

Ricky Brannon #179051  
Broad River Corr INST.  
4460. Broad River Rd  
Columbia S.C. 29210.

The Hon. DANIEL E. Shearouse.  
Clerk of Court  
P.O. Box 11330  
Columbia S.C. 29211.

**RECEIVED**

SEP 18 2011

**S.C. SUPREME COURT**

Re: Ricky Brannon v. The state of South Carolina,  
Pro Se. Response To Johnson Petition.

Dear Mr. Shearouse.

Please find inclosed herein The Following Documents:

1. My Pro Se, Response to Johnson Petition. Raising (12) ISSUE'S. For Appellate Review. IN The Supreme Court.
2. Including 21 Exhibits documents. In support of The issue's.
3. Certificate of Service

Please inform me of your receipt ... of This Response  
Thank you For your cooperation.

Dated September 6, 2011

Respectfully

S/ Ricky Brannon  
Ricky Brannon #179051

RECEIVED

SEP 12 2011

S.C. SUPREME COURT

Certificate of Service

Please Take Notice. That The Under do hereby Certify That he has served The herein attached, "Response To The Johnson Petition" on The belowe named parties. By Placing said Response, in an envelope, properly address AT The belowe said. With U.S. Postage pre-paid sealed and deposited in The United STATES MAIL, AT The Broad River Corr. Mail Room. ON This 7th day of September 2011

Respectfully

Stacy Brunner  
Ricky BRANNON #179051  
Broad River Corr. INST.  
4460. Broad River. Rd.  
Columbia S.C. 29210.

TYPE OF Document Mailed:

Pro se Response, To Johnson Petition /

Mailed TO:

The Honorable, DANIEL E. Shearouse.  
Clerk of Court

P. O. box 11330

Columbia S.C. 29211

cc. SUZANN H. White, Esquire  
Rembert DENNIS Building  
1000, Assembly street Room, 519  
Columbia S.C. 29201.

Sworn before me

This 6th day of September, 2011

Susan N. Frye

Notary public for South Carolina.

My Commission Expires

March 5, 2018

my commission expires

# The Supreme Court of South Carolina

Ricky Brannon,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable J. Derham Cole  
Cherokee County  
Trial Court Case No. 2009-CP-11-00555

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## ORDER

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The request for an extension until September 12, 2011 to serve and file the *pro se* response to the Johnson 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

July 18, 2011

cc: Deputy Chief Appellate Defender Wanda H. Carter  
Ricky Brannon #179051  
Assistant Attorney General Suzanne H. White

Ricky Brannon #179051  
Broad River Corr. INST.  
4460 Broad River Rd.  
Columbia S.C. 29210.

RECEIVED

JUL 16 2011

The Honorable. DANIEL E. Shearouse  
Clerk. South Carolina Supreme Court  
post office box 11330  
Columbia S.C. 29211

S.C. SUPREME COURT

Re: Ricky Brannon v. The STATE OF South Carolina  
Case No. 2004-GS-11-201, 202, 203.

- Requesting For EXTENTION of Time To File  
pro se. Respons. To. Johnson petition, file by  
Appellate Counsel.

Dear. Mr. Shearouse.

Sir, I, am respectfully Requesting from this Honorable Court  
for an EXTENTION... of Time to file a pro se. Responce.  
To The Johnson v. STATE 294 S.C. 310. 364. S.E. 2d 201 (1988).  
(petition). File by Appellate Counsel. in The above referenced  
Action.

The undersigned petitioner of this request. WAS notified by  
This Honorable Clerks office, ON June 9th, 2011. That He had -

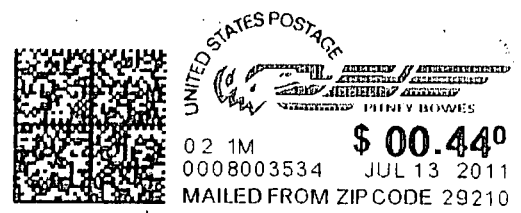
1. OF 3. pages

My Commission Expires April 4, 2018

my Commission expires

3. OF 3.

Ricky Brannon #179051  
Broad River Corr. INST  
4466 Broad River Rd  
Columbia S.C. 29210



Mr. Daniel E. Shearouse, Clerk,  
South Carolina Supreme Court,  
Post Office box 11330  
Columbia S.C. 29211

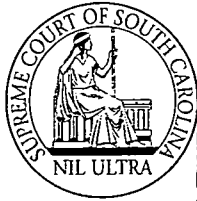
**RECEIVED**

JUL 13 2011

BRCI  
MAILROOM

**LEGAL MAIL**  
20211+1330





# 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

June 7, 2011

Ricky Brannon #179051  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

Re: Brannon, Ricky v. The State


Dear Mr. Brannon:

Your counsel has submitted a Petition for Writ of Certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition & Appendix on June 6, 2011.

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

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

Very truly yours,



CLERK

DES/jj

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

# The Supreme Court of South Carolina

Ricky Brannon,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable J. Derham Cole  
Cherokee County  
Trial Court Case No. 2009-CP-11-00555

---

## ORDER

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For good cause shown, the request for an extension to serve and file the Petition for Writ of Certiorari and Appendix is granted and extended until June 6, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions 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 *Wanda J. Sholly*  
Chief Deputy Clerk

Columbia, South Carolina

May 9, 2011

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

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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ORIGINAL

Certiorari to Cherokee County  
J. Derham Cole, Circuit Court Judge

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RECEIVED

MAY - 6 2011

S.C. Supreme Court

RICKY BRANNON,

PETITIONER, (3)

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

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

---

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 two prior orders of this Court.

2. Counsel is working on the petition for writ of certiorari and accompanying appendix in the case of Xavier Miguel v. State due next week. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Travis J. Williams v. State and Antwan Donaldson v. State yesterday, May 5, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Paul Gray v. State on April 28, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Daniel Shannon v. State on April 26, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Gerald Evans v.

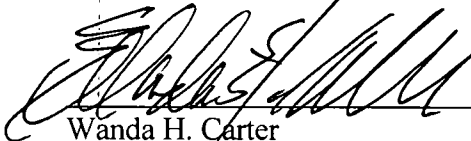
State on April 25, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Francis O. Campbell v. State yesterday, April 20, 2011. Additionally, Counsel filed the petitions for writ of certiorari and accompanying appendices in the case of Antonio M. McClam v. State and Francis Simmons v. State and Corey Londre Bryant v. State on April 19, 2010. Counsel filed the return to petition for writ of certiorari in the case of Anthony King v. State on April 15, 2011. Counsel filed the initial briefs of appellant and designations of matter in the cases of State v. Michael Lackey and State v. Melinda Richmond on April 7, 2011. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Courtney Lyles v. State and Rosemond Jovan Graves v. State on April 6, 2011.

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

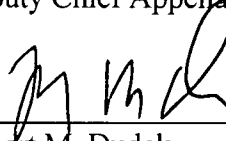
4. As indicated by her consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a 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,



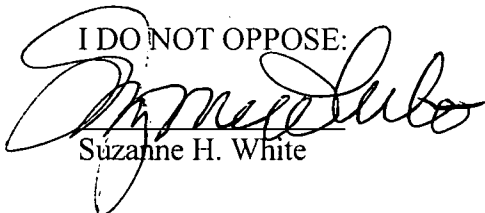
Wanda H. Carter  
Deputy Chief Appellate Defender



Robert M. Dudek  
Chief Appellate Defender

May 6, 2011

I DO NOT OPPOSE:



Suzanne H. White

# The Supreme Court of South Carolina

Ricky Brannon,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable J. Derham Cole  
Cherokee County  
Trial Court Case No. 2009-CP-11-00555

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## ORDER

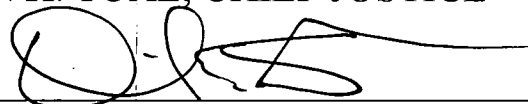
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For good cause shown, the request for an extension until May 6, 2011 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 7, 2011

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

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Cherokee County  
J. Derham Cole, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

APR - 6 2011

S.C. Supreme Court

RICKY BRANNON,

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, which is the undersigned counsel's **first** extension request in this case as it was originally assigned to LaNelle C. Durant, but was just last week re-assigned to counsel. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

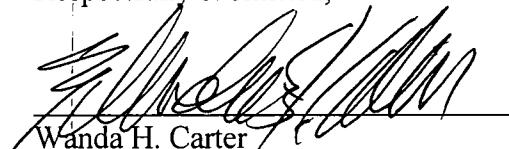
1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.
2. Counsel will be filing the petitions for writ of certiorari and accompanying appendices in the cases of Courtney Lyles v. State and Rosemond Jovan Graves v. State today. In addition, Counsel will be filing on the initial briefs of appellant and designations of matter in the cases of State v. Michael Lackey and State v. Melinda Richmond tomorrow, April 7, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Rafael Horlbeck on March 30, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of

Ronald Jenkins v. State on March 25, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Michael Turner v. State on March 23, 2011. Counsel filed the petition for writ of certiorari in the case of Emmett Kelly v. State Monday, March 21, 2011. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Ernesto Ortiz v. State and Beryl Ray Johnson v. State on March 18, 2011. Additionally, Counsel filed the initial brief of appellant and designation of matter in the case of State v. Kenwood Bright on March 14, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Nicholas Macklen on March 10, 2011. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Devario Marshatt Simpson v. State, Walter Martez Thomas v. State, Vaughn Williams v. State, Terry J. Hardin v. State, and Darrell Keith Emory v. State on Monday, March 7, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of James Matthews v. State on March 2, 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

April 6, 2011

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Cherokee County  
J. Derham Cole, Circuit Court Judge

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RICKY BRANNON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

CERTIFICATE OF SERVICE

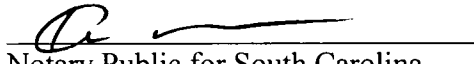
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The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Suzanne H. White, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 6<sup>th</sup> day of April, 2011.

  
\_\_\_\_\_  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 6<sup>th</sup> day of April, 2011.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 2, 2013.

# The Supreme Court of South Carolina

Ricky Brannon,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable J. Derham Cole  
Cherokee County  
Trial Court Case No. 2009-CP-11-00555

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## ORDER

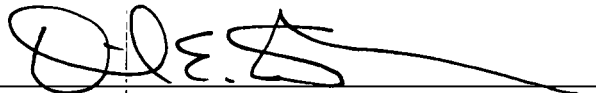
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The request for an extension until April 6, 2011 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

March 8, 2011

cc: Appellate Defender LaNelle C. DuRant  
Assistant Attorney General Suzanne H. White



# 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

March 3, 2011

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

(1)

RECEIVED

MAR 07 2011

S.C. Supreme Court

Re: Ricky Brannon v. The State

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in this case are due to be served and filed with the Court March 7, 2011. However, because of my heavy workload at this time, I am requesting an extension for 30 days, in which to serve and file the petition.

