedman. Please forward all future correspondence to my attention.

Sincerely,

Kaelon E. May
Assistant Attorney General

KEM/lp
Enclosures

cc: Trisha Allen, Victim Services
Kathrine H. Hudgins, Appellate Defender



ALAN WILSON
ATTORNEY GENERAL

March 19, 2012

RECEIVED

MAR 19 2012

S.C. Supreme Court

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

Re: Michael Murray, #321518 v. State of South Carolina
2009-CP-08-317

Dear Mr. Shearouse:

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

This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/arh

cc: Michael Murray, #321518

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

JAN - 3 2012

MICHAEL E. MURRAY,

S.C. Supreme Court
PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

(4)

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

Counsel for Michael E. Murray, petitions the Court for a **final thirty day extension until February 2, 2012**, in which to file the petition for writ of certiorari and accompanying appendix in this case. In support of this petition, counsel shows:

1. The petition for writ of certiorari and accompanying appendix are due to be filed with the Court today.
2. Counsel for Mr. Murray 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 her caseload, counsel hopes that no further extension requests will be required. Counsel acknowledges that she hoped the last extension request would have been the final request but due to arguments in the Court of Appeals and two other cases with a greater number of extensions, counsel was unable to complete the initial brief in this case.
3. Counsel filed the petition for rehearing in State v. Tawanda Williams on December 22, 2011. The initial brief of appellant and designation of matter in State v. Jeffrey Herrmann was filed on December 21, 2011. The petition for writ of certiorari and accompanying appendix in Troy Goffe v. State were filed on December 16, 2011. Counsel filed the initial brief of appellant and designation of

matter in State v. Travis Teasley on December 15, 2011. Counsel had two oral arguments in the Court of Appeals on the week of December 5, 2011. On December 6, 2011 had an oral argument in the case of State v. Daniel Jenkins. On December 7, 2011, counsel argued the case of State v. Robert Phipps. Counsel was in Dorchester County on November 30, 2011 to testify in a Post-Conviction Relief hearing. Counsel filed the petitions for writ of certiorari and accompanying appendices to the Court of Appeals in State v. Eric Dantzler and State v. Bobby Lee Burdine and filed the initial brief of appellant and designation of matter in State v. Michael Watson on November 22, 2011. Counsel filed the petition for rehearing in Kareen D. Lee v. State on November 17, 2011. Counsel had oral argument in this Court in the case of State v. John Jabar Greene on November 1, 2011.

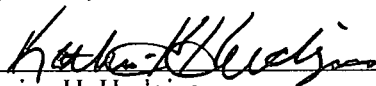
4. Counsel has not had time to complete the petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a **final thirty day extension**, in which to file the petition for writ of certiorari and accompanying appendix. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. As indicated by signature below, Matthew J. Freidman, of the South Carolina Attorney General's Office, does not oppose this request.

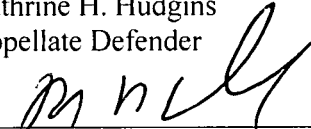
6. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a **final thirty day extension until February 2, 2012**, in which to file the petition for writ of certiorari and accompanying appendix in this case based upon the above circumstances.

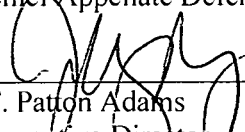
Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender




Robert M. Dudek
Chief Appellate Defender



T. Patton Adams
Executive Director
J. Hugh Ryan, III
General Counsel

January 3, 2012

I do not oppose:



Matthew J. Freidman

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

DEC - 2 2011

S.C. Supreme Court

MICHAEL E. MURRAY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

(3)

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

Counsel for Michael E. Murray, petitions the Court for a **final thirty day extension**, in which to file the petition for writ of certiorari and accompanying appendix in this case. In support of this petition, counsel shows:

1. The petition for writ of certiorari and accompanying appendix are due to be filed with the Court today.
2. Counsel for Mr. Murray 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 her caseload, counsel hopes that no further extension requests will be required.
3. Counsel was in Dorchester County on November 30, 2011 to testify in a Post-Conviction Relief hearing. Counsel filed the petitions for writ of certiorari and accompanying appendices to the Court of Appeals in State v. Eric Dantzler and State v. Bobby Lee Burdine and filed the initial brief of appellant and designation of matter in State v. Michael Watson on November 22, 2011. Counsel filed the petition for rehearing in Kareen D. Lee v. State on November 17, 2011. Counsel had oral argument in this Court in the case of State v. John Jabar Greene on November 1, 2011.

