

The Supreme Court of South Carolina

Victor D. Brown,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Paul M. Burch
York County
Trial Court Case No. 2008-CP-46-03051

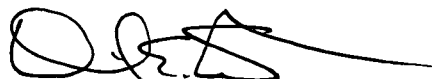
ORDER

The request for an extension until May 21, 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



Clerk

Columbia, South Carolina

April 23, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Karen Ratigan



ALAN WILSON
ATTORNEY GENERAL

April 20, 2012

RECEIVED

APR 20 2012

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

S.C. Supreme Court

RE: **Victor Brown v. State of South Carolina**
2008-CP-46-3051

Dear Mr. Shearouse:

The Return to 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 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.

Sincerely,


J. Rutledge Johnson
Assistant Attorney General

cc: Appellate Defense

The Supreme Court of South Carolina

Victor D. Brown,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Paul M. Burch
York County
Trial Court Case No. 2008-CP-46-03051

ORDER

For good cause shown, the request for an extension until March 12, 2012 to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Arenda J. Shealy
Chief Deputy Clerk

Columbia, South Carolina

February 13, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Karen Ratigan

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
Paul M. Burch, Circuit Court Judge

RECEIVED

FEB 10 2012

VICTOR D. BROWN,

PETITIONER, **S.C. Supreme Court**

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

(3)

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

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

1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today, February 10, 2012.
2. Counsel for Mr. Brown respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.
3. On February 8, 2012 counsel filed the initial brief of appellant and designation of matter in Robert Lee Banks v. State. On February 2, 2012 counsel filed the initial brief of appellant and designation of matter in Dan Williams v. State. On January 26, 2012 counsel filed the petition for writ of certiorari and

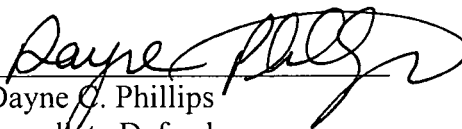
appendix in Joshua Manning v. State. On January 18, 2012 counsel filed the petition for writ of certiorari and appendix in Jeffrey Higgins v. State. On January 17, 2012 counsel filed the petitions for writ of certiorari and appendices in Billy James Lupo v. State and Stanley O. Williams v. State. On January 9, 2012 counsel filed the petitions for writ of certiorari and appendices in Joseph Samuel Whitt v. State and Edward Thompson v. State. On January 5, 2012 counsel filed the petition for rehearing in State v. Bradley Scott Senter. On January 3, 2012 counsel filed the petition for writ of certiorari and appendix in Willie James v. State.

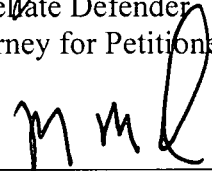
4. Counsel makes this request in good faith and not for purpose of delay.

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

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

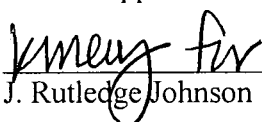
Respectfully submitted,


Dayne C. Phillips
Appellate Defender
Attorney for Petitioner


Robert M. Dudek
Chief Appellate Defender

February 10, 2012

I do not oppose:


J. Rutledge Johnson

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Certiorari to York County
Paul M. Burch, Circuit Court Judge

RECEIVED

JAN 11 2012

VICTOR D. BROWN,

PETITIONER, **S.C. Supreme Court**

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.



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

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

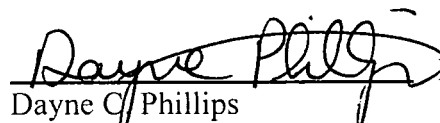
1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today, January 11, 2012.
2. Counsel for Mr. Brown respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.
3. On January 9, 2012 counsel filed the petitions for writ of certiorari and appendices in Joseph Samuel Whitt v. State and Edward Thompson v. State. On January 5, 2012 counsel filed

the petition for rehearing in State v. Bradley Scott Senter. On January 3, 2012 counsel filed the petition for writ of certiorari and appendix in Willie James v. State. On December 21, 2011 counsel filed the initial brief of appellant and designation of matter in Dominique K. Ivey, Jr. v. State. On December 19, 2011 counsel filed the petition for writ of certiorari and appendix in Denise Michelle Edwards v. State. On December 16, 2011, counsel filed the petition for writ of certiorari and appendix in Lillian A. Sims v. State and Charles Dominick v. State. On December 13, 2011 counsel filed the petition for writ of certiorari and appendix in Fernando Saenz v. State.