By copy of this letter, I am informing Suzanne H. White, of the Attorney General's Office, of my request.

Sincerely,

LaNelle C. Durant  
Appellate Defender

LCD/pds

cc: Suzanne H. White, 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  
Joseph L. Savitz, III, Senior Appellate Defender

January 4, 2011

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

RECEIVED

JAN 04 2011

S.C. Supreme Court

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Ricky Brannon v. State of South Carolina

1/4/2011

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

Thank you for your assistance in this matter.

Sincerely,

Sharon A. Graham  
Administrative Coordinator



# 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

December 30, 2010

Ricky Brannon #179051  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

Re: Brannon, Ricky v. The State

Dear Mr. Brannon:

This responds to your letter dated December 15, 2010. Since you are represented by counsel in this matter, no action will be taken on your pro se letter. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

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

Very truly yours,

*Daniel E. Shearouse*  
65

CLERK

DES/jj

cc: Appellate Defense  
Assistant Attorney General Suzanne H. White

Ricky Brannon #179051  
Broad River Carr. INST.  
4460. Broad River Rd.  
Columbia S.C. 29210.

The Honorable, DANIEL E. Shearous, clerk,  
South Carolina Supreme Court  
P.O. Box. 11330  
Columbia S.C. 29211.

**RECEIVED**

DEC 20 2010

S.C. Supreme Court

Re. Ricky Brannon -vs- The STATE of South Carolina.  
(PCR) CASE NO. 2009-CP-11-0555

Dear Mr. Shearous,

Sir, Please find enclosed herein the following  
which I have served upon MY PCR. ATTOR.  
and the other served upon PCR. Judge. The  
Colc. in regards to his order of Dismissal  
PCR. Action. See Following:

Don -  
Do you want  
me to do a  
Foster letter, A.D.  
has assumed rep  
the (D)

(1) A True Copy of letter, Dated December

Directing him to Timely File a 59(c) Motion. Due to him  
inaccuracies of testimony presented at PCR. Hearing and facts  
over looked by The PCR. Court, who based its rulings on the  
inaccurate facts. And because, The PCR Court failed to render a  
Ruling on specific allegations raised at the hearing and also  
because The PCR. Court failed to hear specific allegations raised  
in my PCR application. See Exhibit (A) Copy of letter

(2). A copy of a Request To The Honorable J. Derham Colc, Seeking -

1 of 2 pages

- an extension of time to file 59(e) Motion or 60(b) Motion  
I also brought The PCR Courts attention to numerous errors  
and oversights it committed. like its Failure to hear my  
standing Motion to dismiss my PCR attorney before it  
ruled upon my application. and also The fact That The Court  
failed to hear and rule upon all of my allegations. See  
Exhibit (B). Copy of The said Request.

Dated December 14, 2010

Respectfully Submitted

S/ Reef Brynner  
Ricky BRONNEN #179051

See Exhibits (A) AND (B) attached.

Ricky Brennan #179051  
 Broad River Corr. INST.  
 4460. Broad River Rd.  
 Columbia S.C. 29210.

Mr. Rodney W. Richey, PA.  
 Attorney At Law  
 P.O. Box 10916.  
 Greenville S.C. 29603.

Please File 59 (c) Motion  
 ON Dismissal of MY  
 PCR Application. So That  
 All of my Allegations May be  
 heard and Rule ON. As pursuant To  
 S.C. Code ANN § 17-27-80

Re. Ricky Brennan - vs - The STATE of South Carolina, CASE NO.  
2009-CP-11-0555.

: Requesting For The emmediat filing of Motion, pursuant to RULE  
59 (c), S.C. Rules of Civ. proc. (1) Motion For The PCR Court, To hear  
 and Rule ON All specific Allegation in Application and Amended  
 Application. (2) To correct all inaccurate ~~to~~ conclusions of Fact in  
 The Record. (3) To hear and Rule ON pending Motions. To Alter or  
 Amend Judgment. Based upon sufficient facts and evidence, Not  
 previously considered by The Court.

Dear Sir I have Just received, an order by The PCR Court, Dated  
November 15, 2010. And received by me ON November 30<sup>th</sup> 2010.  
 Dismissing My PCR Application. First, Sir I am very suprized  
 and somewhat confussed, That The PCR Court Dismissed My PCR  
 application. Especially in light of The fact, That At The April 6, 2010  
PCR hearing The Court left The PCR proceedings open, For further  
hearing of The issues, And because, it (The Court) never held a hearing  
 ON The rest of my Allegations within My application, For The PCR  
 Court only conducted ONE hearing ON a single issue. Ineffective . . . . .

... ASSISTANCE OF SUBSTITUTE COUNSEL, AND even w. of my specifically alleged allegations of counsel ineffectiveness. Wasn't even presented to the Court. Because for starters you, wasn't prepared to present them due to the fact that you have never once visited me, and reviewed the merits of my allegations, and reviewed my exhibits evidence. And second. Because the PCR, Court somewhat forced you to proceed with the hearing even though you didn't have all the evidence and facts. For the Court just arbitrarily denied all of our motions for "discovery," "continuance," and even a order to Test D.W. in this case. Further the PCR, Court even refused to recuse it self, even though it had vast knowledge of a pending charge against me. Which involves the 7th Circuit Solicitor's office. and the Cherokee County Court house. Sir. It is beyond me, given all of these factors, of why i even have to write you and request that you file a 59(c) Motion on my behalf. Sir, just to let you know. I filed a Motion with clerk of Court, Cherokee County, To dismiss your representation back in May 24, 2010. For some reason, that Motion has never been heard by the PCR Court. So, Sir, besides filing this 59(c), please also file what ever Motion is necessary. To stay the PCR, Courts order of Dismissal. on the grounds that the Court failed to hear my Motion to dismiss and be assigned a new PCR attorney. See A. stamped Filed copy of that Motion hearing as Exhibit (A), But in the mean time being that i have no other Counsel or choice but to request you file a timely 59(c) Motion in this matter please see Exhibits, and some allegation i specifically request be ruled upon, and or reconsidered in this Motion.

Certificate of Service

The undersigned do hereby certify that he has mailed the attached correspondent letter, to his PCR Attorney, Mr. Rodney W. Rickey P.A. At. P.O. Box 10916, Greenville S.C. 29603, along with 5 Exhibits. Requesting the filing of an 59(c) Motion, To Alter or amend, Reconsider, ect. By placing said correspondent, in an envelope properly addressed with U.S. postage, prepaid, sealed and deposited in the United States Mail, on this 3<sup>rd</sup> day of December 2010

Type of Document mailed:

Request For PCR Attorney To Timely File 59(c) Motion, To Alter or Amend Judgment / For Rehearing / To hear all allegations / To correct mistake and inaccurate Facts. (2) 5 Exhibits. inside

Also Mailed To:

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

The Honorable J. Derham Cole  
Judge 7th Judicial Circuit  
P.O. Drawer, 2289  
Coffey S.C. 29342

3 of 3 pages

Respectfully Submitted

Ricky Brannon  
Ricky Brannon #179051  
Broad River Court INST.  
4460, Broad River Rd.  
Columbia S.C. 29210.

Sworn before me this  
3<sup>rd</sup> day of December 2010

Eugene Keith  
Notary Public for South Carolina

My Commission Expires April 4, 2018  
MY COMMISSION EXPIRES

Ricky Brannon #179051  
 Broad River Court INST.  
 4460. Broad River Rd  
 Columbia S.C. 29210

To: The Honorable, J. Derham Cole,  
 Judge, 7th Judicial Circuit,  
 Court of Common Pleas.

Requesting For Time  
 Extension For Filing  
 59(c) and/or 60(b)  
 Motion.

(IF NECESSARY).

Re. Ricky Brannon #179051 vs The STATE of South Carolina  
 (PCR) CASE NO. 2009-CP-11-055.5

IN Re: Requesting For Extension of Time, (IF necessary) To adequately  
 file 59(c) Motion, and/or To file 60(b) Motion. In regards To  
 The Order denying My (PCR) Application, Of The above referenced  
 CASE. (IF, PCR Counsel, Fails To timely file said Motions).

Dear, Judge Cole,

Sir, I, The undersigned applicant in The above referenced case, For which  
 you Sir, Denied and dismissed with prejudice, Dated November 15<sup>th</sup> 2010,  
 and received by me ON November 30<sup>th</sup> 2010, Am Respectfully Requesting  
 For an Extension of Time, For which to adequately file an 59(c)  
 and or 60(b) Motion. IN This Matter, Sir, I make This request before  
 This Court ON several grounds as follows:

First, This request is necessary For me To preserve Specific Allegations  
 raised in my (PCR), applications and Amended applications, For which  
 This Court Failed to rule upon and to seek a rehearing of Alleg-  
 -ations which had Never been Specifically heard by The PCR Court.

Dated December 3, 2010

*Ricky Brannon*

second. It is to protect me and my Rights To irriporable harm don by My PCR Attorney. Mr. Rodney W. Richey, whom all but sabotage my application in his representation. Please. Note. I have also directed, Mr. Richey To FILE an 59(c), 60.(b), Motion in This Matter See incorporated herein Exhibit (A). Dated Dec. 3, 2010. For which, I have urgently expressed my desire of Mr. Richey. To Timely FILE The above stated necessary Motions. in regards To The dismissal of my application.

Third. That The undersigned believes. This Court erred by rendering a decision on his application. Without first hearing a standing Motion by The undersigned. To DISMISS his (PCR) Attorney Mr. Rodney Richey. Dated May, 24 2010, and filed in The clerk of Court office. See a Copy of That Motion herein as Exhibit #1. Further, This Court failed to hear The undersigned Amendments To his (PCR) Application. Date September 12, 2010 Also file in The clerk of Courts office and served upon The Respondents. Exhibit #3.

Fourth.

