

The Supreme Court of South Carolina

Bobby Gibson Jr.,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Roger L. Couch
Spartanburg County
Trial Court Case No. 2008-CP-42-06126

ORDER

For good cause shown, the request for an extension until April 25, 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 *Dwanda J. Shealy*
Clerk

Columbia, South Carolina *Chief Deputy*

March 27, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Suzanne H. White



ALAN WILSON
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737
PCR FACSIMILE: 803.734.4113

March 26, 2012

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

(2)

RECEIVED

MAR 26 2012

S.C. Supreme Court

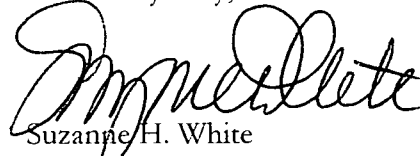
**RE: Bobby Gibson, Jr., v. State of South Carolina
2008-CP-42-6126**

Dear Mr. Shearouse:

The Return to the Petition for Writ of Certiorari in the above appeal is due to be served and filed on today's date. However, this is to 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. Rather, this extension request is necessitated by a heavy workload and made for good cause.

Yours very truly,


Suzanne H. White
Assistant Attorney General.

SHW/aam

cc: Wanda H. Carter, Esquire

The Supreme Court of South Carolina

Bobby Gibson Jr.,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Roger L. Couch
Spartanburg County
Trial Court Case No. 2008-CP-42-06126

ORDER

The request for an extension until March 26, 2012 to serve and file the Return to the Petition for Writ of Certiorari is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Suzanne J. Stealy*
Clerk

Columbia, South Carolina *Chief Deputy*

February 24, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Suzanne H. White



ALAN WILSON
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737
PCR FACSIMILE: 803.734.4113

February 23, 2012

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

RECEIVED

FEB 23 2012

S.C. Supreme Court

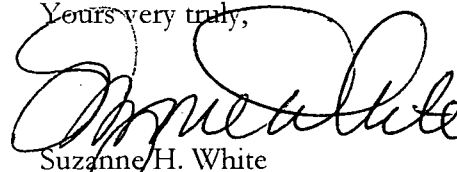
**RE: Bobby Gibson v. State of South Carolina
2008-CP-42-6126**

Dear Mr. Shearouse:

The Return to the Petition for Writ of Certiorari in the above appeal is due to be served and filed on today's date. However, this is to 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. Rather, this extension request is necessitated by a heavy workload.

Yours very truly,



Suzanne H. White
Assistant Attorney General

SHW/aam

cc: Wanda H. Carter, Esquire

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Roger L. Couch, Special Circuit Court Judge

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DEC - 9 2011

S.C. Supreme Court

BOBBY GIBSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

(3)

RESPONDENT

**PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**

The undersigned counsel would respectfully request a **final** thirty day extension, **until January 9, 2011**, in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by two prior orders of this Court.

2. Counsel is filing the petition for writ of certiorari and accompanying appendix in the case of Mark Daniel Cureton v. State in this Court today. Counsel filed the brief of petitioner in the case of Tommy Novack Lloyd v. State in the Supreme Court on December 2, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Leonard G. Stanfield v. State in the Supreme Court on November 22, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of William Avinger v. State in the Supreme Court on November 21, 2011.

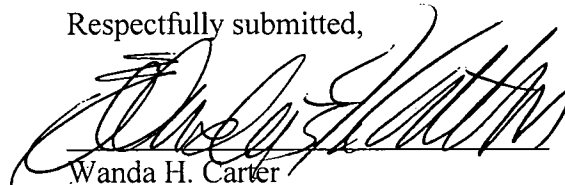
Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Mark Bolte v. State and Stanley DeHart v. State in the Supreme Court on November 7, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Randy Edward Anderson in the Court of Appeals on November 4, 2013. In October, 2011, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Curtis Jerome Mitchell v. State, Ismael Cruz v. State, Vincent J. Beaton v. State, Gary Louis Cunningham v. State, Derek K. Behlke v. State and Timothy Dinkins v. State. Counsel also filed the petition for rehearing in the case of State v. Vashaun Ravenel in October, 2011. Additionally in October, 2011, Counsel had oral arguments in the cases of Michael Jermaine Goins v. State and Marcus Martin v. State in the Court of Appeals.

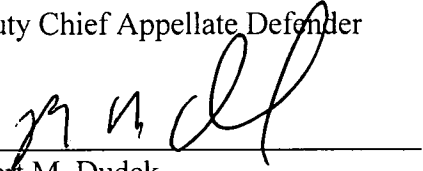
3. This request is made in good faith, and not for purposes of delay.