4. Counsel makes this request in good faith and not for purpose of delay.
5. Counsel for the Attorney General's office has been informed of this request.

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

Respectfully submitted,


Dayne C. Phillips
Appellate Defender

Attorney for Petitioner

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
Paul M. Burch, Circuit Court Judge

VICTOR D. BROWN,

PETITIONER,

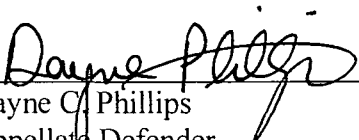
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

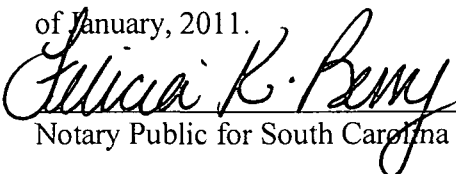
CERTIFICATE OF SERVICE

I certify that a true copy of the motion for an extension of time in which to file the petition for writ of certiorari and appendix in the above case has been served upon Harrison Brant, Esquire, this 11th day of January, 2012.


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 11th day
of January, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.

The Supreme Court of South Carolina

Victor D. Brown,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Paul M. Burch
York County
Trial Court Case No. 2008-CP-46-03051

ORDER

The request for an extension until January 11, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Sherrida A. Shealy*

Chief Deputy Clerk

Columbia, South Carolina

December 13, 2011

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Karen Ratigan



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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

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

December 12, 2011

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

RECEIVED

DEC 12 2011

S.C. Supreme Court

Re: Victor Brown v. State of South Carolina

Dear Mr. Shearouse:

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

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

Thank you for your assistance in this matter.

Sincerely,

Dayne C. Phillips
Assistant Appellate Defender

DCP/fkb

cc: Harrison Brant, 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

RECEIVED

OCT 17 2011

S.C. Supreme Court

October 17, 2011

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.

Victor D. Brown v. State of South Carolina

10/13/2011

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

Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

RECEIVED

September 28, 2011

SEP 28 2011

S.C. Supreme Court

Ms. Wanda S. Nelson
Circuit Court Reporter
1428 Dove Landing Road
York, SC 29745

Dear Ms. Nelson:

Please provide us with the following transcript:

Victor D. Brown v. State of South Carolina Case #: 08-CP-46-3051.

County: York Date of Trial: February 2, 2011

Presiding Judge: Paul M. Burch

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

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

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

Sincerely,


Lorie French
Legal Services Coordinator

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Paul M. Burch, Circuit Court Judge

Case No. 2008-CP-46-3051

Victor D. Brown, 323433 Appellant
v.
The State of South Carolina, Respondent

Motion to be Relived as Counsel

NOW COMES Joseph J. Watson, attorney for Victor D. Brown, seeking an Order of the Court relieving him as counsel for Mr. Brown. In support of this Motion, Mr. Watson would show the following:

- 1) That he was retained by Mr. Brown's family to represent him in a Post-Conviction Relief Matter;
- 2) An Order was issued by the Honorable Paul M. Burch on April 1st, 2011 denying the relief sought by Mr. Brown;
- 3) That a timely appeal was filed in this matter on April 19, 2011;
- 4) That Mr. Brown is unable to retain Mr. Watson to represent him in this appeal and has signed an Affidavit of Indigency;

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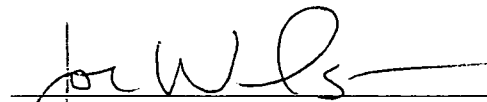
SEP 02 2011

S.C. SUPREME COURT

5) That the Office of Appellate Defense was provided the Affidavit of Indigency on July 22, 2011 and has agreed that they will represent Mr. Brown in this matter.