That The undersigned seeks To have This Court review its its denial of The Recusal Motion at April 6 2010 PCR hearing For which you denied. For The undersigned applicant does have in his possession documents which sufficiently shows. That This PCR Court has previously presided over issues in other cases. of The undersigned, which are relevant and directly related to his PCR. Matters and allegations. For which This same Court presides over. In addition This Court is too familiar with a Pending

- criminal case against The undersigned which involves - The 7th Circuit Solicitor's office. (Troy County). which are one of the victims of the crime charged to The undersigned. And was in fact disqualified. Due to an Actual Conflict of interest. From having any involvement in the prosecution of The undersigned of his, 1st, degree burglary case, which is now the conviction. For which is being contested before This Court in This (PCR) Action. And The impermissible interference, in violation of The order of Disqualification is one of The Allegations I've raised in This (PCR) Application. Including The fact. That The 7th, Circuit Solicitor's office. Could not serve a Notice to seek life as pursuant to The Statute. Because They were on actual Conflict of interest, as also was my initial attorney Mr. Don Thompson. of The Cherokee County Public Defender's office. Who was also was dismissed from my representation due to an actual Conflict of interest. See Exhibits #2 and #10 showing The above said conflicts. Therefore, Sir, I do not believe any Judge within The 7th Judicial Circuit, especially in Spartanburg and Cherokee Co. should sit over my PCR. appeal. The influence is to great.

Fifth. That Because of institutional Rules and scheduling including a constance lack of sufficient security. My access To Legal materials, is all but non existance right now. And Because of The volum of The undersigned's (PCR) allegations, And numerous mistakes The undersigned believes This Court ~~is~~ <sup>made</sup>, and factor's over looked, It would be next to impossible for me to ~~get~~ <sup>get</sup> To all The grounds, Facts, And case Law to sufficiently submit a 59(e) and/or 60.(b) Motion. within 10 days.

Respectfully Submitted,

Dated December 3, 2010

Stacy Bramson  
Ricky BRANNON #179051

# Certificate of Service

The undersigned do hereby certify. That he has mailed The herein attached Request For Extension of Time To File relevant 59 (c) and or 60 (b). Motion. With 5 attached Exhibits documents. To (P.C.R). Judge. The Honorable. J. Derham Cole. 7th Judicial Circuit. By placing said Request in an envelope, properly addressed At Post office Drawer 2289. Cottney S.C. 29342. With U.S. postage prepaid, Silled and deposited in The United States mail at The Broad River Corr. INST. Mail Room on This 6<sup>th</sup> day of December 2010.

Mailed To :

The Honorable. J. Derham Cole  
Judge 7th Judicial Circuit

Respectfully Submitted

s/ Ricky Brannon  
Ricky BRANNON #179051  
Broad River Corr. INST.  
4460. Broad River Rd  
Columbia S.C. 29210

sworn before me This 6 day  
of Dec 2010

Eugene Best  
Notary Public for South Carolina

2016  
my Commission Expires

Ricky Brannon #179051

December 15, 2010.

Broad River Corr INST

4460 Broad River Rd.

Columbia S.C. 29210.

**RECEIVED**

DEC 20 2010

S.C. Supreme Court

The Honorable, DANIEL E. Shearles, Clerk.

South Carolina Supreme Court

P. O. Box. 11330,

Columbia S.C. 29211.

Re. Ricky Brannon #179051. v. The STATE of South Carolina.

(PCR). CASE NO. 2009-CP-11-0555

: SEEKING Order To STAY The Judgment IN The  
Above CASE. For The Following Reasons. :

To The South Carolina Supreme Court. The Applicant in The  
Above stated Action. Which WAS Dismissed with prejudice, ON  
November 15 2010 By The (PCR) Court. The Honorable Judge  
J. Derham Cole. 7th Judicial Circuit. Spartanburg S.C., and  
received by The Applicant ON November 30<sup>th</sup> 2010,

Do hereby moves before This Court for an Order. To stay and/or  
void The Judgment of The Above said Action. ON The Following  
meritorious grounds.

1. Failure of The PCR. Court To hear Timely submitted . . . .

... Motion For The Dismissal of (PCR). Counsel And For The Appointment of a New Attorney.

See. Incorporated herein a Copy of The above stated Motion. Filed in The Cherokee County, Clerk of Courts office on May 24, 2010, Exhibit (1).

The Above stated Motion. WAS Timely filed. Following, Applicants April 6 2010 PCR. hearing presided over by The Honorable. J. Derham Cole. whom decided to leave Applicants PCR proceedings "Open". After denying Applicants PCR. Attorne several Motion Requests. including a compel order to obtain Discovery Material documents, which was being with held by The Cherokee Co. Magistrate Court, And The STATE. And an order To test D.N.A evidence. obtained from Applicant in connection with physical evidence collected from burglar's crime scene, in which a search warrant was issued to seize one (1) vial, of Applicant blood for comparison testing. But although Applicants (blood) D.N.A was seized, It was never tested toward burglary crime, even though The state allude To The fact. That it had been in The Applicants 1st, degree burglary Trial. The Motion To dismiss was never heard. by The PCR, Court, Before it rendered its decision.

(2). The Applicant Also Move For a stay. Because his PCR. Counsel Intentionally with held and refused to file The Applicants Amendment to his Application of Question # 10. of Application which states:

... STATE concisely and in the same order the facts which support each of the grounds set out in # (9).

Here Applicant did do a complete brief of facts. with (25) Exhibits documents as evidence. To support each of his allegations raised in question NO. # (9) of Application. And Timely submitted it To his (PCR) Attorney, Mr Rodney W. Richey on October 2, 2009, To be Amended To his PCR Application, Due To The fact That when Applicant submitted his Application, Question No. # (10). Was The only question of The Application. That was left unanswered, Therefore The Amendment was necessary to complete The Application. See herein Exhibits #2 and #3 with proof of Service. Showing Applicant served his Amendment on his (PCR) Attorney, For filing and See, PCR, Attorneys response Dated November 18, 2009 acknowledging receipt of The Amendment. and That he had filed it.

"Please Note." PCR, Attorney, Mr. Rodney Richey. Never filed my amendment to my Application, of Question No. #10. As he alleged to have done in Exhibit #(3). But only submitted The Amendment, on September 17, 2010, Well After my April 6, 2010 PCR, hearing and After, I filed a Motion to dismiss his representation on May 24, 2010, as shown in Exhibit #(3). See Also herein, Exhibit #(4). A letter from Applicants PCR, Counsel, finally acknowledging The filing of Applicants Amendment.

(3). That Applicants, Amendments To his Application filed September 23, 2010 and served on The Respondents, AS shown in Exhibit \*(4) herein. Has not been heard or ruled upon by The PCR Court prior to its ruling on Applicants application. Thus Applicant has not had a sufficient hearing on all of his allegations within his application and amended application. Further. applicant does believe he had standing to further amend his application with additional grounds for relief and to continue answer question No #10 of the application. To show specific facts to support his allegations. Where at Applicants April 6, 2010. PCR hearing The PCR Court ordered For the applicant PCR. hearing proceedings To remain open.

Here. The Applicant ask This Court to review his ~~Transcript of~~ <sup>- April 6, 2010,</sup> PCR, hearing proceedings. The record of The proceedings will substantiate his claims that his PCR proceeding was left open by The PCR Court. Therefore his Amendment Filed after The proceedings was proper and should have been heard. Before The PCR Court ruled on The application.

(4). That The PCR Court. Judge J. Derham Cole, Erroneously rendered a ruling on numerous allegations. Applicant raised in his application. But only conducted a hearing at applicant April 6 2010. (PCR). proceedings on one allegation. Ineffective assistance of substitute counsel. No hearing was conducted on Applicants allegations of . . . .

... Ineffective Assistance of Original Counsel. Whom also was a conflict of interest. And denied applicant his representation at a bench Trial proceedings in The Magistrate Court, which Applicant contested because The Traffic stop was unlawful and items was unlawfully seized and ultimately led to Applicants criminal charges. And That Original Counsel, intentionally withheld The knowledge of a plea negotiation, of Applicants 1st, degree, burglary charge and steered applicant toward a Trial, facing a life sentence.

Ineffective Assistance of Appellate Counsel. Who denied applicant a direct appeal. By giving applicant a frivolous appellate brief on an issue which The Court of Appeals refuse to consider because The issue was not preserved for appellate review see herein. The Court of Appeals decision. Exhibit #(6). Then Appellate Counsel erroneously informed applicant of The Court of Appeals Decision. (6). six months after they had rendered it thus costing applicant six months of his statutory (1) one year period to file his PCR application and even less time to file a Habeas Corpus if necessary. See herein. Exhibit #(7). The said Notice from Appellate Counsel Dated January 22, 2009.

Informing applicant of The Court of Appeal decision and The date for which applicant needed to file his PCR application.

The PCR. Court also never heard Applicants Newly discovered evidence claim. And falsely concluded in The order of Dismissal, That Applicant failed to submit any evidence to show newly discovered evidence.

The PCR. Court held No hearing on The above allegations at The PCR, proceedings. But yet has rendered a decision on each of

— The above reference Allegations with NO testimony, documents or facts. To support its findings. There was also ~~the~~ other allegations. That The PCR Court has ruled on, But was not heard at The proceedings.

(5). Because (PCR). Judge. The Honorable J. Derham Cole abused his discretion and/or Errored in not recusing himself from applicants (PCR) action. After Applicants PCR. Counsel moved to have. Judge Cole, recuse himself at The Applicants April 6, 2010, PCR Hearing. Judge Cole. WAS a conflict, and very bias towards Applicant. in That he had vast personal knowledge of facts. of a pending criminal charge of Applicant. which involved The Cherokee County Court house. The Cherokee County Sheriff's Dept. And The 7th Circuit Solicitor's office (Trey Gaudy). whom all were victims of The crime charged To Applicant. Thus Applicant believed it would be in conflict with The potential of outside influences. That would deny him a fair hearing of his PCR. application. For any Judge. of The 7th Judicial Circuit in Spartanburg County to preside over his PCR. Application. Further Applicant asserts. The Honorable Judge Cole. Had already previously presided over a civil matter of Applicant involving The same D.N.A. (blood) evidence. For which he denied Applicants Motion For testing at The April 6 2010. PCR, proceedings. See herein Exhibit #(5). Judge Coles ruling over Applicants civil action case. In which he also dismissed with prejudice. Please also note, That Judge Cole has also

— SAT over portions of Applicant's previous appeal of The same Traffic Court conviction which was directly related to his, 1st degree burglary case and conviction. For it was an unlawful traffic violation arrest and seizure. which resulted in Applicant being criminally charged with burglary crime. It is also of this traffic stop arrest, for which Applicant was never issued any actual tickets. and for which The State offered testimony about the tickets at Applicant's burglary Trial. But failed upon request, to produce any copies of the tickets during the Trial. These were the same relevant tickets in which the Applicant's PCR attorney, attempted to obtain a compel order for discovery of the ticket, from Judge Cole, at The PCR hearing for which Judge, Cole, denied the Motion. Incorporated herein is The relevant case number of The above referenced appeal of Traffic conviction, for which Judge Cole, participated in. CASE NO. 09-CP-11-0005.