4. As indicated by her consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final** thirty day extension, **until January 9, 2011**, in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

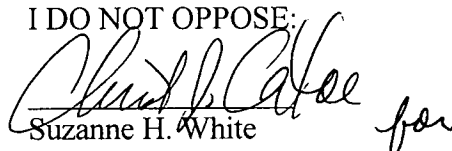
Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender


Robert M. Dudek
Chief Appellate Defender

December 9, 2011

I DO NOT OPPOSE:


Suzanne H. White for

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

NOV -9 2011

Certiorari to Spartanburg County
Roger L. Couch, Special Circuit Court Judge
S.C. Supreme Court

BOBBY GIBSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX

2

The undersigned counsel would respectfully request a thirty-day extension in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

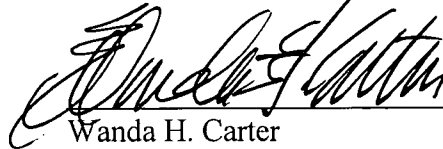
1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.
2. Counsel is currently working on the petition for writ of certiorari and accompanying appendix in the case of William Avinger v. State. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Mark Bolte v. State and Stanley DeHart v. State in this Court on November 7, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Randy Edward Anderson in the Court of Appeals on November 4, 2013. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Curtis Jerome Mitchell v. State in this Court on October 28, 2011. Counsel filed the petition for writ of certiorari

and accompanying appendix in the case of Ismael Cruz v. State in this Court on October 24, 2011. Counsel had an oral argument in the case of Michael Jermaine Goins v. State on October 20, 2011, as well as an oral argument in the case of Marcus Martin v. State on October 19, 2011, both in the Court of Appeals. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Vincent J. Beaton v. State on October 17, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Gary Louis Cunningham v. State on October. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Derek K. Behlke v. State on October 12, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Timothy Dinkins v. State on October 7, 2011. Counsel filed the petition for rehearing in the case of State v. Vashaun Ravenel in the Court of Appeals on October 5, 2011.

3. This request is made in good faith, and not for purposes of delay.

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. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

November 9, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Roger L. Couch, Special Circuit Court Judge

BOBBY GIBSON,

PETITIONER,

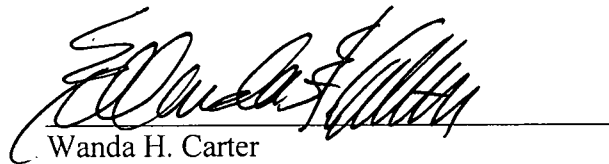
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Suzanne H. White, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 9th day of November, 2011.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 9th day of November, 2011.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 2, 2013



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 10, 2011

RECEIVED

OCT 10 2011

S.C. Supreme Court

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

Re: Bobby Gibson 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, I am informing Suzanne H. White, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/kam

cc: Suzanne H. White



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 11, 2011

RECEIVED

AUG 11 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.

Bobby Gibson v. State of South Carolina

8/10/2011

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

Thank you for your assistance in this matter.

Sincerely,


Loriene French
Legal Services Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

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

RECEIVED

AUG - 4 2011

S.C. Supreme Court

August 4, 2011

Ms. Pamela E. Green
Circuit Court Reporter
121 Bradford Crossing Drive
Roebuck, SC 29376

Dear Ms. Green:

Please provide us with the following transcript:

Bobby Gibson v. State of South Carolina Case #: 08-CP-42-06126

County: Spartanburg Date of Trial: September 14, 2010

Presiding Judge: Roger L. Couch

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

RECEIVED

JUL 11 2011

S.C. Supreme Court

Telephone: (864) 282-1292
Facsimile: (864) 271-6035

J. FALKNER WILKES
Attorney at Law

114 Whittett Street
Greenville, South Carolina 29601

June 29, 2011

Robert M. Dudek, Chief Appellate Defender
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina, 29211-1589

RECEIVED

JUL 01 2011

SC Court of Appeals

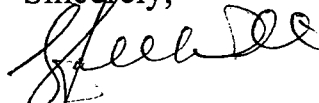
Re: Bobby Gibson, Jr. 171440, v. State of South Carolina
2008-CP-42-6126

Attention: Lorie French

Dear Ms. French,

I am providing herewith an affidavit of indigent status for Bobby Gibson that I received in the mail today. I will forward the additional material you requested tomorrow.

Sincerely,



J. Falkner Wilkes

c. (letter only)
Suzanne White, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
Post Office Box 11549
Columbia, SC 29211

Tanya Gee, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Bobby Gibson, 171440
Q2A-223
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

J. FALKNER WILKES

Attorney at Law

114 Whitsett Street
Greenville, South Carolina 29601

Telephone: (864) 282-1292

Facsimile: (864) 271-6035

June 28, 2011

Daniel Shearouse
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Bobby Gibson, Jr., 171449 v. State of South Carolina
2008-CP-42-6126

Dear Mr. Shearouse,

I represented the Appellant, Bobby Gibson, Jr., in a post conviction relief action in the circuit court. I have filed a notice of appeal in that case. I am enclosing an original and six copies of a Motion seeking an order relieving me as counsel in this case. I have served copies on OID, the Applicant, and the Respondent.

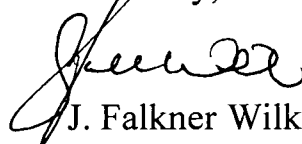
If there is anything else that I need to do to further this effort please let me know.

Because I believe Mr. Gibson may qualify for OID representation I have not requested a transcript in this case. It is my understanding that the Motion will stay the time in which to do so. If this is incorrect please let me know right away. Otherwise, I will await a ruling by the Court.

