

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Georgetown County
Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

NOV 20 2013

S.C. Supreme Court

GARY L. HAYES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-001326

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

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Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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FORM 5

STATE OF SOUTH CAROLINA)
County of GEORGETOWN)
GARY LEROY HAYES # 263985)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS
2012-CP-22-01167

FILED
GEORGETOWN COUNTY, S.C.
2012 OCT 26 AM 11:39
ALMA Y. BRIDGEMAN
CLERK OF COURT

v.)
State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention WALDEN CORR. INST.
4340 BROAD RIVER ROAD COLUMBIA, S.C. 29210
2. Name and location of Court which imposed sentence COURT OF GENERAL
SESSIONS, P.O. Box 479 GEORGETOWN, S.C. 29442
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 98-65-22-839
(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 30, 2012, one (1) year with

(b) THE SOUTH CAROLINA DEPARTMENT OF

(c) CORRECTIONS

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) ATTORNEY FAILED TO FILE NOTICE OF APPEAL

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHMENT
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

- (c) the disposition thereof:
 - i. _____ N/A
 - ii. _____ N/A
 - iii. _____ N/A
 - iv. _____ N/A

- (d) the date of each such disposition:
 - i. _____ N/A
 - ii. _____ N/A
 - iii. _____ N/A
 - iv. _____ N/A

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____ N/A
 - ii. _____ N/A
 - iii. _____ N/A
 - iv. _____ N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
 _____ NO _____

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. _____ N/A
 - ii. _____ N/A
 - iii. _____ N/A
 - (b) the proceedings in which each ground was raised:
 - i. _____ N/A
 - ii. _____ N/A
 - iii. _____ N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____ N/A
- (b) _____ N/A
- (c) _____ N/A

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____ N/A
- (b) your trial, if any? _____ YES
- (c) your sentencing? _____ YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____ N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____ N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. RONALD HAZZARD, PUBLIC DEFENDERS OFFICE
401 CLAWSON ST., GEORGETOWN, S.C. 29440
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. ~~COMMUNITY SUPERVISION REVOCATION HEARING~~ 6/4
- ii. COMMUNITY SUPERVISION REVOCATION HEARING
AND SENTENCING
- iii. _____

19. State clearly the relief you seek in filing this application:

DISCHARGED AND RELEASED FROM INCARCERATION
ON OR BEFORE JANUARY 2013.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of RICHLAND)

VERIFICATION

I, GARY LEROY HAYES, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Gary L. Hayes

SWORN to and subscribed before me this 23rd day of October, 2012.

Yolanda Long (L.S.)
Notary Public

My Commission Expires: 1/20/2022

FILED
GEORGETOWN COUNTY S.C.
2012 OCT 26 AM 11:39
ALMA Y. WHITE
CLERK OF COURT

ATTACHMENT 2012-CP-22-01167

HAYES WAS ARRESTED IN JANUARY 1998 AND WAS SENTENCED TO FIFTEEN (15) YEARS AFTER HIS SECOND TRIAL IN JANUARY 2000.

HAYES WAS GIVEN CREDIT FOR TWO (2) YEARS JAIL TIME HE SERVED AWAITING TRIAL IN ACCORDANCE WITH S.C. CODE § 24-13-40. HAYES' FIFTEEN (15) YEAR SENTENCE EXPIRES ON JANUARY 2013.

HAYES WAS RELEASED ON COMMUNITY SUPERVISION ON OCTOBER 1, 2010. ON AUGUST 30, 2012, HAYES WAS SENTENCED TO ONE (1) YEAR FOR A COMMUNITY SUPERVISION VIOLATION. THE ONE (1) YEAR SENTENCE EXTENDS HAYES' INCARCERATION BEYOND THE MAX-OUT DATE OF JANUARY 2013 ON HAYES' ORIGINAL SENTENCE IN VIOLATION OF S.C. CODE § 24-21-560(D), STATE V. MCGRIER, 378 S.C. 320, 663 S.E.2d 15 (2008) AND STATE V. PICKLESIMER, 388 S.C. 264, 695 S.E.2d 845 (2010).

IN STATE V. MCGRIER, THE SOUTH CAROLINA SUPREME COURT HELD; § 24-21-560(D) SHOULD NOW READ THIS LANGUAGE AS LIMITING THE TOTAL AMOUNT OF TIME AN INMATE COULD BE INCARCERATED AFTER A CSP REVOCATION TO BE THE LENGTH OF THE REMAINING BALANCE OF THE SENTENCE FOR THE "NO PAROLE OFFENSE".

IN STATE V. PICKLESIMER, THE SOUTH CAROLINA SUPREME COURT HELD; THE "ORIGINAL SENTENCE" AS

REFERENCED IN STATUTE GOVERNING REVOCATION OF COMMUNITY SUPERVISION AND THE MAXIMUM AMOUNT OF TIME A PRISONER COULD BE REQUIRED TO SERVE AFTER REVOCATION, INCLUDED SUSPENDED AND UN-SUSPENDED PORTIONS OF A CIRCUIT COURT'S SENTENCE; THEREFORE, PURSUANT TO STATUTE, WHEN A CIRCUIT COURT WAS FACED WITH A DEFENDANT'S VIOLATION OF THE DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES' COMMUNITY SUPERVISION PROGRAM (CSP) OR NORMAL PROBATIONARY TERM, THE COURT COULD NOT REVOKE AND IMPOSE A TERM OF FURTHER INCARCERATION, NOR LENGTHEN THE TERM OF THE CSP OR PROBATION IF THAT WOULD RESULT IN THE AGGREGATE PERIOD OF SERVICE EXTENDING BEYOND THE END OF THE TERM OF THE ORIGINAL SENTENCE.