### CONCLUSION

Applicant, has shown This Court with The above information that he's been prejudiced and denied a fair PCR Hearing as provided by The statute. Applicant prays that This Court finds that numerous substantial errors did in fact render Applicant's PCR proceedings unjust and insufficient. Thus and Order to stay The Judgment of The PCR Court should be granted with a New (PCR) hearing held and previous Motions Motions Heard.

Dated December 15, 2010

S/ Ricky Blannon  
Ricky Blannon #179051

## Certificate OF Service

Please Notice. That The undersigned Applicant# DO hereby Certify That he has mailed the herein attached Motion and/or Request To. The South Carolina Supreme Court. Requesting For a STAY of Judgment of The (PCR). Court. IN his post conviction Relief Action on Relevant Grounds, with support Exhibits evidence. By Placing said stay Motion and Exhibits in an envelope properly addressed with U.S. Postage, sealed and deposited in The United STATES MAIL. AT The Broad River Corr. INST. ON This 15<sup>th</sup> day of December 2010.

Mailed To :

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

Respectfully Submitted

St. Ricky Brannon  
Ricky BRANNON #179051  
Broad River Corr INST  
4460. Broad River Rd  
Columbia S.C. 29210

Sworn before Me This 15<sup>TH</sup> day  
of December 2010

Donald J. Insell  
Notary public For South Carolina

My Commission Expires  
August 25, 2015

my commission expires

7. Exhibits Documents  
Herein as listed.

Exhibit A. Copy of Dismissal of (PCR) application with prejudice. By The Honorable J. Derham Cole.

Exhibit #1 Motion to Dismiss PCR, Attorney, which The PCR. Court failed to hear.

Exhibit #2 The Amendment to my PCR Application of Question #10 in support of my allegations. This Amendment was submitted to my PCR. Counsel on Oct. 2, 2009. Yet PCR Counsel failed to timely file my amendments.

Exhibit #3 The response to my attempt to amend my PCR application as shown in Exhibit #2., (PCR) Counsel falsely informed me that he had forwarded the amendments. But he never did, file it.

Exhibit #4. Copy of Notice I received from my (PCR) Counsel acknowledging the filing of my amendment, which was filed, after my April 6, 2010 PCR. hearing but had been submitted to him, as shown in Exhibit #2, well in advance of hearing date.

Exhibit #5 My Civil Action case in which The Honorable Judge J. Derham Cole, presided and rule over. involving the same issue. DNA "blood" evidence. For which he also sat over in my PCR. hearing and refused to Recuse himself.

Exhibit #6. A COPY of The Judgment from The S.C. Court of Appeals. in regards To my Appellant Brief, AFFIRMING my conviction, without considering my issue ON Direct Appeal, Because the issue was Not preserved for Appellate review, My Trial Counsel failed to object during Trial To preserve The issue, And Appellate Counsel presented an issue which was not preserved. The Court AFFIRMED MY conviction ON June 20 2008. But Appellate Counsel failed to inform me.

Exhibit #7 A copy of The Late Notice, I received from my Appellate Counsel, Lanelle C. Durant. For which she informed me (6) six months after The fact. That The S.C. Court of Appeals had AFFIRMED MY conviction, as shown in Exhibit #6 and that I had 6 months To file on PCR application.

Date December 15, 2010

S/ Ricky Brannon  
Ricky Brannon #179051

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )  
 )  
 Ricky Brannon, #179051, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

2009-CP-11-0555

ORDER OF DISMISSAL

BRANDY W. MOORE

2010 NOV 15 P 2:39

FILED IN OFFICE OF  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 10, 2009. The Respondent made its Return on or about October 12, 2009. An evidentiary hearing into the matter was convened on April 6, 2010, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented the Applicant. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

Prior to testimony, PCR Counsel requested a continuance and made a motion for Discovery on Applicant's behalf. Applicant wanted discovery rights in order to test the blood that was taken from the Applicant after his arrest and to obtain the traffic ticket Applicant was given when he was originally stopped and arrested. This Court denied Applicant's motions for continuance and discovery. Applicant also made a motion for this Court to recuse itself from hearing the matter, as the Applicant had been accused of attempted arson of the Cherokee County Courthouse and this Court is a member of the Seventh Judicial Circuit as well as Cherokee. This Court found that the Applicant had not demonstrated good cause and denied the motion.

At the conclusion of testimony, PCR Counsel again renewed the request for discovery and requested the traffic ticket, original search warrant, waiver of rights form, and Applicant's blood.

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

1. Prosecutorial and trial court misconduct and errors;
  - a. "Prosecution in closing arguments constructively amended the aggravating element of crime charged in the indictment<sup>2</sup>."
  - b. "Trial court in its jury charge constructively amended the indictment by giving instructions of second degree burglary statute absent the required aggravating element when applicant was indicted on first degree burglary charges<sup>3</sup>."
  - c. "Fatal variance between indictment charging applicant with 1<sup>st</sup> degree burglary and grand larceny of the resident of person named in the indictment and proof shown at trial."
  - d. "Abuse of discretion of Trial Court. Failure to conduct 'gate keeping' obligation, proffer testimony, hold relevant 403 hearing before allowing prejudice shoe print expert testimony."
  - e. "Abuse of discretion allowing stipulation to an essential element in lieu of informing and/or instructing the jury about the element."
  - f. "Failure to serve timely Notice seeking life without parole on Applicant."
  - g. "Error in trial court not inquiring into known conflict and potential conflicts of interest in applicants trial, improper jury instructions, failure to instruct jury on lesser included offense, finding that prior guilty plea convictions were separate when crime was consolidated for sentencing constituting one conviction."
2. Ineffective assistance of original trial counsel "in violation of applicants right to due process, conflict of interest...denial of counsel..."
3. Ineffective assistance of substitute trial counsel "in violation of applicants right to due process, conflict of interest...denial of counsel..."

---

2 The "aggravating element" to which the Applicant refers is his prior record, specifically "prior convictions or guilty pleas of two or more burglaries." (TT. p. 39; TT. p. 308-311).

3 During pre-trial motions the parties stipulated that evidence of the Applicant's prior convictions for burglary, first degree would be introduced into evidence in order to establish the aggravating element outside the presence of the jury to avoid prejudicing the Applicant, and the jury would be instructed "in such a manner that two prior convictions [would] not prejudice the Defendant." (TT. 39-40).

in jail, Applicant testified that he gave a statement to the police. Applicant testified that the police interviewed him a second time as well, and at that time, Applicant informed them that he did not live at his Aunt's house. Applicant further testified that the cops initiated the second conversation after he had requested an attorney. Applicant testified that he never signed a waiver of rights form. Applicant testified that he was forced to give blood at the hospital. Applicant testified that he spoke with Counsel about when the results of the DNA test would come in and never realized that the blood was never tested. Applicant did acknowledge that there was never any DNA evidence used against him during his trial.

Applicant testified that he believes that Counsel had a conflict in representing Applicant. Applicant had been accused of attempted arson of the Cherokee County Courthouse, so Don Thompson, a public defender for Cherokee County had been dismissed as Applicant's attorney because of the conflict. Applicant testified that he believed that no one from the Seventh Judicial Circuit should have been involved in the case because of the conflict.

Applicant testified that he was served with notice to seek life without parole by the Seventh Judicial Circuit, but not by the Attorney General's office. Applicant also testified that he never discussed the notice with Counsel. Applicant testified that he met with Counsel approximately three times. Applicant testified that he told Counsel about the illegal traffic stop at their first meeting.

Applicant testified that Investigators Henson and Fowlkes both gave expert testimony at his trial and Counsel did not attempt to question them as hostile witnesses.

Applicant testified that in May 2006, he proceeded to trial in magistrate's court for the traffic charges and Counsel did not appear to represent him. Applicant testified that he pled guilty to not having a driver's license and asked for a bench trial for the charge of disregarding a stop sign. Applicant also testified that after he was found guilty of that charge, he appealed the decision and a

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).

### **Prosecutorial and Trial Court Misconduct and Errors**

Applicant raises several issues that he claims are errors on behalf of the trial court or the prosecution, in which approximately five issues involve Applicant's claims that the indictment was either constructively amended or improper in some fashion.

#### Indictment

Applicant alleges that not only did the prosecution constructively amend the aggravating element of the crime charged in the indictment during closing arguments, but Applicant also alleges the trial court similarly amended the indictment during jury instructions. The Applicant failed to present any evidence or testimony in support of his allegation. This Court also finds that the record directly refutes Applicant's allegations; therefore, this Court finds that this claim is denied and dismissed.

Applicant also alleges that there was a fatal variance between the indictment and crimes he faced and the proof shown at trial. This Court finds that not only did the Applicant fail to provide any evidence or testimony in support of this allegation, but also the record reflects that a jury found the Applicant guilty and his conviction was affirmed on appeal. Therefore, this Court finds that the Applicant has failed to meet his burden of proof as to this claim and it is denied and dismissed.

#### Abuse of Discretion

Applicant alleges that the trial court abused its discretion when it allowed the parties to stipulate to an essential element instead of informing the jury. Applicant also alleges that the trial court abused its discretion when it allowed the testimony of an expert in shoe prints. This Court finds that the Applicant failed to meet his burden of proof as to both of these claims. Again, other

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 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.

This Court finds that as to allegations of ineffective assistance of substitute trial counsel, Counsel's testimony was more credible than the Applicant's testimony. Counsel was believable, knowledgeable, and well prepared. This Court finds that Counsel thoroughly investigated the case, researched legal issues, and prepared legal arguments in support of the defense theory. Counsel

### Failure to Investigate

Applicant alleged that Counsel was ineffective for failing to investigate the case sufficiently, in particular the traffic stop. However, Applicant offers no testimony or evidence as to what he believes Counsel would have discovered had he conducted additional investigations. "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). The record reflects that Counsel was well prepared to argue against the traffic stop and evidence obtained as a result. This Court finds that Applicant has failed to meet his burden of proof as to this claim. Therefore, this allegation is denied and dismissed.