RECEIVED

JUN 30 2011

Sincerely,


J. Falkner Wilkes

c. S.C. SUPREME COURT
Suzanne White, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
Post Office Box 11549
Columbia, SC 29211

Robert M. Dudek, Chief Appellate Defender
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina, 29211-1589
via facsimile also to: (803) 734-1397

Bobby Gibson, 171440
Q2A-223
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

J. FALKNER WILKES

Attorney at Law

114 Whitsett Street
Greenville, South Carolina 29601

Telephone: (864) 282-1292
Facsimile: (864) 271-6035

June 28, 2011

Robert M. Dudek, Chief Appellate Defender
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina, 29211-1589

Re: Bobby Gibson, Jr. 171440, v. State of South Carolina
2008-CP-42-6126

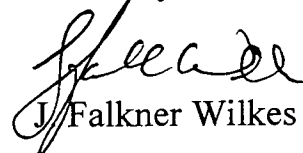
Attention: Lorie French

Dear Ms. French,

I am providing herewith copies of documents relating to Mr. Bobby Gibson, Jr. I am making a motion to be relieved as counsel in this case. Because Mr. Gibson is currently incarcerated and has been for quite some time, I believe he may qualify for representation by indigent defense. I have notified him of the process and provided him the appropriate affidavit for him to fill out. He did not fill that out at my last meeting with him and he has not returned it to me since our last meeting. I have explained to him that the affidavit is necessary for your office to be able to evaluate his case for potential representation.

Because I have done all that I can to assist in the facilitation of counsel through your office I am now moving to be relieved.

Sincerely,


J. Falkner Wilkes

c.
Suzanne White, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
Post Office Box 11549
Columbia, SC 29211

RECEIVED

JUN 30 2011

S.C. SUPREME COURT

Daniel Shearouse
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Bobby Gibson, 171440
Q2A-223
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

The State of South Carolina
In the Supreme Court

Appeal from Spartanburg County
Court of Common Pleas
(Post Conviction Relief Case)

Roger L. Couch, Circuit Court Judge

Case No.: 2008-CP-42-6126

Bobby Gibson, Jr, 171440, Appellant,
v.
State of South Carolina, Respondent.

MOTION TO BE RELIEVED AS COUNSEL

J. Falkner Wilkes hereby moves to be relieved as counsel in the above captioned case.

The undersigned was retained to represent the Appellant on a Post Conviction Relief matter. The PCR matter has been concluded with a final order dismissing the Application in this case. The Applicant desired to pursue an appeal so a Notice of Appeal was timely filed. The undersigned has met with and advised the Petitioner of his right to have a retained counsel on the appeal of his case and, if he could afford one, that the Applicant could make application to the Office of

Indigent Defense for representation on the appeal.

The undersigned believes that the Applicant is fully aware of his rights as to counsel and what he needs to do to have the Office of Indigent Defense review his case to determine if the Applicant qualifies for services. The undersigned has advised and offered to assist the Applicant in the process of submitting an affidavit of indigent status to OID. The Applicant has been provided with the appropriate affidavit but has elected not to fill it out and submit it to OID.

The undersigned has fulfilled his obligations in the post conviction relief matter, including the filing of the Notice of Appeal and advising the Applicant of deadlines for ordering the transcript and the need for retaining counsel or submitting the necessary paperwork to OID for review.

Counsel has not been retained to pursue the Petition for Writ of Certiorari, nor provided with costs for doing so by the Applicant. Wherefore, the undersigned hereby moves to be relieved of counsel in this case.

Respectfully submitted,



L. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile

Counsel for Appellant

The State of South Carolina
In the Supreme Court

Appeal from Spartanburg County
Court of Common Pleas
(Post Conviction Relief Case)

Roger L. Couch, Circuit Court Judge

Case No.: 2008-CP-42-6126

Bobby Gibson, Jr, 171440, Appellant,
v.
State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

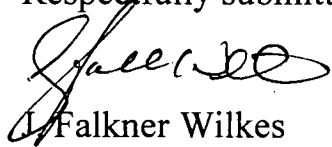
I certify that I have served a copy of Notice of Appeal on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, this 28th day of June, 2011 addressed as follows:

Suzanne White, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

Robert M. Dudek
Chief Appellate Defender
1330 Lady Street, Suite 401
Columbia, SC 29201

Bobby Gibson, 171440
Q2A-223
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Respectfully submitted,



L. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile
Counsel for Appellant

June 28, 2011.

RECEIVED

JUN 16 2011

SC Court of Appeals

J. FALKNER WILKES

Attorney at Law

114 Whitsett Street
Greenville, South Carolina 29601

Telephone: (864) 282-1292
Facsimile: (864) 271-6035

June 17, 2011

RECEIVED

JUN 20 2011

S.C. Supreme Court

Tanya Gee, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
via facsimile also to: (803) 734-1839

Re: Bobby Gibson, Jr., 171449 v. State of South Carolina
2008-CP-42-6126

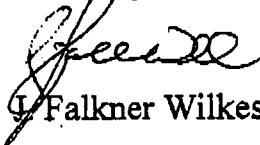
171440

Dear Ms. Gee,

I represented the Appellant, Bobby Gibson, Jr., in a post conviction relief action in the circuit court. I am enclosing herewith a Notice of Appeal and Certificate for service in the above case. Because Mr. Gibson is incarcerated he may qualify for representation by the Division of Appellate Defense. I am therefore providing a copy of the Notice of Appeal to the Office of Indigent Defense.