WHEREFORE, Mr. Watson seeks an Order from this Court relieving him as counsel of record for Mr. Brown and substituting the Office of Appellate Defense as counsel for Mr. Brown.

Respectfully submitted,



Joe Watson
650 E. Washington Street
Greenville, South Carolina 29601
(864) 467-0380
(864) 672-1406 (fax)

Attorney for the Appellant

August 30, 2011

Other Counsel of Record:
Harrison D. Brant, Assistant Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia, SC 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

September 19, 2011

RECEIVED

SEP 19 2011

S.C. Supreme Court

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

Re: Victor D. Brown v. State of South Carolina

Dear Mr. Shearouse:

Please accept this letter in lieu of a return to the motion to be relieved as counsel filed by Joseph J. Watson, Esquire.

As previously communicated to the Supreme Court we have received and approved the affidavit of indigency for Mr. Brown. Therefore, we will assume representation of Mr. Brown for the appeal of his post-conviction relief if this Court decides to relieve Joseph J. Watson, Esquire.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

cc: Joseph J. Watson, Esquire
Harrison D. Brant, Assistant Attorney General
Mr. Victor D. Brown

JOE WATSON

ATTORNEY AT LAW

650 E WASHINGTON STREET
GREENVILLE, SOUTH CAROLINA 29601

TELEPHONE (864) 467-0380
FACSIMILE (864) 672-1406
EMAIL JOE@JOEWATSONLAW.COM

August 29, 2011

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

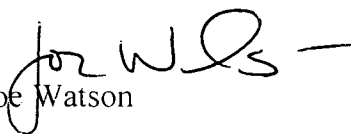
Re: *Victor D. Brown, 323433 v. State of South Carolina*
C.A. No. 2008-CP-46-3051

Dear Mr. Shearouse:

Enclosed please find a Motion to be Relieved as Counsel in the above referenced case. I have filed an Affidavit of Indigency with the Office of Appellate Defense. Please let me know if there is anything else I need to do.

I appreciate your assistance in this matter.

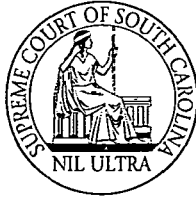
Very truly yours,


Joe Watson

JJW/da
enclosures

cc: Lorraine French
Office of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

RECEIVED
SEP 02 2011
S.C. SUPREME COURT



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

May 18, 2011

Victor D. Brown #323433
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335-9308

Re: Brown, Victor D. v. The State

Dear Mr. Brown:

This responds to your letter of May 16, 2011. A timely notice of appeal was filed on your behalf by Joe Watson, Esquire. He has requested and is awaiting delivery of the PCR hearing transcript. Further questions about your appeal and the appellate process should be directed to your counsel.

Very truly yours,

CLERK

DES/jj

cc: Joseph J. Watson, Esquire
Assistant Attorney General Karen Ratigan

Victor Brown #323433
Tyger River Lower, U-3A-114
200 Prison Road
Enoree, S.C. 29335

Supreme Court of S.C.
Clerk of Court
P.O. Box 11330
Columbia, S.C. 29211

IN RE: Victor Brown v. State of South Carolina on Notice of Appeal from York
County South Carolina:

Pleas be advised, I have been informed by my prior (PCR) attorney, that a
Notice of Intent to Appeal was perfected and has been forwarded to your office
in my behalf. But due to reasons for doubt that this action has taken place, I
would appreciate it, if your office would provide me with a confirmation of
the status on this matter; Conviction August 7, 2007, indictment No.
2006-GS-46-03641, Trafficking Cocaine, York County South Carolina.

I thank you in advance for your assistance in this matter.

PCR attorney, Joe Watson
Greenville, SC.

Victor Brown 323433
Victor Brown #323433

Date: May 16, 2011.