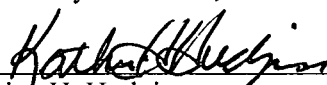
4. Counsel has not had time to complete the petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a thirty day extension, in which to file the petition for writ of certiorari and accompanying appendix. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. As indicated by signature below, Matthew J. Freidman, of the South Carolina Attorney General's Office, does not oppose this request.

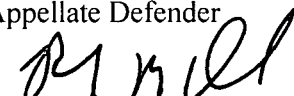
6. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a thirty day extension, in which to file the petition for writ of certiorari and accompanying appendix in this case based upon the above circumstances.

Respectfully submitted,




Kathrine H. Hudgins
Appellate Defender



Robert M. Dudek
Chief Appellate Defender

December 2, 2011

I do not oppose:



Matthew J. Freidman

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

ORIGINAL

RECEIVED

NOV 2 2011

S.C. Supreme Court

MICHAEL E. MURRAY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

2

Counsel for Michael E. Murray petitions the Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix in this case. In support of this petition, counsel shows:

1. The petition for writ of certiorari and accompanying appendix are due to be filed with the Court today.
2. Counsel for Mr. Murray 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 her caseload, counsel hopes that no further extension requests will be required.
3. Counsel filed the initial brief of appellant and designation of matter in State v. Bert Foster on September 7, 2011. On September 12, 2011, counsel filed the petition for writ of certiorari and accompanying appendix in Travis Richardson v. State. Counsel filed the return to petition for writ of certiorari in Dorian Cain v. State on September 20, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in Cody Waters v. State on September 23, 2011. On September 30, 2011, counsel filed the petition for writ of certiorari and accompanying appendix in Terry Smalley v. State.

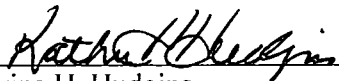
Counsel had three oral arguments scheduled with the South Carolina Supreme Court and South Carolina Court of Appeals during the week of October 3, 2011. Counsel argued In the interest of Justin B., a minor under the age seventeen in the South Carolina Supreme Court on October 4, 2011. On October 5, 2011, counsel argued Kareen Lee v. State and Joseph Walker v. State in the South Carolina Court of Appeals. Counsel filed the initial brief of appellant and designation of matter in State v. Danny Ryant on October 18, 2011. On October 21, 2011, counsel filed the petition for writ of certiorari and accompanying appendix in Troy Zeigler v. State. Counsel filed the petition for writ of certiorari and accompanying appendix in William Wood v. State on October 24, 2011. Counsel file the brief of petitioner in Dana Rikard v. State on October 31, 2011. Counsel also had oral argument in this Court in the case of State v. John Jabar Greene on November 1, 2011.

4. Counsel has not had time to complete the petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to initial brief of appellant and designation of matter. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

6. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix in this case based upon the above circumstances.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

November 2, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

MICHAEL E. MURRAY,

PETITIONER,

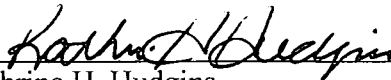
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the brief of respondent in the above referenced case has been served upon Matthew Freidman, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 2nd day of November, 2011.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR RESPONDENT.

SUBSCRIBED AND SWORN TO before me
this 2nd day of November, 2011.



(L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014 .



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

October 3, 2011

RECEIVED

OCT - 3 2011

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

S.C. Supreme Court

Re: Michael E. Murray 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.

By copy of this letter, I am informing Matthew J. Freidman, Esquire, of the Attorney General's Office, of my request.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/lec

cc: Matthew J. Freidman, 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

August 8, 2011

RECEIVED

AUG - 8 2011

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

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.

Michael E. Murray v. State of South Carolina

8/4/2011

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,

Sharon A. Graham
Administrative Coordinator

BRENDA COOLEY
POST OFFICE BOX 24
SULLIVAN'S ISLAND, SC 29482

RECEIVED

FEB 22 2011

February 17, 2011

S.C. Supreme Court

Ms. Sharon A. Graham
Administrative Coordinator
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

RE: Michael E. Murray v State of South Carolina
Case No. 09-CP-08-00317

Dear Ms. Graham:

Thank you for your letter of February 3, 2011 requesting the transcript referenced above. By copy of this letter I am forwarding your letter to Desiree Allen, South Carolina Court Administration, 1015 Sumter Street, Suite 200, Columbia, South Carolina, 29201 who will assign someone for production of the transcript as I have resigned my position as circuit court reporter.