Because I believe Mr. Gibson may qualify for OID representation I will not request a transcript unless it appears that OID will not engage or you direct me to do otherwise.

Sincerely,


J. Falkner Wilkes

c.
Suzanne White, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
Post Office Box 11549
Columbia, SC 29211
via facsimile also to: (803) 734-4113

and a copy also delivered to:

Robert M. Dudek, Chief Appellate Defender
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina, 29211-1589
via facsimile also to: (803) 734-1397

The State of South Carolina
In the Court of Appeals

Appeal from Spartanburg County
Court of General Sessions

Roger L. Couch, Circuit Court Judge

Case No.: 2008-CP-42-6126

RECEIVED
JUN 16 2011
SC Court of Appeals
RECEIVED
JUN 20 2011
S.C. Supreme Court

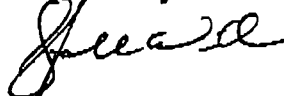
Bobby Gibson, Jr, 171440, Appellant,
v.
State of South Carolina, Respondent.

NOTICE OF APPEAL

Appellant appeals from the ORDER OF DISMISSAL attached hereto which was signed by the Hon. Roger L. Couch on the 16th day of May, 2011 and which was entered by the Clerk in the record on 17th day of May, 2011.

Counsel received a copy of said order on the 23rd day of May, 2011. A copy of said Order is attached hereto.

Respectfully submitted,



J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile

Counsel for Appellant

Other counsel of record:

**Suzanne White, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
Post Office Box 11549
Columbia, SC 29211**

The State of South Carolina
In the Court of Appeals

Appeal from Spartanburg County
Court of General Sessions

Roger L. Couch, Circuit Court Judge

Case No.: 2008-CP-42-6126

RECEIVED

JUN 20 2011

S.C. Supreme Court

Bobby Gibson, Jr, 171440, Appellant,
v.
State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

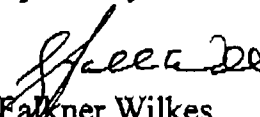
I certify that I have served a copy of Notice of Appeal on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, this 17th day of June, 2011 addressed as follows:

Suzanne White, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

M. Hope Blackley
CLERK OF COURT
PO Box 3483
Spartanburg, SC 29304-3483

Robert M. Dudek
Chief Appellate Defender
1330 Lady Street, Suite 401
Columbia, SC 29201

Respectfully submitted,


J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile

Counsel for Appellant

June 17, 2011.

J. FALKNER WILKES

Attorney at Law

114 Whitsett Street
Greenville, South Carolina 29601

Telephone: (864) 282-1292
Facsimile: (864) 271-6035

June 17, 2011

Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

via facsimile also to: (803) 734-1499

RECEIVED

JUN 20 2011

Re: Bobby Gibson, Jr., 171449 v. State of South Carolina
2008-CP-42-6126


S.C. SUPREME COURT

Dear Mr. Shearouse,

I represented the Appellant, Bobby Gibson, Jr., in a post conviction relief action in the circuit court. I am enclosing herewith a Notice of Appeal and Certificate for service in the above case. Because Mr. Gibson is incarcerated he may qualify for representation by the Division of Appellate Defense. I am therefore providing a copy of the Notice of Appeal to the Office of Indigent Defense.

Because I believe Mr. Gibson may qualify for OID representation I will not request a transcript unless it appears that OID will not engage or you direct me to do otherwise.

Sincerely,


J. Falkner Wilkes

c.
Suzanne White, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
Post Office Box 11549
Columbia, SC 29211

via facsimile also to: (803) 734-4113

and a copy also delivered to:

Robert M. Dudek, Chief Appellate Defender
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina, 29211-1589
via facsimile also to: (803) 734-1397

The State of South Carolina
In the Supreme Court

Appeal from Spartanburg County
Court of General Sessions

Roger L. Couch, Circuit Court Judge

Case No.: 2008-CP-42-6126

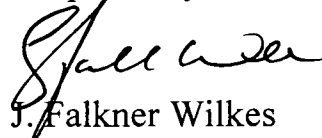
Bobby Gibson, Jr, 171440, Appellant,
v.
State of South Carolina, Respondent.

NOTICE OF APPEAL

Appellant appeals from the ORDER OF DISMISSAL attached hereto which was signed by the Hon. Roger L. Couch on the 16th day of May, 2011 and which was entered by the Clerk in the record on 17th day of May, 2011.

Counsel received a copy of said order on the 23rd day of May, 2011. A copy of said Order is attached hereto.