### Conflict of Interest

Applicant also alleged that Counsel had a conflict of interest because of Counsel's employment within the Seventh Judicial Circuit and Applicant's pending charges of attempted arson. The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). Although Counsel practiced law in the Seventh Judicial Circuit, his office and work was centered in Spartanburg County while the pending arson charges Applicant faced originated in Cherokee County. It is clear from the record that Counsel was a zealous advocate for Applicant, so this Court finds that Applicant has failed to meet his burden of proof as to this claim. Therefore, this

professional norms. The Applicant failed to present specific and compelling evidence that trial 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 trial 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**

Regarding Applicant’s allegation that Appellate Counsel was ineffective because of “frivolous appeal, prejudice late notice of final decision of issue on appeal,” this Court finds that the Applicant has failed to meet his burden of proof. Applicant failed to present any evidence or testimony to support his claims or prove prejudice; therefore, this Court finds that this allegation is denied and dismissed

### **Due Process Violations**

Regarding Applicant’s allegation that that his due process rights were violated because of “Conflict of interest in the 7<sup>th</sup> Circuit Solicitor’s Office in violation of order of disqualification, obstruction of justice, due process violation, denial of right to trial and appeal,” this Court finds that the Applicant has failed to meet his burden of proof. Applicant’s allegations are vague and repetitive and he offers no support in the form of testimony or evidence for any of the alleged claims. In fact, in particular, this Court finds that the record directly refutes Applicant’s claim that he was “deni[ed] right to trial and appeal.” Clearly, Applicant received a full trial and subsequent appeal regarding these charges. Therefore, this Court finds that the claim is denied and dismissed.

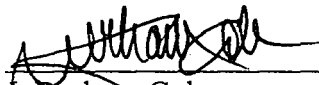
Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243<sup>4</sup> for appropriate procedures for appeal.

**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 15 day of November, 2010.

Gaffney, South Carolina

  
\_\_\_\_\_  
J. Derham Cole  
Presiding Circuit Court Judge

<sup>4</sup> 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.

STATE OF South Carolina  
County of Cherokee.

Ricky BRANNON #179051.

Applicant.

vs.

STATE OF South Carolina.

Respondent.

IN The Court of Common Pleas  
7th Judicial Circuit.

CASE NO. 009-CP-11-555

Motion To Dismiss, p. c. R.  
Attorney.

2010 MAY 26  
A 3

Please Notice. That The Above named Applicant. Do hereby move before  
This Honorable Court, with a Motion To Dismiss his p. c. R. Attorney  
Rodney W. Richey, of Richey and Richey, PA. p. O. Box, 10916,  
Greenville S.C. 29603. ,

This Motion is put before This  
Court by The Applicant. Ricky BRANNON #179051, who is currently  
confined at The Broad River Corr. INST. 4460. Broad River Rd  
Columbia S.C. 29210. And is pursuant to The requirement as  
set out in Rule 71.1 (d). and other applicable Laws.

The Applicant do herein as follows, set forth The grounds in  
support of This Motion:

1. That appointed p. c. R. Attorney, has failed to visit and/or  
adequately meet with The Applicant. For which to sufficiently  
review, and discuss. issue's to be presented and acquire a  
full understanding of The Applicants Allegations, So That he  
may sufficiently and accurately put forth The Allegation before  
The p. c. R. Court.

Here. Applicants. p. c. R. Attorney has only corresponded by mail.

2. p.c.R. Counsel. has failed to challenge The STATES return. Where The state has sought to have all of The applicants p.c.R. Allegations. dismissed. Including <sup>(1)</sup> subject matter jurisdiction issues, <sup>(2)</sup> Newly Discovered evidence issues, <sup>(3)</sup> Denial of Counsel issue, <sup>(4)</sup> Ineffective of original Counsel and <sup>(5)</sup> appellate Counsel issues, as well as numerous Trial Court errors. and prejudice prosecutors misconduct issues.

Here The state. Only wanted The p.c.R. Court to hear. Just one of applicants issues. For Ineffective assistance of substitute Trial Counsel. And p.c.R. attorney has failed to challenge The state. And seek to have all of The applicants issues heard.

3. Failure to seek out witnesses. Interview witnesses and to present them to testify at applicants p.c.R. proceedings on The relevant issues as material witnesses.

4. Failure to request for a evidentiary hearing, on The applicants Newly discovered evidence claims. and New United States Supreme Court Ruling which establishes grounds for which The applicant can assert That his Trial was unfair and unconstitutional. Based upon evidence admitted in violation of his 4th Amendment Rights.

5. That applicants p.c.R. attorney has prejudiced The applicant. By his inadequate presentation and failure to sufficiently raise all of The applicants allegation of ineffective assistance of substitute Trial Counsel claims at The p.c.R. Hearing held on April 6, 2010, Due to his failure to meet with, me, and review those claims and to call relevant witnesses before

Judge, J. Derham Cole. Denied All of The p.c.R. Attorney's Motion's and order him to proceed with The p.c.R. hearing For Ineffective assistance of substitute Counsel. For which he was unprepared to proceed on. Because he had never met with Applicant to sufficiently review his claims. And he had not interviewed and had any of The relevant witnesses available to testify before The p.c.R. Court. plus he failed to submit any of The Applicant Exhibits, Documents as evidence. During The p.c.R. proceedings.

Wherefore base on The above information. The Applicant does PRAYS. That This Court. dismisses his p.c.R. Attorney Mr. Rodney Richey and appoint him a New p.c.R. Attorney.

Dated May 24, 2010

S/ Ricky Brannon  
Ricky BRANNON #179051

Certificate of Service

Please Take Notice That The undersigned Applicant, Do hereby Certify. That A Motion to Dismiss his (p. c. R) Attorney, Mr. Rodney W. Richey. Has been served on The below named, clerk of Court of The 7th Judicial Circuit. By placing said Motion in an envelope with U. S. postage prepaid properly addressed, sealed and deposited in The United States MAIL, at The Broad River Corr. INST. Columbia S.C. on this 24 Day of MAY 2010.

Motion Mailed To:

Mrs. Brandy W. McBee, Clerk  
clerk of Court, Cherokee Co.  
post office Drawer 2289.  
Gaffney S.C. 29342.

Respectfully Submitted

S / Ricky Brannon  
Ricky BRANNON #179051  
Broad River Corr. INST  
4460. Broad River Rd  
Columbia S.C. 29210

Sworn before Me This 29th Day  
of April 2010.

Susan D. Johnson  
Notary public for South Carolina

My Commission Expires  
March 5, 2018

my commission expires.

BRANDY W. MCBEE

2010 MAY 26 A 10:30

CLERK OF COURT  
CHEROKEE CO.  
GAFFNEY, S.C.

Ricky Brannon #179051  
Broad River Court INST.  
4460. Broad River Rd.  
Columbia S.C. 29210.

Amendment To (p.c.R)

Rodney W. Richey P.A.  
Richey & Richey Atty At Law.  
Post office box 10910.  
Greenville S.C. 29603.

Re.: Ricky Brannon #179051 - vs - The State of South Carolina  
Case No. 2009-CP-23-555.

Dear Sir

please find inclosed herein an Amendment To my post conviction  
Relief Applicant. In This Amendment. Applicant continues to  
answer question NO# 10. of p.c.R. application. Allegations, A-I,  
as is set out in support of my claims in Question No# 9. of  
application, please submit This Amendment or make The necessary changes To it.  
Sincerely

Dated October 2, 2009

S/ Ricky Brannon  
Ricky Brannon #179051.

please Return The Applicant  
a Copy of This Amendment.

STATE of South Carolina }  
County of Cherokee. }

Ricky Brannon #179051 }

Applicant }

- vs - }

STATE of South Carolina. }

Respondent. }

IN The Court of Common Pleas  
7th Judicial Circuit.

CASE NO. 009-CP-11-0555

Applicant Amends his past  
Conviction Relief Application  
(p.c.r.).

The above named Applicant do hereby Amends his past Conviction Relief Application, And continues To ANSWER question # 10. of of application which states:

: STATE Concisely and in The same order The facts which support each of The grounds set out in #9.

Here Applicant will set out in The same alphabetical order The factual grounds to support each issue raised in his Application, please see those ground in support on The Following attached sheets.

Dated October 2, 2009.

Respectfully,

St Ricky Brannon

Ricky Brannon

# Certificate of Service

Please Take Notice. That The undersigned, Do hereby Certify. That he has mailed  
The herein attached. Amendment to his post Conviction Relief Application,  
To his, p.c.R. attorney Mr. Rodney W. Richey, of Richey & Richey PA.  
At post office box 10916, Greenville S.C. 29603. By plain said amendment  
in an envelope with U.S. postage prepaid, properly addressed, sealed and  
deposited in The United States MAIL, at The Broad River Corr. INST, on  
This 2nd day of October, 2009.

Type of Amendment Mailed:

Respectfully Submitted.

Continued Answer to p.c.R. Application  
of question NO# 10. of Application, Submitted  
brief of Allegation A-I.

S/ Ricky Brannon  
Ricky Brannon #179051  
Broad River Corr. INST  
4460. Broad River Rd.  
Columbia S.C. 29210.

sworn before me. This 2nd day of  
November, 2009.

Donald J. Quirk  
Notary public for South Carolina

My Commission Expires  
August 25, 2015

My Commission Expires.

Exhibit (3)

**RICHEY AND RICHEY**  
ATTORNEYS AT LAW

*A PROFESSIONAL ASSOCIATION*

RODNEY W. RICHEY  
LOLA S. RICHEY

POST OFFICE BOX 10916  
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503  
(864) 467-0646 FAX

November 18, 2009

Ricky Brannon, SCDC # 179051  
Broad River Correctional Institute  
4460 Broad River Road  
Columbia, SC 29210

RE: Ricky Brannon, SCDC # 179051 vs. The State of South Carolina  
Case No: 2009-CP-23-555

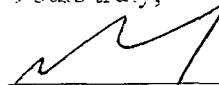
Dear Mr. Brannon:

Please find enclosed a copy of the letter I mailed to the Clerk of Court to file your Amendments. I am reviewing other Amendments you forwarded to my office. Once I have reviewed them, I will forward them for filing.

If you should have any questions, please feel free to write.

RICHEY AND RICHEY, P.A.

Yours truly,

  
\_\_\_\_\_  
Rodney Richey

RWR/tlg  
enclosure

Exhibit —

**RICHEY AND RICHEY** **COPY** *A PROFESSIONAL ASSOCIATION*  
ATTORNEYS AT LAW

RODNEY W. RICHEY  
LOLA S. RICHEY

POST OFFICE BOX 10916  
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503; 1-888-882-4878 Toll Free  
(864) 467-0646 FAX

November 18, 2009

Clerk of Court  
Cherokee County Courthouse  
PO Drawer 2289  
Gaffney, SC 29342

RE: Ricky Brannon, SCDC # 179051 vs. The State of South Carolina  
Case No: 2009-CP-11-0555

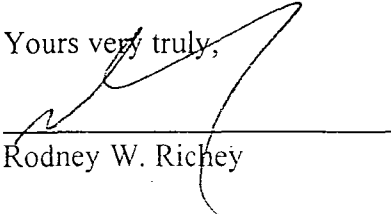
Dear Sir/Madam:

Please find enclosed Amendments for the above referenced matter. Please file and return the clocked copy in the enclosed stamped envelope.