RECEIVED

MAY 18 2011

S.C. SUPREME COURT

JOE WATSON

ATTORNEY AT LAW

650 E WASHINGTON STREET
GREENVILLE, SOUTH CAROLINA 29601

TELEPHONE (864) 467-0380
FACSIMILE (864) 672-1406
EMAIL JOE@JOEWATSONLAW.COM

May 4, 2011

Wanda Nelson
Court Reporter
Moss Justice Center
1675-1H York Hwy.
York, SC 29745

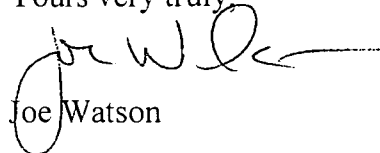
Re: Victor Brown v. State of South Carolina
2008-CP-46-3051

Dear Ms. Nelson:

Please be advised that I would respectfully request a copy of the PCR hearing transcript in the above referenced matter. The hearing was held on February 2, 2011 before the Honorable Paul M. Burch. I have been advised that you were the court reporter for this hearing. Please let me know the cost of this transcript and I will forward payment to you immediately.

Thank you for your assistance. Please call this office if you have any questions or concerns.

Yours very truly,



Joe Watson

JJW/da

Cc: Daniel E. Shearouse, Clerk of Court, Supreme Court

RECEIVED
MAY 06 2011
S.C. SUPREME COURT

The South Carolina Court of Appeals

Victor D. Brown, #323433,

Appellant,

v.

State of South Carolina,

Respondent.

The Honorable Paul M. Burch
York County
Trial Court Case No. 2008-CP-46-03051

RECEIVED

APR 27 2011

S.C. Supreme Court

ORDER

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

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For The Court

BY


CLERK

Columbia, South Carolina

cc: Joseph J. Watson, Esq.
Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Karen C. Ratigan
The Honorable Daniel Shearouse



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839

January 6, 2009

Joseph J. Watson, Esquire
650 E. Washington Street
Greenville, SC 29601

Re: Victor D. Brown v. State of SC
2087-CP-46-03051

RECEIVED

APR 27 2011

S.C. Supreme Court

Dear Mr. Jordan:

Enclosed is an order of the Court of Appeals transferring the above referenced Notice of Appeal to the South Carolina Supreme Court. Your check #3010 is hereby returned to you.

According to Rule 243 of the South Carolina Appellate Court Rules, final decisions entered under the Post-Conviction Relief Act are to be reviewed by the Supreme Court. Therefore, all Notices of Appeal regarding Post-Conviction actions must be filed in the Supreme Court.

I hope the above information will assist you in the future when filing Notices of Appeal from post conviction relief actions.

Very truly yours,

Tanya A. Gee
CLERK

TAG/ma

JOE WATSON

ATTORNEY AT LAW

650 E WASHINGTON STREET
GREENVILLE, SOUTH CAROLINA 29601

TELEPHONE (864) 467-0380
FACSIMILE (864) 672-1406
EMAIL JOE@JOEWATSONLAW.COM

April 19, 2011

Honorable Tanya Gee
Clerk of South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
APR 22 2011

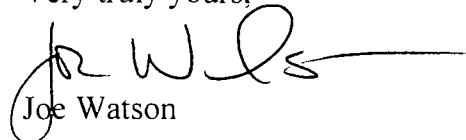
Re: *Victor D. Brown, 323433 v. State of South Carolina* **SC Court of Appeals**
C.A. No. 2008-CP-46-3051

Dear Ms. Gee:

Please find enclosed the original and six (6) copies of a Notice of Appeal in the above referenced matter. Also enclosed is my firm's check in the amount of \$100.00 along with a Proof of Service. Please return the clocked copies to me in the envelope provided.

I appreciate your assistance in this matter.

Very truly yours,


Joe Watson

JJW/da
enclosures

cc: David Hamilton
York County Clerk of Court
P.O. Box 649
York, South Carolina 29745

Harrison D. Brant, Assistant Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia, SC 29211-1549

RECEIVED
APR 27 2011

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Paul M. Burch, Circuit Court Judge

Case No. 2008-CP-46-3051

RECEIVED

APR 27 2011

S.C. Supreme Court

The State of South Carolina,..... Respondent
v.

Victor D. Brown, Appellant

NOTICE OF APPEAL

Victor D. Brown appeals the Order of the Honorable Paul M. Burch dated April 1st, 2011.
Appellant received written notice of entry of this Order on or about April 11, 2011.