Respectfully submitted,



J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile

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S.C. SUPREME COURT

Counsel for Appellant

Other counsel of record:

Suzanne White, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
Post Office Box 11549
Columbia, SC 29211

The State of South Carolina
In the Supreme Court

Appeal from Spartanburg County
Court of General Sessions

Roger L. Couch, Circuit Court Judge

Case No.: 2008-CP-42-6126

Bobby Gibson, Jr, 171440, Appellant,
v.
State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

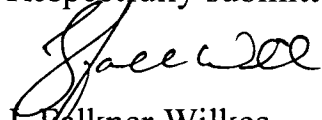
I certify that I have served a copy of Notice of Appeal on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, this 17th day of June, 2011 addressed as follows:

Suzanne White, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

M. Hope Blackley
CLERK OF COURT
PO Box 3483
Spartanburg, SC 29304-3483

Robert M. Dudek
Chief Appellate Defender
1330 Lady Street, Suite 401
Columbia, SC 29201

Respectfully submitted,



J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile

Counsel for Appellant

June 17, 2011.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Bobby Gibson, Jr., #171440,)
)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
)
 Respondent.)
)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2008-CP-42-6126

ORDER OF DISMISSAL

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This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 14, 2008. The Respondent made its Return on or about August 20, 2009. An evidentiary hearing into the matter was convened on September 14, 2010, at the Spartanburg County Courthouse. J. Faulkner Wilkes, Esquire, represented the Applicant. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. William Roberts, Investigator hired by Applicant's Counsel, also testified on behalf of the Applicant. Thomas A. M. Boggs, Esquire, Jane Millwood, and Robert Rosenberg also testified. This Court also had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court, Applicant's appellate records, the Applicant's records from the South Carolina Department of Corrections, and all exhibits entered into evidence at the hearing.

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 Spartanburg County. The Applicant was

indicted at the November 2004 and January 2005 terms of the Court of General Sessions for Spartanburg County for Possession of Crack Cocaine (2004-GS-42-4363) and two counts of Trafficking in Cocaine (05-GS-42-0073) (05-GS-42-0074). Thomas A. M. Boggs, Esquire, represented the Applicant. On April 8, 2005, the Applicant proceeded to trial after which he was found guilty as indicted. The Honorable Doyet A. Early III sentenced him to confinement for a period of fifteen (15) years and \$15,000 for Possession of Cocaine; thirty (30) years and \$200,000 for the first count of Trafficking in Cocaine; and thirty (30) years and \$50,000 for the second count of Trafficking in Cocaine. Each sentence runs concurrently to Applicant's first charge of Trafficking in Cocaine (05-GS-42-0073).

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Gibson, Unpublished Op. No. 2006-UP-372 (S.C. Ct. App. filed October 31, 2006). On December 13, 2007, the Supreme Court denied the Petition for Writ of Certiorari filed on the Applicant's behalf. Remittitur was issued on December 17, 2007.

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

1. Ineffective Assistance of Trial Counsel, in that:
 - a. Counsel failed to properly investigate and prepare for trial,
 - b. Counsel failed to call witnesses relevant to the defense theory of the case,
 - c. Counsel failed to properly investigate, present evidence, cross-examination and make motions to suppress the evidence,
 - d. Counsel failed to move for a mistrial or curative instructions when jurors saw the Applicant in prison jumpsuit and shackles during a break in the trial,
 - e. Counsel failed to argue and preserve legal issues for appellate review,
 - f. Counsel failed to object and adequately challenge the alleged traffic stop and the resulting fruits of the arrest and search,
 - g. Counsel failed to object and adequately challenge the qualifications of the

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- State's Expert witnesses,
- h. Counsel failed to properly conduct discovery and obtain information relevant to the defense of the case,
 - i. Counsel failed to challenge the introduction of prejudicial evidence of mother's funds,
 - j. Counsel failed to move for a continuance based on the accident and admission of Applicant to ER on the day of trial;
2. Ineffective Assistance of Appellate Counsel, in that;
- a. Appellate counsel failed to properly research case and present proper issues including, but not limited to, the denial of Applicant's motion for directed verdict, when specifically asked to do so by Applicant; and
3. Failure of the State to Comply with Applicable Rules of Discovery, in that;
- a. State withheld discoverable material including, but not limited to the videos, tapes, call logs, and other evidence relating to the stop,
 - b. State withheld discoverable material including, but not limited to the warrants obtained for the search(s) of real property.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing, along with review exhibits entered at the 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

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668,

104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry, Id. S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating 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." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Properly Investigate and Prepare for Trial

Regarding Applicant's allegation that Counsel failed to properly investigate and prepare for trial, this Court finds no factual basis for this claim. This Court also finds that Counsel's testimony was more credible than Applicant's as to this issue. Counsel is an experienced trial attorney with over thirty years of experience representing clients on serious charges. Counsel testified that he conducts research to remain updated on the latest case law regarding his cases, in particular on issues dealing with searches and seizures. Counsel testified that he reviewed all discovery materials and made Motions to obtain any video or audiotape evidence of the Applicant's stop. However, Counsel



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testified and records reflect that there was no video or audiotape available. Counsel also made Motions in an attempt to suppress any and all evidence found as a result of the stop and subsequent searches of Applicant's home and business.

"Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329-S.C. 329, 496 S.E.2d 415 (1998). This Court finds that the Applicant has failed to meet his burden of proof as to this claim. The Applicant failed to present any testimony or evidence that Counsel would have discovered had he conducted additional investigation. This Court finds that Counsel was very thorough and competent in his representation of Applicant and filed appropriate Motions to protect Applicant's interests. Furthermore, this Court finds that Counsel was well prepared for trial. Therefore, this claim is denied and dismissed.

