



LAW OFFICE OF TRICIA A. BLANCHETTE

May 30, 2012

Office of Appellate Defense
ATT: Lorieane French
1330 Lady Street, Suite 401
Columbia, SC 29201

RE: Richard Butler v. State

Dear Lorieane:

I received your letter dated May 23rd acknowledging acceptance of the above referenced PCR Appeal and requesting the case documents. On Friday, I received the PCR transcript, which I have enclosed, and I sent payment for it to Cheri L. Young, Court Reporter. The State did not provide me a copy of the Appendix or prior transcripts, so I had to use my client's copy, which I have returned to him. The Appendix was compiled by your office, so I assume you would have a copy available. I have copied and enclosed the following case documents:

1. Indictment / Sentencing Sheet
2. PCR Application
3. Return and Motion to Dismiss
4. Conditional Order of Dismissal
5. Response to Conditional Order of Dismissal
6. Order of Dismissal

If I can be of further assistance, please do not hesitate to contact me.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: South Carolina Supreme Court
Richard Butler



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

May 23, 2012

RECEIVED

MAY 23 2012

Tricia Blanchette, Esquire
P O Box 12725
Columbia, SC 29211

S.C. Supreme Court

Re: Richard Butler v. State of South Carolina

Dear Ms. Blanchette:

The Chief Appellate Defender has reviewed the Affidavit of Indigency for the above case and has approved for this Office to perfect the appeal for Mr. Butler.

I would appreciate receiving the documents at your earliest possible convenience. Also, please include a copy of your request for the transcript and any extensions, or if you have already received the transcript of the December 9, 2010, post-conviction relief hearing, please forward it with the documents.

Please contact me if you should have any questions concerning this matter.

Sincerely,

Lorie French
Legal Services Coordinator

cc: S.C. Supreme Court



LAW OFFICE OF TRICIA A. BLANCHETTE

May 17, 2012

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

RECEIVED

MAY 21 2012

S.C. SUPREME COURT


RE: Richard Butler v. State

Dear Sir:

Enclosed for filing is an original and seven copies of a Motion to be Relieved as Counsel with a Certificate of Service attached. Upon filing, please return the extra copy to my office in the enclosed envelope.

Thank you for your assistance with this matter. Please contact my office with any questions.

Yours truly,



Tricia A. Blanchette
Attorney at Law

cc: Megan Harrigan, Assistant Attorney General
Loriene French, Office of Appellate Defense
Richard Butler

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 21 2012

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

Honorable Edgar W. Dickson, Circuit Court Judge

Case No.: 2010-CP-38-0368

Richard Butler,.....Petitioner,

vs.

State of South Carolina,.....Respondent.

MOTION TO BE RELIEVED AS COUNSEL

NOW COMES undersigned counsel for Petitioner in the above captioned Post Conviction Relief Appeal, respectfully moving this Court to relieve her as counsel in this matter. In support of this motion, undersigned counsel submits the following:

Undersigned counsel was retained to represent Petitioner on his Post Conviction Relief Application in Orangeburg County. On December 9, 2010, a hearing was convened in front of the Honorable Edgar W. Dickson at the Orangeburg County Courthouse. An Order of Dismissal was issued by the Honorable Edgar W. Dickson on December 20, 2011, which was filed on January 10, 2012. The Petitioner, through counsel, timely filed a Notice of Appeal with this Court on February 21, 2012.

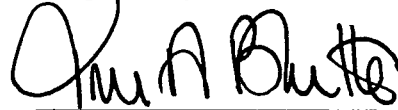
On February 16, 2012, undersigned counsel met with Petitioner at Allendale Correctional Institution to discuss representation for the instant appeal. Petitioner

accepted counsel's offer of representation and indicated that she would receive the initial retainer in a timely manner. Counsel informed Petitioner that she would need to receive payment prior to the ordering of the transcript and would execute a Retainer Agreement when payment was received. Based upon Petitioner's assertions that the payment was forthcoming, counsel ordered the transcript on March 19, 2012. The transcript has not been received by counsel at this time.