Joe Watson
650 E. Washington Street
Greenville, South Carolina 29601
(864) 467-0380
(864) 672-1406 (fax)

Attorney for the Appellant

April 19, 2011

Other Counsel of Record:
Harrison D. Brant, Assistant Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia, SC 29211-1549

RECEIVED

APR 22 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Paul M. Burch, Circuit Court Judge

RECEIVED

APR 22 2011

Case No. 2008-CP-46-3051

SC Court of Appeals

The State of South Carolina, Respondent
v.

Victor D. Brown, Appellant

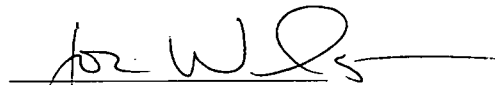
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the following parties by depositing a copy of it in the United States Mail, postage prepaid, on April 19, 2011, addressed to their attorneys of record as follows:

*Harrison D. Brant, Assistant Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia, SC 29211-1549*

*David Hamilton
York County Clerk of Court
P.O. Box 649
York, South Carolina 29745*

*The Honorable Tonya Gee
Clerk of Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211*


Joe Watson
650 E. Washington Street
Greenville, S.C. 29601
(864) 467-0380
Attorney for Appellant

April 19, 2011

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT

)
)
) 2008-CP-46-3051
)

Victor D. Brown, 323433.

)
)
) Applicant.
)

v.

) **ORDER OF DISMISSAL**
)

State of South Carolina,

)
)
) Respondent.
)
)

This matter comes before the Court by way of Application for Post-Conviction Relief filed August 6, 2008, and Amended Application filed June 28, 2010. The Respondent filed its Return on November 14, 2008. An evidentiary hearing into the matter was convened at the Moss Justice Center in York County on February 2, 2011. The Applicant was present at the hearing and was represented by Joseph J. Watson, Esquire. The Respondent was represented by Karen C. Ratigan, Esquire, of the South Carolina Attorney General's Office.

The Applicant testified on his own behalf at the hearing. Applicant's trial counsel, Jack B. Swerling, Esquire, also testified at the hearing. This Court had before it the records of the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and Applicant's guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the November 2006, term of the York County Grand Jury for Trafficking Cocaine (2006-GS-46-3641). Jack B. Swerling, Esquire, represented the Applicant. On August 9, 2007, Applicant pled

guilty as indicted. The Honorable Lee S. Alford sentenced him to confinement for a period of twelve (12) years. The Applicant did not appeal his conviction or sentence.

In his application for post-conviction relief and at the evidentiary hearing, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel/ Involuntary guilty plea
 - a. “[P]lea was entered into without sufficient advice and understanding of the consequences of my plea”
 - b. Counsel failed to investigate chain of custody issue
 - c. Counsel failed to develop defenses and trial strategies
 - d. Counsel failed to object to the trial court’s coercive conduct
 - e. Counsel failed to communicate with Applicant after his bond hearing
 - f. Counsel failed to communicate with Applicant’s family attorney from Tennessee
 - g. Counsel failed to give Applicant adequate notice of 12 year plea offer
 - h. Counsel failed to advise Applicant as to what level of trafficking he was pleading guilty to

SUMMARY OF TESTIMONY

The Applicant testified he was arrested on August 5, 2006, and hired plea counsel in October of 2006 while he was still in jail. He testified he was released from prison on bond in December of 2006. He testified counsel failed to sufficiently communicate with him in person, by phone, or otherwise, and testified the meetings were usually brief. He stated he met with counsel two times while incarcerated, and each meeting lasted about thirty minutes. He testified that at the first meeting they discussed counsel’s representation, and at the second meeting

discussed his bond. He testified that after he got out on bond, he met with counsel three more times in person. He stated that he met with counsel once in January of 2007 for forty-five minutes to an hour. He stated that the second meeting was with the police in Rock Hill to discuss his desire to cooperate. He stated that he also met with counsel on July 22, 2007, in counsel's office. He testified counsel never provided him with the State's discovery, and never discussed with him potential defenses or trial strategies; however, he stated counsel did discuss his version of the facts with him. He further testified he had difficulties reaching or communicating with plea counsel. He stated he tried to call counsel once or twice a month, but could not always reach him. He stated he had a total of three phone conversations with counsel.