Thank you and if you should have any questions, please feel free to call.

RICHEY AND RICHEY, P.A.

Yours very truly,

  
Rodney W. Richey

RWR/tlg  
enclosures  
cc: Ricky Brannon

Exhibit # (4)

**RICHEY AND RICHEY**  
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY  
LOLA S. RICHEY

POST OFFICE BOX 10916  
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503  
(864) 467-0646 FAX

September 23, 2010

Ricky Brannon, SCDC # 179051  
Broad River Correctional Institute  
4460 Broad River Road  
Columbia, SC 29210

RE: Ricky Brannon, SCDC # 179051 vs. The State of South Carolina  
Case No: 2009-CP-23-555

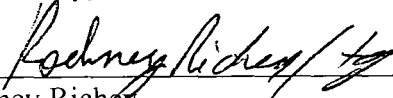
Dear Mr. Brannon:

Please find enclosed the filed September 2010 Amendments to PCR Application.

Thank you and if you should have any questions, please feel free to write me.

RICHEY AND RICHEY, P.A.

Yours truly,

  
Rodney Richey

RWR/tlg  
enclosures

COPY

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHEROKEE )

IN THE COURT OF COMMONS PLEAS  
CASE NO: 2009-CP-11-0555

RICKY BRANNON, )  
SCDC# 179051 )

**AFFIDAVIT OF SERVICE**

vs. )

THE STATE OF SOUTH CAROLINA )

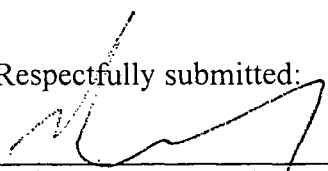
BRANDY W. MOBEE

2010 SEP 21 A 11:02

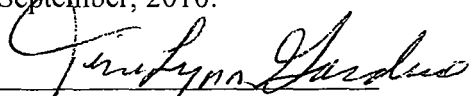
CLERK OF COURT  
SOUTH CAROLINA

I certify that I have served the Amendment to PCR Application dated September 13, 2010 on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on September 17, 2010, addressed to their attorney of record, Suzanne H. White, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Respectfully submitted:

  
Rodney Richey  
Richey and Richey, P.A.  
Post Office Box 10916  
Greenville, South Carolina 29603  
Attorney for the Applicant

Sworn to before me this 17 day of  
September, 2010.

  
Notary Public of South Carolina  
My Commission Expires: 12-21-11

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-11-556

Rickey BRANNON,

Bill BLANTON, Sheriff of Cherokee County, et. al.,

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a) SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other

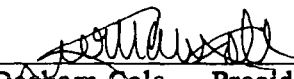
FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2008 APR -9 P 12:54  
BRANDY W. MCBEE

IT IS ORDERED AND ADJUDGED:  See formal order to follow;  Statement of Judgment by the Court.

This matter came before the court on motion of the plaintiff, pursuant to *Rule 59(e), SCRPC*, seeking the court to reconsider, alter, clarify, or amend the judgment of this court granting the defendant's motion to dismiss pursuant to *S. C. Code Section 15-78-110*. The motion was filed with the court but no copy provided to the judge in accordance with *Rule 59(g), SCRPC*.

After consideration of the record in this case and the applicable law, this court finds that oral argument would not aid the court in the resolution of this motion and further that the plaintiff's *Rule 59(e) motion* should be and **is** therefore **denied**.

Dated this 9<sup>th</sup> day of April, 2008.

  
\_\_\_\_\_  
J. Derham Cole, Presiding Judge

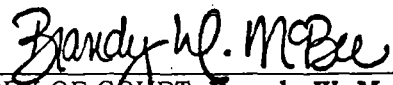
This judgment was entered on the \_\_\_\_\_ day of April, 2008, and a copy mailed first class this \_\_\_\_\_ day of April, 2008 to attorneys of record or to parties (when appearing *pro se*) as follows:

**Ricky Brannon**  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, South Carolina 29621

**A. Todd Darwin, Esq.**  
Post Office Box 1897  
Spartanburg, South Carolina 29304

ATTORNEY(S) FOR THE PLAINTIFF

ATTORNEY(S) FOR THE RESPONDENT

  
\_\_\_\_\_  
CLERK OF COURT, Brandy W. McBee

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )  
 )  
 Ricky Brannon, #179051 )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Bill Blanton, Sheriff of Cherokee )  
 County; Mike Fowlkes, Captain )  
 Cherokee County Sheriff Dept.; )  
 Mark Vanderburg, Detective )  
 Cherokee County Sheriff Dept.; )  
 and Jimmy Henson, CSI )  
 Cherokee County Sheriff Dept., )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 CIVIL ACTION NO.: 2008-CP-11-556

**ORDER DISMISSING CASE  
 WITH PREJUDICE AS TO  
 ALL DEFENDANTS**

2009 FEB 27 A 11: 00  
 BRANDY W. MOBEE

CLERK OF COURT  
 CHEROKEE COUNTY, S.C.

THIS MATTER CAME BEFORE ME on February 2, 2009 for a hearing on the Defendants' Motion to dismiss the Plaintiff's Complaint pursuant to SC Code Ann. §15-78-110. Present at the call of the case was the Plaintiff appearing *pro se* and A. Todd Darwin, attorney for the Defendants. As a preliminary matter, prior to the start of oral argument the Plaintiff stated to the Court that he had not been provided notice by the Clerk of Court's Office of this hearing, although he had been provided with notice of a hearing he had in another unrelated case on the motions docket. However, the Plaintiff then advised the Court that he was aware of this motion and was prepared to go forward. Therefore, we proceeded with the hearing. After reviewing the pleadings on file and this case, and considering the arguments of Plaintiff and Defendants' counsel, I hereby make the following findings of fact and conclusions of law.

Plaintiff filed this lawsuit on June 11, 2008. On the face of the Summons he prepared in his lawsuit, the Plaintiff asserts "TYPE OF CASE TORT CLAIM." Furthermore, when the Court asked

the Plaintiff during the hearing if he agreed his case fell under the provisions of the South Carolina Tort Claims Act, he stated unequivocally that it did, and from a review of the Complaint I find that the Plaintiff's claims fall under the Act.

The statute of limitations in the South Carolina Tort Claims Act is found in §15-78-110, which states:

*Except as provided for in §15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date of loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.*

Since the Plaintiff never filed a claim pursuant to this section, the statute of limitations in this case is two years.

Plaintiff was arrested for traffic violations on November 20, 2003 and detained at the Cherokee County Detention Center. During the course of his detention, investigators with the Cherokee County Sheriff's Office questioned Plaintiff about his possible involvement in one or more robberies in the area and he was charged accordingly.

The Plaintiff requested and was appointed a public defender to defend the criminal charges brought against him. On December 3, 2003 an Order appointed Don Thompson, Esq. as his criminal attorney. Mr. Thompson promptly served on the Solicitor's Office a *Request and Notice of Motion Pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and Rule 5 of the South Carolina Rules of Criminal Procedure*. On December 8, 2003, the Solicitor's Office served its response to Mr. Thompson. In that response the Plaintiff's criminal attorney was advised that the Solicitor's Office had an "open file policy with respect to discovery" and was instructed to contact the Solicitor's Office to make arrangements to look at the file and copy any documents contained therein.

Therefore, as of December 8, 2003, Plaintiff's legal representative was given the opportunity to review and copy anything in the Solicitor's file, and he was also instructed that because discovery is ongoing he should periodically check the file for new material.

As their investigation progressed, investigators obtained a warrant for the collection of blood from the Plaintiff. The warrant was served on Plaintiff on January 16, 2004, and the blood was obtained that same day. The Plaintiff admits, in the allegations of paragraphs 17, 18 and 19 of his Complaint, that the warrant and supporting Affidavit were served on him on January 16, 2004. In fact, in paragraph 19 of the Complaint, the Plaintiff even admits that the officers serving the warrant and Affidavit "did read and let Plaintiff read the Affidavit in support of the ground for probable cause. In which it did state that there was hair evidence collected from the crime scene of the burglarized home of Mr. Kenneth Gallman, and that there is probable cause to believe that this evidence is linked to the suspect, Ricky Brannon (Plaintiff)." Therefore, it is clear from Plaintiff's own allegations that he was aware of the contents of the warrant and the Affidavit supporting it as of January 16, 2004. Since he did not file a verified claim under the Act, the two year statute of limitations expired in January, 2006.

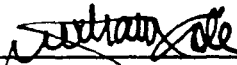
Furthermore, the Plaintiff was tried in Cherokee County General Sessions Court on April 12-13, 2006 for two (2) counts of first degree burglary and one (1) count of grand larceny. He was convicted on April 13, 2006 of one (1) count of first degree burglary and grand larceny. He received a life sentence pursuant to SC Code Ann. §17-25-45 for the first degree burglary conviction, and a five (5) year sentence on the grand larceny conviction. Therefore, even if I were to consider April 13, 2006 as the date the statute of limitations was to begin, the Plaintiff still falls outside the two year statute of limitations since he did not file his lawsuit against the

Defendants until June 11, 2008.

In his Complaint the Plaintiff alleges that despite requests to his court-appointed legal counsel to provide him with copies of the discovery obtained from the Solicitor's Office, he did not receive the documents until "on or about January 27, 2007". However, I find that any requests the Plaintiff made to his own lawyers to obtain copies of the discovery are irrelevant to the Defendants. The fact remains that as of December 8, 2003, any and all documents in the solicitor's file were made available to the Plaintiff's legal counsel at any time. Moreover, according to paragraphs 26, 27 and 28 of his Complaint, the documents the Plaintiff relied on in bringing this lawsuit were contained in the documents he received from his court-appointed criminal lawyer. Again, the fact that the Plaintiff did not receive the items he had allegedly been requesting from his own lawyers until January 12, 2007 has no bearing on the statute of limitations under the South Carolina Tort Claims Act.

Accordingly, because the Plaintiff did not file this lawsuit until June 11, 2008, it is barred by the statute of limitations found in §15-78-110 of the South Carolina Tort Claims Act.

It is therefore, **ORDERED, ADJUDGED AND DECREED** that the Plaintiff's lawsuit is barred by the applicable statute of limitations and this case is hereby dismissed with prejudice as to all Defendants.

  
\_\_\_\_\_  
J. Derham Cole, Presiding Judge  
Seventh Judicial Circuit

Spartanburg, SC

February 23, 2009.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

The State, Respondent,

v.

Ricky Brannon, Appellant.