After contacting Petitioner about his failure to pay the initial retainer fee, counsel was informed that Petitioner no longer has the financial means necessary to pay any portion of her Retainer Fee. For this reason, counsel is respectfully requesting that she be relieved as counsel as it will be a financial burden as a solo practitioner to provide representation without compensation for her work or reimbursement for the costs of preparing the Appendix. Undersigned counsel would also respectfully request that this Court appoint the South Carolina Commission on Indigent Defense, Division of Appellate Defense, to represent the Petitioner in this matter. Petitioner's Affidavit of Indigency has been forwarded for processing.

WHEREFORE, having set forth her grounds, undersigned respectfully requests that this Court issue such order as is just and proper.

Respectfully submitted,



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Attorney for Petitioner

May 16, 2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 21 2012

S.C. SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Edgar W. Dickson, Circuit Court Judge

Case No.: 2010-CP-38-0368

Richard Butler,.....Petitioner,

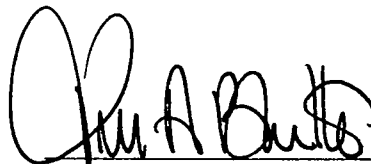
vs.

State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Petitioner, hereby certify that I placed in the United States Mail on this 17th day of May 2012, a copy of a Motion to be Relieved as Counsel, with postage prepaid and the return address clearly shown on said envelope to Megan Harrigan with the Office of the Attorney General at:

Office of the Attorney General
Att: Megan Harrigan, Ast. AG
P.O. Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Attorney for Petitioner
PO Box 12725
Columbia, SC 29211

May 17, 2012



LAW OFFICE OF TRICIA A. BLANCHETTE

March 19, 2012

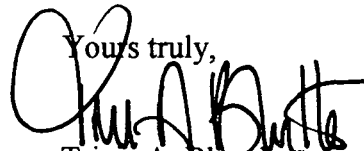
Cheri L. Young
Circuit Court Reporter
P.O. Box 1154
Aiken, SC 29802

RE: Richard Butler v. State; Docket No.: 2010-CP-38-0368

Dear Ms. Young:

For the above referenced case, I am writing to request the transcript from the Post Conviction Relief hearing held in Orangeburg County in front of the Honorable Edgar W. Dickson on December 9, 2010. Please prepare the transcript in accordance with the format requirements as set forth in the Court Reporter Manual. Please note that amended Rule 227(e)(3), SCACR, now requires as detailed an index for PCR hearings as for trial transcripts. Please include all exhibits in the index.

Upon receipt of your statement for this transcript, I will remit payment. Please contact me if any additional information is needed. Thank you for your assistance with this matter.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: South Carolina Supreme Court
Mary S. Williams, Assistant Attorney General
Loriene French, Appellate Defense
Richard Butler

RECEIVED

MAR 21 2012

S.C. SUPREME COURT

PO Box 12725 | Columbia SC 29211

p: 803.988.0008 | f: 803.988.8070 | e: blanchettelaw@gmail.com



LAW OFFICE OF TRICIA A. BLANCHETTE

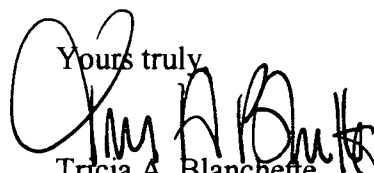
March 19, 2012

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

RE: Richard Butler v. State

Dear Sir:

I am in the process of being retained by Richard Butler to handle his pending PCR Appeal. Therefore, I submitted the enclosed request for the evidentiary hearing transcript. Please contact me if you need any additional information.