The Applicant testified he also hired another attorney, Allen Schwartz from Tennessee, at the same time he hired plea counsel. He testified that although counsel and Mr. Schwartz spoke at least once, there was a lack of communication between the two attorneys and this frustrated him. He testified he told counsel to contact Schwartz so he could be co-counsel, and stated he sent a letter to counsel addressing this issue. He testified that after his July 22 meeting with counsel, he hired a third attorney from California to represent him because counsel would not communicate with Schwartz. He testified he told plea counsel he hired someone else on July 26, 2007, and the attorney from California contacted trial counsel as well. He stated he told counsel to request a continuance, and believes plea counsel should have done so.

The Applicant testified his guilty plea was involuntary and the result of plea counsel's coercion. He testified that at his July 22, 2007 meeting, counsel first notified him of the State's second offer. He testified counsel told him the State made a twelve year offer, it was the best deal he could get, and the plea hearing would be the next week. However, the hearing was subsequently continued to the next week. He testified that at his plea hearing, counsel told him

to plead guilty because the trial court was "pissed off," he would have to go to trial next week, and he would get twenty-five years if he went to trial. He stated counsel did not tell him to lie, but told him how to answer the trial court's questions.

The Applicant testified plea counsel failed to adequately advise him with regards to the consequences of his plea he did not know he was pleading guilty to a no-parole offense, and counsel never advised him regarding parole eligibility. He testified that, based on his colloquy with the trial court, he thought he would still have a chance for parole eligibility. He stated that he would not have pled guilty if he had known he would not be parole eligible. He testified he was confused with regards to the level of trafficking he faced. He testified that as a result of counsel deficient performance, he was unable to make adequate decisions with regards to the decision to plead guilty.

The Applicant also testified plea counsel should have objected to the trial court's statements that coerced him to plead guilty. He testified the trial court told him the State's plea offer would be gone if he did not accept it, and told him it was the best offer he would get. He then acknowledged the trial court probably made these statements because the solicitor made these same assertions to the trial court. He testified he told the trial court he was not coerced to plead guilty and was satisfied with his attorney's services because the trial court told him he must say these things or have his bond revoked.

The Applicant's sister, Tina Berry ("Berry"), testified she attended Applicant's July 22, 2007 meeting with plea counsel. She testified Applicant was frustrated with the lack of communication he had with counsel. She further testified she helped Applicant hire his second and third attorneys. She stated that she spoke with each attorney, the attorneys were paid fees, and she told them to contact plea counsel.

Plea counsel testified he was hired to represent Applicant in September of 2006 while Applicant was still in jail. He testified he met with Applicant on September 27 of 2006, November 6 of 2006, January 8 of 2007, and February 7 of 2007. He stated he received the State's discovery on October 30, 2006, forwarded it to Applicant, and then he reviewed it with Applicant at the January meeting. He testified the only evidence missing was some audio tapes the State had not yet provided pursuant to the solicitor's office policy; however, the State informed him of what was on the tapes. He testified he explained to Applicant the impact the State's evidence would have on Applicant's case if he proceeded to trial.

Plea counsel testified he discussed the facts of the case with Applicant, and Applicant provided him with his version of the facts. He stated that Applicant was the middleman of a drug deal involving five thousand (5,000) grams of cocaine. He further stated that Applicant confessed to him that he committed the offense with which he was charged.

Plea counsel testified he discussed with Applicant and his family the comparative risks and benefits of pleading guilty or proceeding with trial. He testified he discussed plea negotiations with Applicant, and advised him that he would face a mandatory minimum of twenty-five years if he proceeded with trial and was found guilty. He testified Applicant expressed a desire to cooperate with the State and gave a statement. He stated that on February 7, 2007, the State made a fifteen (15) year offer, which he communicated to Applicant. However, he said the State told him the offer could improve. He testified he sent numerous letters and made numerous phone calls to Applicant to which Applicant did not respond. He testified he sent Applicant a letter on March 27, 2007, telling Applicant to contact him. He testified Applicant did not call him back until July of 2007. He stated that in early July, the State

made a twelve (12) year offer even though Applicant did not cooperate with them. He testified he communicated this offer to Applicant by phone on July 3, 2007.