---

Appeal From Cherokee County  
Doyet A. Early, III, Circuit Court Judge

---

Unpublished Opinion No. 2008-UP-313  
Submitted June 1, 2008 – Filed June 20, 2008

---

**AFFIRMED**

---

Appellate Defender Lanelle C. Durant, South Carolina Commission on Indigent Defense, Division of Appellate Defense, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Deborah R. J. Shupe, all of Columbia; and Solicitor Harold W. Gowdy, III, of Spartanburg, for Respondent.

**PER CURIAM:** Ricky Brannon appeals his convictions for burglary in the first degree and grand larceny, arguing the trial court erred in admitting the testimony of a footprint analysis expert. We affirm<sup>[1]</sup> pursuant to Rule 220(b), SCACR, and the following authorities: State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) ("Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review."); State v. Wood, 362 S.C. 520, 526, 608 S.E.2d 435, 438 (Ct. App. 2004) (holding a party opposing the admission of evidence must object to the evidence when it is introduced because "a motion in limine is not a final determination"), cert. denied (Aug. 15, 2006); State v. Burton, 326 S.C. 605, 611, 486 S.E.2d 762, 765 (Ct. App. 1997) ("Unless an objection is made

at the time the evidence is offered and a final ruling made, the issue is not preserved for review.”).

**AFFIRMED.**

**WILLIAMS, THOMAS, and PIEPER, JJ., concur.**

---

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.



# 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

Joseph L. Savitz, III, Chief Attorney  
Wanda H. Carter, Deputy Chief Attorney

*Exhibit #7*

*see next sheets*

*For Court of Appeals*

*Ruling*

January 22, 2009

Ricky Brannon, #179051  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

Re: Your case

Dear Mr. Brannon:

Enclosed please find a copy of the S.C. Court of Appeals' decision in your case. If you want to pursue your case, you can elect to go into post-conviction relief. However, it should be done by **June 20, 2009**, due to a statute of limitations which has been enacted on PCRs.

Feel free to contact me if you have any questions.

Sincerely,

LaNelle Cantey DuRant  
Appellate Defender

LCD/kde

Enclosure

*See attached next pages*



# 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  
Joseph L. Savitz, III, Senior Appellate Defender

December 14, 2010

**RECEIVED**

DEC 14 2010

**S.C. Supreme Court**

Ms. Linda D. Moffitt  
Circuit Court Reporter  
800 Belcher Road  
Spartanburg, SC 29316

Dear Ms. Moffitt:

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

Ricky Brannon v. State of South Carolina      Case #:      09-CP-11-00555.

County: Cherokee      Date of Trial: April 6, 2010

Presiding Judge: J. Derham Cole

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

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

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

Ms. Linda D. Moffitt  
December 14, 2010  
Page Two

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

Thank you for your kind cooperation in this matter.

Sincerely,

  
Loriehe French  
Legal Services Coordinator

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

Rodney W. Richey  
Lola S. Richey

24 Vardry Street, Suite 301  
Greenville, South Carolina 29601

**Mailing Address:**  
Post Office Box 10916  
Greenville, South Carolina 29603

(864) 467-0503  
(864) 467-0646 (Fax)

**Offices:**  
Greenville/Spartanburg

**Website:**  
[www.richeyandrichey.com](http://www.richeyandrichey.com)

November 23, 2010

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

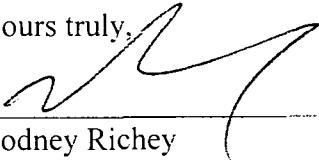
Re: Ricky Brannon, SCDC # 179051 vs. The State of South Carolina  
Case No: 2009-CP-23-555

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,

  
Rodney Richey

RECEIVED

NOV 24 2010

S.C. SUPREME COURT  
RWR/tlg

enclosures

cc: Suzanne White, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas

HONORABLE J. DERHAM COLE

2009-CP-11-0555

RICKY BRANNON, SCDC#: 179051,

APPELLANT,

against

STATE OF SOUTH CAROLINA,


RESPONDENT.

---

**NOTICE OF APPEAL**

---

Ricky Brannon appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable J. Derham Cole, Circuit Judge on April 6, 2010 and Order issued on November 15, 2010 and filed on November 15, 2010. The Appellant received notice of the judgment on November 22, 2010.

  
Rodney W. Richey  
Attorney for the Appellant  
Post Office Box 10916  
Greenville, South Carolina 29603  
(864) 367-8503

**RECEIVED**

Other Counsel of Record:  
Suzanne H. White, Esquire  
Office of Attorney General State of SC  
Post Office Box 11549  
Columbia, SC 29211-1549

NOV 24 2010

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas

HONORABLE J. DERHAM COLE

2009-CP-11-0555

RICKY BRANNON, SCDC#: 179051,

APPELLANT,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

---

**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on November 23, 2010, addressed to their attorney of record, Suzanne White, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: November 23, 2010

RICHEY & RICHEY, P.A.



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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )  
 )  
 Ricky Brannon, #179051, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

2009-CP-11-0555

**ORDER OF DISMISSAL**

DRAYDOR W. MOORE

2010 NOV 15 P 2:39

CLERK OF COURT  
 CHEROKEE COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 10, 2009. The Respondent made its Return on or about October 12, 2009. An evidentiary hearing into the matter was convened on April 6, 2010, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented the Applicant. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

Prior to testimony, PCR Counsel requested a continuance and made a motion for Discovery on Applicant's behalf. Applicant wanted discovery rights in order to test the blood that was taken from the Applicant after his arrest and to obtain the traffic ticket Applicant was given when he was originally stopped and arrested. This Court denied Applicant's motions for continuance and discovery. Applicant also made a motion for this Court to recuse itself from hearing the matter, as the Applicant had been accused of attempted arson of the Cherokee County Courthouse and this Court is a member of the Seventh Judicial Circuit as well as Cherokee. This Court found that the Applicant had not demonstrated good cause and denied the motion.

At the conclusion of testimony, PCR Counsel again renewed the request for discovery and requested the traffic ticket, original search warrant, waiver of rights form, and Applicant's blood.

This Court denied Applicant's requests again, finding that Applicant could test his blood currently without retrieving the blood that was taken from him at the time of the arrest, and finding that the documents requested by Applicant should be available in files available to Applicant or the State.

At the hearing, the Applicant testified on his own behalf. J. Roger Poole, Esquire, also testified on behalf of the State. This Court also had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court, appellate records and the Applicant's records from the South Carolina Department of Corrections.

### PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Cherokee County Grand Jury indicted the Applicant at the February 2004 term of General Sessions for two counts of burglary, first degree (04-GS-11-0201, 04-GS-11-0202) and grand larceny (04-GS-11-0203). J. Roger Poole, Esquire, represented the Applicant. On April 13, 2006, the Applicant was convicted by a jury for one count of burglary, first degree (04-GS-11-0202) and of grand larceny. The Honorable Doyet A. Early, III sentenced the Applicant to confinement for life without parole (LWOP) for the burglary, first degree charge, and for five (5) years for the grand larceny charge, sentences running concurrently<sup>1</sup>.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Williams, Unpublished Op. No. 2008-UP-313 (S.C. Ct. App. filed June 20, 2008). The Remittitur was issued on July 8, 2008.

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<sup>1</sup> The Applicant was sentenced to life without parole pursuant to §17-25-45.

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

1. Prosecutorial and trial court misconduct and errors;
  - a. "Prosecution in closing arguments constructively amended the aggravating element of crime charged in the indictment<sup>2</sup>."
  - b. "Trial court in its jury charge constructively amended the indictment by giving instructions of second degree burglary statute absent the required aggravating element when applicant was indicted on first degree burglary charges<sup>3</sup>."
  - c. "Fatal variance between indictment charging applicant with 1<sup>st</sup> degree burglary and grand larceny of the resident of person named in the indictment and proof shown at trial."
  - d. "Abuse of discretion of Trial Court. Failure to conduct 'gate keeping' obligation, proffer testimony, hold relevant 403 hearing before allowing prejudice shoe print expert testimony."
  - e. "Abuse of discretion allowing stipulation to an essential element in lieu of informing and/or instructing the jury about the element."
  - f. "Failure to serve timely Notice seeking life without parole on Applicant."
  - g. "Error in trial court not inquiring into known conflict and potential conflicts of interest in applicants trial, improper jury instructions, failure to instruct jury on lesser included offense, finding that prior guilty plea convictions were separate when crime was consolidated for sentencing constituting one conviction."
2. Ineffective assistance of original trial counsel "in violation of applicants right to due process, conflict of interest...denial of counsel..."
3. Ineffective assistance of substitute trial counsel "in violation of applicants right to due process, conflict of interest...denial of counsel..."

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2 The "aggravating element" to which the Applicant refers is his prior record, specifically "prior convictions or guilty pleas of two or more burglaries." (TT. p. 39; TT. p. 308-311).

3 During pre-trial motions the parties stipulated that evidence of the Applicant's prior convictions for burglary, first degree would be introduced into evidence in order to establish the aggravating element outside the presence of the jury to avoid prejudicing the Applicant, and the jury would be instructed "in such a manner that two prior convictions [would] not prejudice the Defendant." (TT. 39-40).

4. Ineffective assistance of appellate counsel for “frivolous appeal, prejudice late notice of final decision of issue on appeal.”
5. Due Process Violations; and
  - a. “Conflict of interest in the 7<sup>th</sup> Circuit Solicitor’s Office in violation of order of disqualification, obstruction of justice, due process violation, denial of right to trial and appeal.”
6. Newly discovered evidence.
  - a. “Perjury testimony, 6<sup>th</sup> amendment violation, discovery violation, 4<sup>th</sup> amendment violation and violation of due process (involuntary statement).”

### SUMMARY OF TESTIMONY

Applicant testified that Roger Poole (“Counsel”) was appointed to represent him on charges of burglary – first degree and grand larceny. Applicant testified that Counsel did not properly investigate the case and did not interview a witness, who was material to the case. Applicant testified that a female named “Tasha” was with him in the car when he was stopped for a traffic violation and she witnessed him purchasing the guns that were stolen. Applicant also testified that Counsel should have properly investigated the traffic stop. Applicant testified that the Deputy that stopped and arrested him gave insufficient testimony regarding the stop because the Deputy said that Applicant was given a courtesy summons.

Applicant testified that a woman saw the car at her house around the time of a burglary and reported the tag number to the police. The police then contacted the owner of the car, Applicant’s girlfriend at the time, who informed them that the Applicant had the car. However, Applicant also testified that several other people used the car as well as him. Applicant testified that he was subsequently pulled over for disregarding a stop sign and having no license, but he was never issued any tickets for those violations. Applicant also testified that the car was searched without his permission, at which time the Deputy seized burglary tools found in the car. After he spent the night

in jail, Applicant testified that he gave a statement to the police. Applicant testified that the police interviewed him a second time as well, and at that time, Applicant informed them that he did not live at his Aunt's house. Applicant further testified that the cops initiated the second conversation after he had requested an attorney. Applicant testified that he never signed a waiver of rights form. Applicant testified that he was forced to give blood at the hospital. Applicant testified that he spoke with Counsel about when the results of the DNA test would come in and never realized that the blood was never tested. Applicant did acknowledge that there was never any DNA evidence used against him during his trial.