Yours truly

Tricia A. Blanchette
Attorney at Law

cc: Mary S. Williams, Assistant Attorney General
Loriene French, Appellate Defense
Richard Butler

RECEIVED
MAR 21 2012
S.C. SUPREME COURT



LAW OFFICE OF TRICIA A. BLANCHETTE

February 21, 2012
VIA HAND DELIVERY

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

RECEIVED

FEB 21 2012

RE: Richard Butler v. State

S.C. Supreme Court

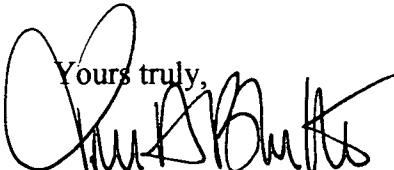
Dear Sir:

Enclosed for filing is a Notice of Appeal for the above PCR case. Also enclosed are the following:

- (1) Proof of service on the Respondent.
- (2) A copy of the Order of Dismissal.

This appeal is being filed with the Supreme Court pursuant to Rule 243 (b), SCACR.

Thank you for your assistance with this matter. Please contact my office with any questions.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: Robert D. Corney, Assistant Attorney General
Richard Butler

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Edgar W. Dickson, Circuit Court Judge

Case No.: 2010-CP-38-0368

RECEIVED

FEB 21 2012

S.C. Supreme Court

Richard Butler,.....Petitioner,

vs.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Richard Butler, Petitioner, through counsel, appeals the Order of Dismissal issued by the Honorable Edgar W. Dickson on December 20, 2011, which was filed on January 10, 2012. The Petitioner, through counsel, received notice of the entry of the Order of Dismissal via mail on January 23, 2012.



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Attorney for Petitioner

Other Counsel of Record:

Robert D. Corney
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Post Conviction Relief

RECEIVED

Honorable Edgar W. Dickson, Circuit Court Judge

FEB 21 2012

S.C. Supreme Court

Case No.: 2010-CP-38-0368

Richard Butler,.....Petitioner,

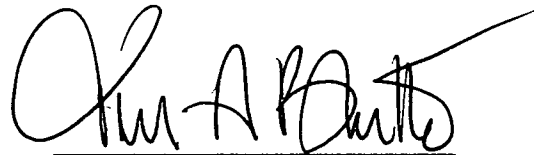
vs.

State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Petitioner, hereby certify that I placed in the United States Mail on this 21st day of February 2012, a copy of a Notice of Appeal and Order of Dismissal, with postage prepaid and the return address clearly shown on said envelope to Robert D. Corney with the Office of the Attorney General at:

Office of the Attorney General
Att: Robert D. Corney, Ast. AG
P.O. Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Attorney for Petitioner
PO Box 12725
Columbia, SC 29211

February 21, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Richard Butler, 162467)

Plaintiff)

v.)

State Of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-38-0368

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Tricia Blanchette, Bar No. Address: Post Office Box 12725 Columbia SC 29211 phone: (803) 988-0008 fax: (803) 988-8070 e-mail: other:	Defendant's Attorney: Robert Corney, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
---	--

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

November 4, 2011

Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:

EXEMPT:

(check reason)

Rule to Show Cause in Child or Spousal Support

Domestic Abuse or Abuse and Neglect

Indigent Status State Agency v. Indigent Party

Sexually Violent Predator Act Post-Conviction Relief

Motion for Stay in Bankruptcy

Motion for Publication Motion for Execution (Rule 69, SCRPC)

Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

MOTION FEE COLLECTED: _____

CONTESTED - AMOUNT DUE: _____

ATTEST: TRUE COPY

Winnifred B. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SC

FILED FOR RECORD
WINNIFRED B. CLARK
CLERK OF COURT
ORANGEBURG COUNTY, SC
2012 JAN 10 PM 12:20

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS)
FOR THE FIRST JUDICIAL CIRCUIT)

2010-CP-38-0368)

Richard Butler, #162467,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2012 JAN 10 PM 12: 20

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 9, 2010. The Respondent made at Return and Motion to Dismiss dated July 22, 2010, and filed with the clerk on August 26, 2010. Tricia Blanchette, Esquire, responded to the State's Return on behalf of Applicant in a document entitled, "Response to Respondent's Return and Motion to Dismiss" dated July 29, 2010. Thereafter, a Conditional Order of Dismissal was signed by the Honorable Diane Goodstein on August 21, 2010, and was filed on August 26, 2010. However, in light of Applicant's response to the return requesting a hearing, Judge Goodstein requested Respondent schedule a hearing to investigate the allegation of after-discovered evidence based on the recent decision in State v. Belcher, 385 S.C. 597, 685 S.E.2d 803 (2009). A hearing was convened on December 9, 2010, before this Court to review the issue at hand. The Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

This Court had before it the records of the Orangeburg County Clerk of Court, the trial transcript, and the Applicant's records from the South Carolina Department of Corrections.