Counsel testified he met with Applicant and his family on July 27, 2007, for about two hours to discuss their problems with the case and the State's plea offer. He testified that a week before Applicant's plea, he received a call from a Florida lawyer regarding Applicant's case. He stated he answered the lawyer's questions and faxed him a copy of the State's discovery. He testified Applicant never told him he hired Schwartz, the lawyer from Tennessee, but Applicant did ask him to consult with Schwartz. He stated he received no letters from Schwartz, but did speak with him on the phone twice on July 27, 2007. He testified that he never heard anything about a lawyer from California until today, the day of his present testimony. He received no calls or letters from any such attorney, and Applicant never made reference to this lawyer at his plea hearing.

Counsel testified Applicant was not coerced to plead guilty. He testified the trial court merely restated to Applicant the State's positions regarding Applicant's plea offer and the sentence the State would seek if Applicant proceeded to trial. He further testified he did not coerce Applicant to plead guilty or tell Applicant how to respond to the trial court's questions. He stated that he advised Applicant that accepting the twelve year deal was the best thing for him to do. He testified the State's evidence was overwhelming. He stated that he explained to Applicant that if he pled guilty the State would reduce the charge from a third offense to a first, and would also reduce the amount of drugs involved from over 400 grams to less than 100 grams. He further testified that he advised Applicant that he was pleading guilty to a no parole offense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/ Involuntary Guilty Plea

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; 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 "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, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 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. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the post-conviction relief hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

As to the allegation plea counsel failed to conduct sufficient meetings, or failed to otherwise sufficiently communicate with Applicant, this Court finds this allegation is without merit. In his testimony, Applicant referenced at least five face-to-face meetings and three phone conversations he had with counsel. Counsel also testified Applicant generally failed to respond to his letters and phone calls, and testified Applicant specifically failed to respond to one letter he sent on March 27, 2007, for over a month. This Court finds Applicant has failed to show that

counsel's preparation was inadequate based on the number or brevity of the meetings, phone calls, or other forms of communication conducted with Applicant. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) ("brevity of time spent in consultation with defendant, without more, did not establish that trial counsel was ineffective") (citing Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980)). Further, this Court finds the Applicant failed to provide any testimony, evidence, or information that could have been used in his favor had counsel conducted additional conferences, and thus has failed to show any resulting prejudice. See Harris at 75, 659 S.E.2d at 145 ("mere speculation and conjecture . . . is insufficient to substantiate allegation that counsel's deficient performance was prejudicial") (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). The Applicant has failed to meet his burden of proof. This claim is therefore denied and dismissed.

With regards to the allegations concerning counsel's failure to investigate the chain of custody evidence, his failure to communicate with Applicant's attorney from Tennessee, or his failure to request a continuance, this Court finds Applicant has also failed to meet his burden of proof. The Applicant has failed to provide any evidence or testimony indicating he was prejudiced by counsel's alleged failure to request a continuance, communicate with another lawyer, or otherwise further investigate. See Harris. Therefore, these claims are denied and dismissed.

As to the allegation plea counsel failed to adequately advise Applicant with regards to the offense he pled guilty to and the consequences thereof, this Court finds Applicant's testimony not credible. Specifically, the Applicant testified he did not know what level of trafficking offense he pled to, counsel never advised him regarding parole eligibility, and he thought was pleading guilty to an offense for which he was parole eligible. However, the plea transcript