Applicant testified that he believes that Counsel had a conflict in representing Applicant. Applicant had been accused of attempted arson of the Cherokee County Courthouse, so Don Thompson, a public defender for Cherokee County had been dismissed as Applicant's attorney because of the conflict. Applicant testified that he believed that no one from the Seventh Judicial Circuit should have been involved in the case because of the conflict.

Applicant testified that he was served with notice to seek life without parole by the Seventh Judicial Circuit, but not by the Attorney General's office. Applicant also testified that he never discussed the notice with Counsel. Applicant testified that he met with Counsel approximately three times. Applicant testified that he told Counsel about the illegal traffic stop at their first meeting.

Applicant testified that Investigators Henson and Fowlkes both gave expert testimony at his trial and Counsel did not attempt to question them as hostile witnesses.

Applicant testified that in May 2006, he proceeded to trial in magistrate's court for the traffic charges and Counsel did not appear to represent him. Applicant testified that he pled guilty to not having a driver's license and asked for a bench trial for the charge of disregarding a stop sign. Applicant also testified that after he was found guilty of that charge, he appealed the decision and a

second trial was ordered.

Counsel testified that he was appointed to represent Applicant on the charges of grand larceny and burglary – 1<sup>st</sup> degree, but he was not representing Applicant on the traffic charges. Counsel testified that he believed Chip Weatherford represented the Applicant on the charge of disregarding a stop sign. Counsel testified that he did not recall ever seeing the traffic tickets that resulted from Applicant's traffic stop. However, Counsel testified that he did not believe the stop was unreasonable, as the police had received a notice to be on the lookout for that vehicle and the officer testified that the driver disregarded a stop sign. In addition, Counsel testified that the only evidence that may have been suppressed if the stop was found to be unreasonable would have been Applicant's tennis shoes.

Counsel testified that he did recall Applicant's blood being sent off for analysis, but that no testing was going to be used at trial. Counsel testified that he did not believe that they needed to discuss the blood samples since the State was not using any of the samples at trial. Counsel testified that if the blood had been tested and had exculpated the Applicant, then it was discoverable; however, he is not aware of that occurring. Counsel testified that he did not believe there was a conflict in his representation of Applicant in this case simply because he worked in the Seventh Judicial Circuit. Counsel also testified that he had no information regarding the witness in the car and had no way of contacting her. Counsel further testified that notice of life without parole was properly served on Mr. Don Thompson, Applicant's previous counsel.

#### **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).

### **Prosecutorial and Trial Court Misconduct and Errors**

Applicant raises several issues that he claims are errors on behalf of the trial court or the prosecution, in which approximately five issues involve Applicant's claims that the indictment was either constructively amended or improper in some fashion.

#### Indictment

Applicant alleges that not only did the prosecution constructively amend the aggravating element of the crime charged in the indictment during closing arguments, but Applicant also alleges the trial court similarly amended the indictment during jury instructions. The Applicant failed to present any evidence or testimony in support of his allegation. This Court also finds that the record directly refutes Applicant's allegations; therefore, this Court finds that this claim is denied and dismissed.

Applicant also alleges that there was a fatal variance between the indictment and crimes he faced and the proof shown at trial. This Court finds that not only did the Applicant fail to provide any evidence or testimony in support of this allegation, but also the record reflects that a jury found the Applicant guilty and his conviction was affirmed on appeal. Therefore, this Court finds that the Applicant has failed to meet his burden of proof as to this claim and it is denied and dismissed.

#### Abuse of Discretion

Applicant alleges that the trial court abused its discretion when it allowed the parties to stipulate to an essential element instead of informing the jury. Applicant also alleges that the trial court abused its discretion when it allowed the testimony of an expert in shoe prints. This Court finds that the Applicant failed to meet his burden of proof as to both of these claims. Again, other

than Applicant's allegations in his application, he failed to provide any evidence or testimony to support his claims. Additionally, the record clearly reflects and supports the trial court's communication with the parties, pre-trial hearing and decision regarding both the stipulation to the aggravating element and the testimony of the expert regarding Applicant's shoe prints. Furthermore, this Court finds that both issues were raised, ruled upon by the trial court, and the issue of the shoe print expert's testimony was reviewed and ruled upon by the South Carolina Court of Appeals. Therefore, this Court finds that the claim should be denied and dismissed.

#### Untimely Service of Notice of Intent to Seek Life Without Parole

Applicant also alleges that the prosecution failed to provide timely notice of the intent to seek life without parole. Applicant's testimony lacks credibility on this issue, in particular, when the record and Counsel's testimony directly refute Applicant's testimony. This Court finds that notice of intent to seek life without parole was timely served and Applicant has failed to meet his burden of proof as to this claim. Therefore, this allegation is denied and dismissed.

#### Other Allegations

Applicant also alleges numerous vague and repetitive claims regarding conflicts of interest, jury instructions and prior convictions. However, Applicant failed to provide any testimony, other than testimony regarding his claims of Counsel's alleged conflict of interest, to support any of these claims. Once again, this Court finds that Applicant has failed to meet his burden of proof as to these claims and they should therefore be denied and dismissed.

#### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of original and substitute trial 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), SCRPC). 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 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.

This Court finds that as to allegations of ineffective assistance of substitute trial counsel, Counsel's testimony was more credible than the Applicant's testimony. Counsel was believable, knowledgeable, and well prepared. This Court finds that Counsel thoroughly investigated the case, researched legal issues, and prepared legal arguments in support of the defense theory. Counsel

made the appropriate motions and argued against the introduction of the evidence from the traffic stop and attempted to attack the credibility and qualifications of State witnesses, but unfortunately, the judge disagreed with Counsel's efforts. This Court also finds that Counsel communicated with the Applicant and attempted to negotiate with the State on Applicant's behalf.

Regarding Applicant's claims that his original appointed trial counsel was ineffective, this Court finds that the Applicant failed to present any testimony or evidence in support of his allegation that his original trial counsel was ineffective. Therefore, this claim is denied and dismissed.

#### Failure to Interview or Call Witnesses

In regards to Applicant's allegations that testimony from "Tasha" regarding the traffic stop or Applicant purchasing the stolen guns would have helped his case, this Court finds that Applicant has failed to meet his burden of proof. 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 testimony or evidence to support his allegations. Applicant offered nothing more than his assertions that "Tasha" could have assisted in his defense. Therefore, this claim is denied and dismissed.

### Failure to Investigate

Applicant alleged that Counsel was ineffective for failing to investigate the case sufficiently, in particular the traffic stop. However, Applicant offers no testimony or evidence as to what he believes Counsel would have discovered had he conducted additional investigations. "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). The record reflects that Counsel was well prepared to argue against the traffic stop and evidence obtained as a result. This Court finds that Applicant has failed to meet his burden of proof as to this claim. Therefore, this allegation is denied and dismissed.

### Conflict of Interest

Applicant also alleged that Counsel had a conflict of interest because of Counsel's employment within the Seventh Judicial Circuit and Applicant's pending charges of attempted arson. The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). Although Counsel practiced law in the Seventh Judicial Circuit, his office and work was centered in Spartanburg County while the pending arson charges Applicant faced originated in Cherokee County. It is clear from the record that Counsel was a zealous advocate for Applicant, so this Court finds that Applicant has failed to meet his burden of proof as to this claim. Therefore, this

allegation is denied and dismissed.

Failure to Object and Properly Question Witnesses

Regarding Applicant's allegation that Counsel was ineffective for failing to object to the defective indictment, this Court finds that the Applicant has failed to meet his burden of proof. Applicant presented no evidence or testimony in support of his claims that Counsel was ineffective for failing to object to the allegedly defective indictment and in fact, the record demonstrates that there was no legal basis for an objection to the indictment; therefore, this claim is denied and dismissed.

Regarding Applicant's claim that Counsel failed to properly question Investigators Henson and Fowlkes, this Court finds that there is no merit to this claim. Not only did the Applicant provide no examples of questions that Counsel should have asked either witness, but the record clearly reflects that Counsel cross-examined each witness during the trial. Therefore, this claim is denied and dismissed.

Failure to Represent Applicant at Magistrate Court

Applicant also alleges that Counsel was ineffective for failing to appear to represent Applicant at his Magistrate trial for the traffic charges related to this incident. This Court finds Applicant's testimony to lack credibility as to this issue and finds Counsel's testimony to be far more credible. This Court finds that Counsel was not representing Applicant on the traffic charges and was therefore, not required to appear on Applicant's behalf. 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 trial 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 trial 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**

Regarding Applicant’s allegation that Appellate Counsel was ineffective because of “frivolous appeal, prejudice late notice of final decision of issue on appeal,” this Court finds that the Applicant has failed to meet his burden of proof. Applicant failed to present any evidence or testimony to support his claims or prove prejudice; therefore, this Court finds that this allegation is denied and dismissed

### **Due Process Violations**

Regarding Applicant’s allegation that that his due process rights were violated because of “Conflict of interest in the 7<sup>th</sup> Circuit Solicitor’s Office in violation of order of disqualification, obstruction of justice, due process violation, denial of right to trial and appeal,” this Court finds that the Applicant has failed to meet his burden of proof. Applicant’s allegations are vague and repetitive and he offers no support in the form of testimony or evidence for any of the alleged claims. In fact, in particular, this Court finds that the record directly refutes Applicant’s claim that he was “deni[ed] right to trial and appeal.” Clearly, Applicant received a full trial and subsequent appeal regarding these charges. Therefore, this Court finds that the claim is denied and dismissed.

### Newly Discovered Evidence

As to Applicant's allegation that newly discovered evidence exists in the form of perjury testimony, 6<sup>th</sup> amendment violation, discovery violation, 4<sup>th</sup> amendment violation and violation of due process (involuntary statement), this Court finds that the Applicant has failed to meet his burden of proof. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant failed to produce any evidence that meets *any* of the requirements for after-discovered evidence, in the form of either testimony or physical evidence. Therefore, the Applicant failed to meet his burden of proof in regards to this allegation and this Court should find that the claim should be 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 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 243<sup>4</sup> 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 15 day of November, 2010.

Gaffney, South Carolina

  
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J. Derham Cole  
Presiding Circuit Court Judge

<sup>4</sup> 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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