Page 1 of 7



ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

PROCEDURAL HISTORY

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. The Applicant was indicted at the March 1989 term of the Grand Jury for Orangeburg County for Murder (1989-GS-38-0224). Reddick A. Bowman, Esquire, represented him. On August 30, 1989, the Applicant proceeded to trial by jury pursuant to which the Applicant was found guilty as charged. He was sentenced by the Honorable C. Anthony Harris to confinement for Life.

The Applicant filed a Notice of Appeal. Following submission of an Anders brief, the South Carolina Supreme Court affirmed the conviction. State v. Butler, Op. No. 91-MO-76 (filed February 25, 1991). The Remittitur was sent on March 13, 1991.

Applicant filed his first PCR application (1991-CP-38-343) on April 15, 1991. An evidentiary hearing was held on December 17, 1991, at the Orangeburg County Courthouse. The Honorable Julius H. Baggett denied relief in his order of dismissal filed February 27, 1992. The applicant did not appeal.

The Applicant filed his second PCR application (1995-CP-38-0271) on April 25, 1995. The Applicant alleged the following grounds for relief:

1. Ineffective assistance of counsel.
2. Illegal arrest.
3. Arrest without probable cause.
4. Denial of due process.
5. Violation of 5th, 6th, and 14th Amendments of U.S. Constitution.
6. Denial of witness.
7. "Fail to file Brady Motion."
8. "Shifting the burned of prove [sic]."
9. "Erroneously charged with murder."
10. Evidence never showed murder but (self-defense).
11. Jury was never presented the lesser offense of self-defense.



12. Denial of the right to appeal (PCR).
13. Request for belated appeal (PCR).

Respondent made its Return and Motion to Dismiss on or about August 23, 1996. An evidentiary hearing was held at the Orangeburg County Courthouse on April 28, 1997. The Honorable Edward B. Cottingham granted a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), and dismissed the remaining grounds as successive. Applicant filed a notice of appeal, and a Johnson Petition for Writ of Certiorari was filed. By Order dated March 3, 1999, the South Carolina Supreme Court declined to grant a writ of certiorari. On April 12, 1999, Applicant's *pro se* Petition for Rehearing was denied, and the Remittitur was issued.

Applicant thereafter filed this application for PCR on March 9, 2010. In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence of ineffective assistance of counsel.
 - a. "Pursuant to State v. Belcher, 685 S.E.2d 802 (2009), the Applicant is alleging that trial counsel should have objected to the implied malice charge since evidence was presented and the jury was charged on self-defense and manslaughter. The jury was also unable to reach a verdict, and the court recharged implied malice to the jury. Thereafter, the trial court also gave the jury an Allen charge."
 - b. "Appellate counsel argued that there was insufficient proof of the element of malice but trial counsel failed to make an objection to the court's charges of implied malice due to the use of a deadly weapon (knife)."

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.

Retroactive Application of State v. Belcher Based on Fundamental Unfairness

The Applicant alleges the South Carolina Supreme Court's 2009 decision in State v. Belcher, 385 S.C. 597, 685 S.E.2d, 802, lead to Applicant's discovery of outcome determinative issues that amounted to an exception of the retroactivity provision that was set forth by the Court in Belcher. Therefore, Applicant argues, the inferred malice charge, plus the State's closing arguments and the trial court's responses to the jury when they had questions, made the murder verdict fundamentally unfair in light of the evidence presented during the trial.