reveals the trial court told Applicant on the record that he was pleading to the charge of trafficking cocaine in an amount between twenty-eight and one hundred grams, first offense, and twice clearly told Applicant this was a no-parole offense. (Tr. p. 12, line 25 – p. 13, line 13; p. 14, lines 8-13). The Applicant further stated under oath that he understood he was pleading guilty with a negotiated sentence of twelve years, and he understood the State was reducing his charge of trafficking over four hundred grams, third offense, to trafficking less than one hundred grams, first offense. (Tr. p. 16, lines 11-18). Further, counsel testified he advised Applicant of the same, and further advised Applicant he was pleading guilty to a no-parole offense. The Applicant's further assertion counsel failed to give him sufficient notice of the State's plea offer is conclusively refuted by Applicant's own testimony before this Court. The Applicant testified counsel informed him of the State's twelve year offer on July 22, 2007. The record shows the Applicant pled guilty on August 9, 2007, well over two weeks later. Therefore, this Court finds these claims are denied and dismissed as without merit.

Moreover, this Court finds Applicant's claims concerning parole eligibility are without merit as counsel was under no duty to inform Applicant of such matter. Parole eligibility is "a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea." Smith v. State, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997). "However, if the defendant's attorney undertakes to advise the defendant about parole eligibility and gives erroneous advice, then the plea may be collaterally attacked." Id. The Applicant's testimony, even if believed, was that counsel simply failed to advise him with regards to parole eligibility. Therefore, this claim is without merit, and is denied and dismissed.

As to the allegations regarding the voluntariness of Applicant's plea, this Court finds these allegations are without merit. This Court also finds Applicant's testimony with regards to

the voluntariness of his plea is not credible. The Applicant testified the trial court and counsel coerced him to plead guilty, and also testified counsel told Applicant how to answer the trial court's questions. However, at the plea hearing the Applicant stated under oath that he was not coerced by anyone to plead guilty, and he was pleading of his own free will. (Tr. p. 16, lines 19-24; p. 18 lines 3-7). This Court further finds plea counsel's testimony was credible, and further notes, as did the trial court in this case, that plea counsel is an experienced and highly recognized criminal defense attorney. (Tr. p. 24, line 24 – p. 25, line 6). Counsel testified he did not instruct the Applicant how to answer the trial court's questions. Counsel also stated he advised Applicant the State's twelve year offer was the best offer he would get, he would lose the offer if he did not plead, and the State would then seek a conviction of twenty-five years or more at trial. The trial court similarly advised Applicant to consider these facts in his decision of whether to plead. This Court finds counsel did not improperly pressure or threaten the Applicant with regards to Applicant's plea. This Court also finds counsel had no basis for objecting to the trial court's colloquy with the Applicant. Further, this Court finds counsel adequately conferred with Applicant, adequately sought and discussed Applicant's plea options, and was thoroughly competent in his representation of Applicant.

Furthermore, Applicant's testimony before this Court is inconsistent with the sworn statements he made at his guilty plea. "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct.App.2007). "Therefore, statements made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874. At Applicant's plea hearing, he testified under oath he understood that by pleading guilty he was waiving his right to remain

silent, and his right to a trial by jury, including his rights to assert legal defenses, confront witnesses, present his own witnesses, and testify on his own behalf. (Tr. p. 14, lines 15-24). He testified he was not otherwise promised anything, threatened, or coerced by anyone to plead guilty. (Tr. p. 16, lines 19-24). He stated he was pleading guilty of his own free will, was in fact guilty of this charge. (Tr. p. 18, lines 3-7). Further, he stated he was satisfied with his attorney, and his attorney had fully discussed with him the charges against him, the State's evidence against him, and any legal defenses available to him. (Tr. p. 16, line 25 – p. 17, line 13). This Court finds the Applicant has failed to present valid reasons why he should be allowed to depart from these statements. This Court further finds the Applicant knowingly and intelligently pled guilty based upon the effective assistance of counsel. Therefore, the allegations regarding the voluntariness of Applicant's plea are denied and dismissed.

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

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

CONCLUSION

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


with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

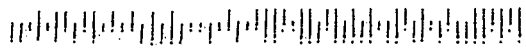
1. That the application for post-conviction relief be dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 1st day of Apr. 1, 2011.



Paul M. Burch
Presiding Judge
Sixteenth Judicial Circuit

Pageland, South Carolina.



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