With kindest regards, I am

Sincerely,

Brenda Cooley

cc: Desiree Allen, Court Administration (w/enclosure)

The Hon. Daniel E. Shearhouse ✓
Clerk of Court
South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549



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

February 3, 2011

RECEIVED

FEB 03 2011

S.C. Supreme Court

Ms. Brenda C. Cooley
Circuit Court Reporter
PO Box 24
Sullivan's Island, SC 29482

Dear Ms. Cooley:

Our office has been requested to perfect the appeal arising out of:

Michael E. Murray v. State of South Carolina Case #: 09-CP-08-00317

County: Berkeley Date of Trial: November 15, 2010

Presiding Judge: Kristi Lea Harrington

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript 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. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

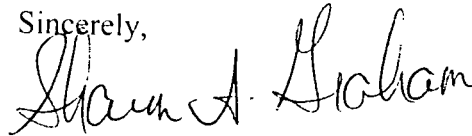
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. Brenda C. Cooley
February 3, 2011
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Sharon A. Graham". The signature is written in black ink and is positioned above the printed name and title.

Sharon A. Graham
Administrative Coordinator

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

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

January 4, 2011

RECEIVED

JAN 07 2011

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

S.C. Supreme Court

RE: Michael E. Murray v State of South Carolina
Case No. 2009-CP-08-317

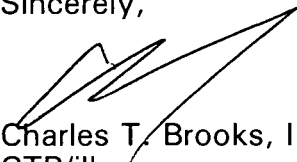
Dear Sir or Madam:

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: Matthew J. Friedman, Office of Attorney's General
South Carolina Office of Appellate Defense
Michael E. Murray, 321518

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Honorable Kristin L. Harrington Circuit Court Judge

RECEIVED

Case No: 2009-CP-08-317

JAN 07 2011

S.C. Supreme Court

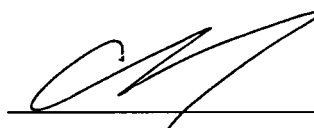
Michael E. Murray.....Appellant
S.C.D.C. 321518

v.

The State Respondent

NOTICE OF APPEAL

Michael E. Murray, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Kristin L. Harrington, December 15, 2010, which I, Charles T. Brooks, III, received on December 31, 2010.



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

Other Counsel on Record:
Matthew J. Friedman, 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 BERKELY COUNTY

Court of Common Pleas
Honorable Kristin L. Harrington Circuit Court Judge

RECEIVED

JAN 07 2011

Case No: 2009-CP-08-317

S.C. Supreme Court

Michael E. Murray.....Appellant

S.C.D.C. 321518

v.

The State.....Respondent

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 4th day of January, 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 January 4, 2011, addressed to the following as indicated below:

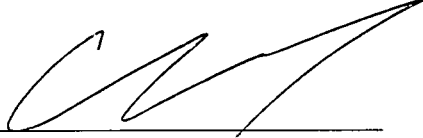
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

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

Office of Attorney's General
Attn: Matthew J. Friedman, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Michael E. Murray, 321518
Turbeville Correctional Institution
Post Office Box 252
Turbeville, South Carolina, 29162

Dated: January 4, 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 BERKELEY)
)
 Michael E. Murray, #321518,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 2009-CP-08-317

ORDER OF DISMISSAL

FILED
 2010 DEC 20 PM 1:57
 HARRY E. PROFFER
 CLERK OF COURT
 BERKELEY COUNTY, SC 29904

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 27, 2009. The Respondent made its Return on April 30, 2009. An evidentiary hearing into the matter was convened on November 15, 2010 at the Berkeley County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant and Applicant's plea counsel, Patricia A. Kennedy, Esquire, testified at the PCR hearing. This Court had before it the records of the Berkeley County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, the PCR application, and the Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Berkeley County. The Applicant was indicted at the June 2007 term of the Berkeley County Grand Jury for leaving the scene of accident with personal injury resulting in death (2007-GS-08-1242) and habitual traffic offender (2007-GS-08-1243). Patricia A. Kennedy, Esquire, represented the Applicant. On March 5,

2008, the Applicant pled guilty as indicted. The Honorable James C. Williams, Jr. sentenced the Applicant to confinement for eight (8) years for leaving the scene of an accident and five (5) years for habitual traffic offender. The sentences were to run concurrently. The Applicant did not appeal the sentence or conviction.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel did not explain the implications of parole eligibility.
2. Denied direct appeal.
3. Double jeopardy in that Applicant was previously convicted in magistrate's court based on the same facts.
4. Brady violation in that prosecution failed to supply the defense with all the evidence.
5. Defective indictments.
6. Did not receive Grand Jury transcripts.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified that double jeopardy was triggered because he was previously convicted in magistrate's court and the same facts and circumstances were on the warrants. He asserted that his indictments were defective because they listed multiple crimes as one offense. Applicant testified that counsel did not explain parole implications to him. He also asserted that he never saw the Grand Jury transcripts.