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Failure to Call Witnesses Relevant to the Theory of the Case

Applicant alleges that Counsel was ineffective for failing to call witnesses relevant to the theory of the case. However, Applicant failed to meet his burden of proof as to this claim, in that Applicant failed to allege what witnesses Counsel did not call and presented no testimony or evidence at the hearing to support his claim. In addition, Counsel testified that the only witnesses that would have been able to testify as to the traffic stop were the police who arrested Applicant. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover



v. State, 318 S.C. 496; 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Applicant produced no favorable testimony or witness therefore, this claim is denied and dismissed.

Failure to Properly Argue for Suppression of Evidence, Including Evidence Obtained as a Result of the Traffic Stop and Evidence Obtained at Applicant's Home

Applicant alleged that Counsel failed to properly argue for the suppression of evidence obtained as a result of a traffic stop and search at Applicant's home and business. This Court finds Counsel's testimony to be more credible than Applicant's as to this issue. This Court also finds that Counsel was well prepared and argued zealously for suppression of the evidence.

Applicant also alleged that the evidence should have been suppressed because the search warrant he received was unsigned; but Counsel failed to argue that point. According to the record, the testimony indicating that an unsigned warrant was served (at the home) is double hearsay and neither witness with knowledge of the warrant's service procedure was present at the hearing. Additionally, it is clear that a signed warrant was issued prior to the search actually taking place. Since the warrant was signed at the time of the search, State v. Covert should not apply. State v. Covert, 382 S.C. 205 (2009). Covert does not require the judge's signatures on the copies of the warrants furnished pursuant to S.C. Code Ann. §17-13-150. Furthermore, the Applicant presented no evidence confirming that a signed warrant wasn't served at the time of the search. The record only states that an unsigned copy was found at each location one and a half months after the search. Lastly, the record has no evidence that anyone was present at the business to be served at the time of



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the search.

The standard in a motion for PCR is ineffective assistance of counsel and that a change in result would have occurred had counsel been effective. The applicant raised the issue of staleness as to the information relied on by the search warrant. Based on State v. Thompson, the information relied on in the search warrant was not stale:

We next address, and reject, Thompson claim that the information contained in the affidavit supporting the warrant was stale, and therefore could not have been the basis of a finding of probable cause. In order for an affidavit to support probable cause, it must state facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time." State v. Winborne, 273 S.C. 62, 64, 254 S.E.2d 297, 298 (1979) (internal quotation marks omitted). "An affidavit which fails altogether to state the time of the occurrence of the facts alleged is insufficient." Id.

There is, however, no fixed standard or formula establishing a maximum allowable interval between the date of events recited in an affidavit and the date of a search warrant. United States v. McCall, 740 F.2d 1331, 1336 (4th Cir.1984). This court has explained that the acceptable length of time between the establishment of probable cause and the execution of the warrant depends on a variety of case-specific factors:

While the lapse of time involved is an important consideration and may in some cases be controlling, it is not necessarily so. There are other factors to be considered, including the nature of the criminal activity involved, and the kind of property for which authority to search is sought.

State v. Corns, 310 S.C. 546, 550-51, 426 S.E.2d 324, 326 (Ct.App.1992) (quoting United States v. Steeves, 525 F.2d 33 (8th Cir.1975)).

The record in this case contains ample support for the trial court's rejection of Thompson's assertion that the circumstances providing probable cause for the search had grown stale by the time the warrant was executed. The affidavit provides that the informant had observed Thompson in possession of crack cocaine within the past 72 hours. The affidavit was sworn on the same day the magistrate issued the warrant, and Officer Phillips executed the warrant the day after it was issued. Additionally, the record reveals that the information received from the informant was not an isolated incident. Phillips testified that he informed the magistrate that Thompson was the subject of an ongoing narcotics investigation conducted during the several months prior to obtaining the warrant.



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Given the continuous nature of the alleged drug activity, we find the record supports the trial court's finding that it was reasonable for the magistrate to conclude that Thompson would be found in possession of illegal substances. Although isolated sales of narcotics unquestionably occur, it is generally recognized that "narcotics conspiracies are the very paradigm of the continuing enterprises for which the courts have relaxed the temporal requirements of non-staleness." United States v. Rowell, 903 F.2d 899, 903 (2d Cir.1990) (quotation marks and citation omitted); see also Donaldson v. State, 46 Md.App. 521, 420 A.2d 281, 286 (1980) (noting that the selling of drugs, by its nature, is an ongoing activity). Considering the informants report of Thompson's drug possession together with Phillips testimony that Thompson was the subject of an ongoing narcotics investigation did not suggest an isolated incident, but rather described a probable continuing course of illegal drug activity. We concur, therefore, with the trial court that the probable cause predicate, which supported the issuance of the warrant, continued to exist at the time of its execution.

State v. Thompson, 363 S.C. 192 (S.C. Ct. App. 2005).