The case of State v. Belcher was decided by the South Carolina Supreme Court on October 12, 2009, some twenty (20) years after the Applicant was convicted in 1989. Belcher "represents a clear break from our modern precedent" approving of the jury charge on inference of malice from use of a deadly weapon, expressly overruling some twenty-six (26) cases decided over the course of more than 100 years, ranging in date from 1894 to 2006. 385 S.C. at 612, 685 S.E.2d at 810. The charge given in Applicant's case was, at the time of his trial, the sanctioned charge on the law. In Belcher, the Court held, "where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon." State v. Belcher at 612, 685 S.E.2d at 810. The opinion expressly stated that "[o]ur ruling, however, will not apply to convictions challenged on post-conviction relief." Id. at 613, 685 S.E.2d at 810.

Both in his response to the State's Return and Motion to Dismiss and at the evidentiary hearing before this court, Applicant conceded that the opinion set forth in Belcher explicitly stated

that it was not to be applied retroactively or to convictions challenged on post conviction relief. Applicant argues, however, trial counsel's failure to object to the State's closing argument in regards to the application of the inference of malice, coupled with the inference of malice jury charge and subsequent questions from the jury about that charge, create an issue of fundamental fairness that carves out an exception to the limitations set forth in Belcher. Further, Applicant states he is not attempting to allege a change in law, but rather that errors committed by trial counsel were only brought to light upon the decision in Belcher, and such errors resulted in a fundamentally unfair verdict, which would allow the decision in Belcher to be applied retroactively. (see Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060 (1989) stating "new rules of criminal procedure generally should not be applied retroactively to cases on collateral review... [u]nless... it requires the observance of "those procedures that ... are implicit in the concept of ordered liberty..." Id. at 295.) The Court in Teague additionally stated, "The fundamental fairness exception is a narrow one, and has been applied in limited circumstances" (Id. at 298) and referred to the case of People v. Goerger, 52 Ill.2d 403, 288 N.E.2d 416(1972), stating that "an improper instruction on reasonable doubt did not constitute such fundamental unfairness as to obviate the *res judicata* and waiver doctrines." (Id. at 406.)

Because the Belcher decision posed a clear break from long-established precedent some two ~~two~~ ^{decades} after Applicant's trial, Counsel was not unreasonable in failing to pose an objection to the charge given. Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994) (attorney is not required to be clairvoyant or anticipate changes in the law which were not in existence at time of trial) (overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999)). Additionally, a jury charge applying the correct statement of the law at the time of trial concerning the inference of

malice is not an issue of fundamental unfairness that warrants retroactively applying a change in law made twenty (20) years after a conviction. Based on the explicit language of the Supreme Court's opinion, this court is precluded from applying Belcher to the conviction challenged in this PCR application.

Further, trial counsel was not ineffective for failing to object to statements made by the State in its closing argument in regards to the inference of malice standard as it stood at the time of trial. An Applicant in a post-conviction relief proceeding "may not simply posit suppositions and speculations in an attempt to establish that counsel was ineffective." Simpson v. Moore, 367 S.C. 587, 598, 627 S.E.2d 701, 707 n.2 (2006). "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland v. Washington, 466 U.S. 668, 689, 104 S.Ct. 2052, 2065 (1984). Furthermore, "[t]hrough hindsight may provide a different view of counsel's actions," an applicant is not entitled to relief "for the sole purpose of presenting a 'fancier' case." Simpson at 598, 627 S.E.2d at 707 n.2 (quoting Jones v. State, 332 S.C. 329, 339, 504 S.E.2d 822, 827 (1998)). Attorneys are not required "to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial." Thornes v. State, 310 S.C. 306, 310, 426 S.E.2d 764, 765 (1993); see also Robinson v. State, 308 S.C. 74, 78, 417 S.E.2d 88, 91 (1992) (finding counsel not ineffective for failing to assert defense not yet recognized by the Court). Therefore, counsel was not ineffective for failing to object to the State's remarks in closing or to the jury charge given by the trial court based on the then correct statement of law concerning the inference of malice.

Other Allegations

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

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 20th day of December, 2001.



EDGAR W. DICKSON
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina.