Plea counsel testified that she had no specific recollection about discussing parole implications with Applicant, but she asserted that it is her general practice to explain parole implications with clients. She testified that Applicant was in SCDC custody on unrelated charges so it was difficult to meet with him in person. Counsel testified that she did not recall any Brady issues. She testified that she viewed the photographs with the prosecutor, but she was unable to share them with Applicant because he was in SCDC custody and she did not have the ability to duplicate the photographs. Counsel testified that she went over Applicant's confession with him, but Applicant had difficulty understanding his situation. She asserted that the only plea negotiation was that the State would dismiss a reckless homicide charge in exchange for the plea. Counsel testified that Applicant wanted a probationary sentence and she requested such a sentence on his behalf, but he was ultimately sentenced to eight (8) years. Counsel testified that there was no double jeopardy because Applicant's magistrate court convictions were for different charges. Counsel also testified that Applicant did not ask her to file an appeal.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that counsel's testimony was credible while also finding that Applicant's testimony was not credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on

numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that the Applicant understood the nature of the charges against him, the possible punishments, and his constitutional rights. He told the court he was satisfied with his attorney and that no one threatened him or promised him anything to get him to plead guilty. This Court finds that it was Applicant's decision to plead guilty, and he entered the plea freely, voluntarily, knowingly, and intelligently.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that it is counsel's general practice to explain parole implications to clients. However, even if counsel failed to do so in this case, this Court finds that she was not ineffective. This Court finds that parole eligibility is a collateral consequence – rather than a direct consequence – of a guilty plea. “The distinction between ‘direct’ and ‘collateral’ consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the

defendant's punishment." Cuthrell v. Director, Patuxent Institution, 475 F.2d 1364, 1366 (4th Cir.), cert. denied, 414 U.S. 1005 (1973). "The imposition of a sentence may have a number of collateral consequences, however, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is *not* informed of the collateral consequences." Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) (emphasis in original). "Parole eligibility is a collateral consequence of sentencing and is a matter that falls within the province of the Board of Probation, Parole, and Pardon Services." Id. Parole eligibility has no direct bearing on the range of the defendant's punishment.

This Court finds that Applicant is not entitled to a belated direct appeal. The United States Supreme Court has rejected a bright-line rule that counsel must always file an appeal in a criminal case. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). The Court went on to hold that a professionally reasonable attorney should, in most cases, consult with the defendant regarding an appeal. Id.

In determining whether an attorney should consult with the criminal defendant concerning an appeal, the totality of the circumstances must be considered. Id. In examining the totality of the circumstances, courts should consider: (1) whether a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) whether this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

Trial counsel is not required to file a notice of appeal without specifically being asked to

do so. Roe, 528 U.S. 470. In the present case, there is no indication that Applicant specifically asked counsel to file a notice of appeal. In fact, counsel testified that Applicant did not ask her to file an appeal.

This Court finds that Applicant's allegation of double jeopardy has no merit. Applicant's previous convictions in magistrate court were from different charges. This Court finds that these convictions did not trigger double jeopardy. See Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1992).

This Court also finds that Applicant's remaining allegations have no merit. Applicant was not entitled to copies of the Grand Jury transcripts because the Grand Jury proceedings are secret and confidential. Applicant has failed to establish a Brady violation because counsel testified that she was able to view all of the State's evidence. Likewise, Applicant has failed to show that his indictments were defective. This Court finds that Applicant fully understood the nature of the charges against him. "[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (S.C. Ct. App. 2007) (citations omitted). Here, the indictments outline the nature of the offenses in plain language. Applicant was on notice of the charges against him. Counsel and Applicant sufficiently discussed the elements of each charge, and counsel believed that Applicant understood the nature of the offenses.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The

Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

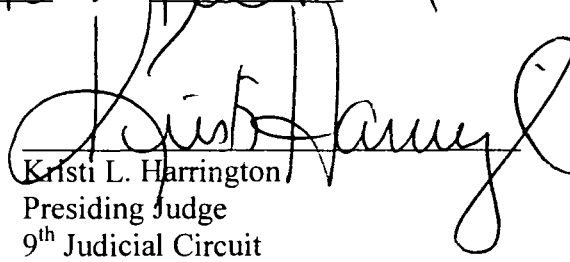
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15th day of December


Kristi L. Harrington
Presiding Judge
9th Judicial Circuit

March 2008 South Carolina.

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



South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

Michael Murray