As discussed in the excerpt from Thompson, there is no definite interval of time in which authorities must act on information used to obtain a search warrant. Additionally, a case-by-case approach is used in examining the factors involved. Furthermore, the type of criminal activity is very important in determining if the informant's information was stale (see U.S. v. Rowell above). Here the interval of time did not create a staleness issue based on the facts of ongoing information of drug activity which was deemed to be reliable. Therefore, there was effective assistance of counsel; and, even if there wasn't effective assistance, based on Thompson the result of the case would not have changed. Therefore, this claim is denied and dismissed.

Failure to Object to Chain of Custody

Applicant also alleged that the chain of custody of the drugs should have been objected to because of various reasons, including the alleged improper signing of the forms by the evidence custodians Robert Rosenburg and Jane Millwood, both evidence custodians at the time of Applicant's arrest and trial, testified at the hearing. Although there was much testimony regarding

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the forms and whether or not they were proper, this Court finds that the issue lacks merit. According to the record, Millwood testified as to her participation in the chain of custody of the drugs; therefore, the forms were never entered into evidence or used at Applicant's trial. This Court finds that the alleged improper paperwork is simply cumulative in the light of the fact that Millwood testified as to the chain at trial. Therefore, this claim is denied and dismissed.

Furthermore, the record indicates that the evidence was secured, subsequently analyzed, and confirmed to be crack cocaine. "Proof of chain of custody need not negate all possibility of tampering, but must establish a complete chain of evidence, as far as practicable." State v. Williams, 297 S.C. 290, 293, 376 S.E.2d 773, 774 (1989); State v. Wells, 336 S.C. 223, 230, 426 S.E.2d 817 (Ct. App. 1992) *overruled on other grounds by Burgess v. State*, 329 S.C. 88, 495 S.E.2d 445 (1998). Even if counsel should have challenged the chain of custody, there is no evidence that the Applicant was prejudiced by counsel's failure to do so. Therefore, this allegation is dismissed.

Failure to Move for Mistrial when Applicant was Observed in Prison Garb

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. This Court also finds Counsel's testimony to be more credible than Applicant's testimony as to this issue. Applicant testified that on the second day of the trial, as he was arriving for court, there were three jurors standing outside of the jury room who saw the Applicant in his prison uniform and shackles. Counsel testified that he had no recollection of the Applicant ever being seen in shackles; however, Counsel did not believe that a Motion for Mistrial would have been successful just on that issue. The power of a court to declare a mistrial ought to be used with the greatest caution under urgent circumstances, and for very plain and obvious causes" stated into the record by the trial judge. State v. Kirby, 269 S.C. 25, 28, 236 S.E.2d 33, 34 (1977). Granting of motion for mistrial is an

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extreme measure that should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way. State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999). Mistrial should not be granted unless absolutely necessary; to receive mistrial, defendant must show error and resulting prejudice. State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999). This Court finds that even if Counsel had made a Motion for Mistrial, the Motion would not have been successful, so even if Counsel's performance was deficient as to this issue, Applicant suffered no prejudice. Therefore, this claim is denied and dismissed.

Failure to Properly Argue and Preserve Legal Issues for Appellate Review

The Applicant argued that Counsel failed to properly preserve the issue of the unsigned search warrant. This Court finds that Applicant, even if Counsel failed to preserve the issue, failed to demonstrate any prejudice. Applicant failed to produce any evidence that this issue would have succeeded on appeal had it been preserved by Counsel. As indicated previously, the State was able to produce signed search warrants and based on the case law, it is clear that even if Counsel had timely objected, the appeal would have failed. Therefore, this Court finds that he has failed to meet his burden of proof and the claim should be denied and dismissed.

Failure to Properly Challenge State's Expert Witnesses

In Applicant's case, only one witness was qualified as an expert witness, Beth Vaughn, the forensic chemist for the Spartanburg County Sheriff's Office. However, Applicant failed to present any testimony or evidence in support of his claim that Counsel was ineffective for failing to properly challenge her qualifications. In regards to Counsel's challenging the witnesses on cross-examination, this Court finds that Applicant failed to meet his burden of proof in showing any deficiency on Counsel's behalf. The nature and scope of cross-examination is inherently a matter of



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trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not proffer any questions counsel allegedly failed to ask, and did not present any testimony showing the witnesses' answers at trial would have been different. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense. Therefore, this claim is denied and dismissed.

Failure to Challenge Introduction of Prejudicial Evidence of Mother's Funds

The Applicant failed to present any testimony or evidence in support of this allegation. Therefore, this Court finds that he has failed to meet his burden of proof and the claim should be denied and dismissed.

Failure to Move for Continuance Based on Accident on Day of Trial

Applicant alleged that Counsel should have requested a continuance when the Applicant was involved in a traffic accident on his way to court for trial. However, this Court finds that the Applicant failed to meet his burden of proof as to this issue. "Where there is no showing that any other evidence on behalf of the appellant could have been produced or that any other points could have been raised had more time been granted for the purpose of preparing the case for trial," a continuance is unnecessary. State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51-52 (1996). The Applicant does not claim that he was denied access to witnesses or lacked time to prepare a specific defense. Furthermore, the Applicant must show actual prejudice from the denial of a continuance. Skeen v. State, 325 S.C. 210, 213-14, 481 S.E.2d 129, 130-32 (1997) [Absent showing that



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additional preparation would have benefitted defense, counsel's failure to request continuance did not result in ineffective assistance]. Accordingly, since "it is unclear what the additional preparations would have yielded, . . ." the Applicant has not shown counsel's failure to request a continuance was ineffective assistance. Skeen, 325 S.C. at 214-15, 481 S.E.2d at 132. Therefore, this claim is denied and dismissed.

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

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

Ineffective Assistance of Appellate Counsel

The Applicant also alleged that Appellate counsel failed to properly research case and present proper issues including, but not limited to, the denial of Applicant's motion for directed verdict, when specifically asked to do so by Applicant. The Applicant failed to present any testimony or evidence in support of this allegation; therefore, this Court finds that the Applicant has failed to meet his burden of proof as to this issue. This claim is denied and dismissed.

Brady Violation

The Applicant also alleged that the State failed to comply with the rules of discovery in regards to videos, tapes, call logs, and other information regarding Applicant's traffic stop, in



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addition to the warrants. Applicant alleged that this was a violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1992). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, if the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

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This Court finds that no Brady violation occurred. Testimony was presented at trial that the tapes were requested but were not available and no evidence of purposeful suppression or the willful destruction of evidence was offered. The Applicant failed to meet his burden of proof as to this claim. No testimony or evidence was presented to prove that the State withheld any information from Applicant. Therefore, this claim is denied and dismissed.

CONCLUSION

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

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by Counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an



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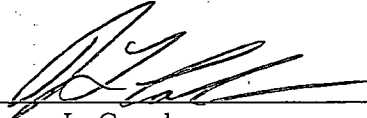
Applicant has a right to an appellate Counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR Counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243¹ for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

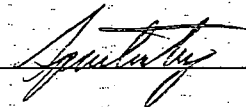
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 16th day of May, 2011

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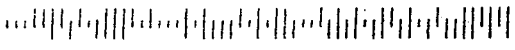


Roger L. Couch
Presiding Circuit Court Judge

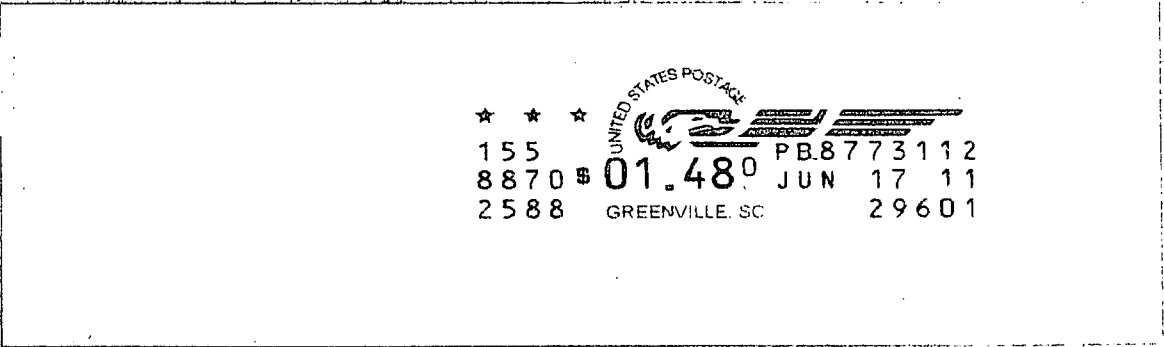
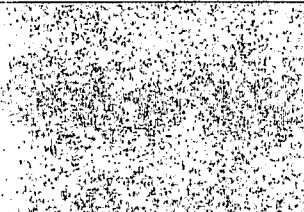
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¹ Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

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Daniel Shearouse
Clerk of the Supreme Court
P.O. Box 11330
Columbia, SC 29211

*Bobby
Ruben, Jr.*



ALAN WILSON
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737
PCR FACSIMILE: 803.734.4113

April 25, 2012

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

RECEIVED

APR 25 2012


S.C. Supreme Court

RE: **Bobby Gibson Jr. v. State of South Carolina**
2008-CP-42-6126

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. 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.

Very truly yours,

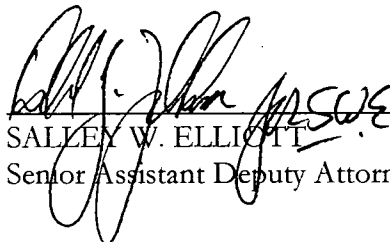


Suzanne H. White
Assistant Attorney General

SHW/aam

In compliance with:

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



SALLEN W. ELLIOTT
Senior Assistant Deputy Attorney General

Wanda H. Carter
Attorney for Petitioner

Anne Mueller - Bobby Gibson Jr. 3rd Extension

From: Anne Mueller
To: wcarter@sccid.gov
Date: 4/25/2012 3:02 PM
Subject: Bobby Gibson Jr. 3rd Extension
CC: White, Suzanne
Attachments: ANNE-GIBSONEXTLTR.PDF

Ms. Carter:

Suzanne needs to request a third extension for her RPWC in the above matter. If you can consent to this extension, please print out the attached letter, sign where indicated and send your signed copy to the Clerk's office. If you are unable to consent, please let me know so that we can inform the Clerk when we file our request.

Thank you.

Anne Mueller

Anne A. Mueller

Legal Assistant, PCR Division
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