THEREFORE, BY THE PLAIN AND ORDINARY MEANING OF S.C. CODE §§ 24-13-40, 24-21-560(b), STATE V. Mc GRIER, AND STATE V. PICKLESIMER, HAYES SHOULD BE DISCHARGED AND RELEASED FROM INCARCERATION ON OR BEFORE JANUARY 1, 2013.

2012-CP-22-01167

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, GARY LEROY HAYES, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Gary L. Hayes
Applicant

SWORN or affirmed to and subscribed before me this
23rd day of October, 2012.

Jolanda Love
Notary Public

My Commission Expires: 1/20/2022

FILED
GEORGETOWN COUNTY S.C.
2012 OCT 26 AM 11:39
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
)
 Gary Leroy Hayes, 263985)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

12-CP-22-1167

**RETURN
AND MOTION TO DISMISS**

Respondent, making its Return to the application for post conviction relief (PCR) filed October 26, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. The Applicant was indicted at the October 1998 term of the Georgetown County Grand Jury for Murder (98-GS-22-839). He was represented by David Hood, Esquire. On January 24-28, 2000, the Applicant proceeded to trial after which he was found guilty of Voluntary Manslaughter. He was sentenced by the Honorable Howard P. King to confinement for a period of fifteen (15) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Hayes, Op. No. 2001-UP-415 (S.C. Ct. App. filed September 27, 2001).

Respondent filed his first PCR July 23, 2002. On June 15, 2004 the PCR trial court denied PCR and dismissed the Application. Applicant filed a pro se Petition for Writ of Certiorari and the court denied Certiorari. The remittitur was sent June 7, 2006.

Attached herewith and incorporated herein are the records of the Clerk of Court regarding the subject conviction, and if available, the transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges in a two page handwritten amendment that he is being held in custody unlawfully as he claims he "should be discharged and released from incarceration on or before January 1, 2013." Respondent asserts such claims are not cognizable in PCR.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test, in addition to being filed past the applicable statute of limitations as well as improperly successive. Therefore, Respondent requests this Court summarily dismiss the Application with prejudice.

IV.

The statute of limitations applicable to post-conviction relief actions bars the entire application. S.C. Code Ann. § 17-27-45 (Supp. 2001) requires an inmate to file a post-conviction relief application "within one year after the entry of a judgment of conviction" This provision applies to all convictions after the July 1, 1995 effective date of the statute. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

Applicant's remittitur was sent June 7, 2006. The Applicant should have filed this

application within a year of that date. Applicant filed this post-conviction relief application past the applicable statute of limitations. Accordingly, since Applicant did not present these allegations in a timely manner, this Court should dismiss the application with prejudice as barred by the statute of limitations.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

Successive

This Application must be summarily dismissed because it is successive to the Applicant's prior PCR Applications. The Uniform Post Conviction Procedure Act (the Act) provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. code Ann. § 17-27-90 (1985). Successive applications are disfavored and the burden is on the

Applicant to establish that any new ground raised in a subsequent application could not have been raised in the previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991).

The current allegations were or could have been raised in the proceedings based on Applicant's prior applications for PCR and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; accordingly, the Application should be summarily dismissed as successive.

VI.

The State therefore requests that this Court summarily dismiss this Application as it is filed outside the statute of limitations and also seeks relief not available in PCR, pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

12/28, 2012.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 GARY LEROY HAYES, #263985)
)
)
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 Applicant,)
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 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

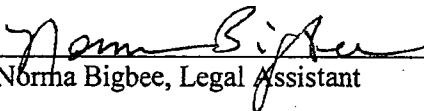
2012-CP-22-1167

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Gary Leroy Hayes, #263985
Walden Corr, Inst.
4340 Broad River Rd.
Columbia, SC 29210

DATED this 28th day of December, 2012


 Norma Bigbee, Legal Assistant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 Gary Leroy Hayes #263985,)
)
 Applicant pro se,)
)
)
)
 v.)
)
)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

12-CP-22-1167

ALMA V. WHITE
CLERK OF COURT

2013 FEB -4 PM 4:44

FILED
GEORGETOWN COUNTY, S.C.

REPLY BRIEF AND
MOTION FOR SUMMARY JUDGEMENT

Applicant makes his REPLY BRIEF AND MOTION FOR SUMMARY JUDGE-
MENT in the above captioned case.

I.

Hayes was arrested in January 1998 and proceeded to trial in
January 2000 where he was sentenced to fifteen(15) years.

II.

Hayes was given credit for two(2) years jail time he served
awaiting trial in accordance with S.C.Code §24-13-40. See attach-
ed sentencing sheet. With two(2) years jail time credit Hayes'
fifteen year sentence expires in January 2013. This date is calcu-
lated without any good time, earned work credits or education
credits applied.

III.

Hayes was released on the Community Supervision Program(CSP)
October 1,2010. On August 30,2012 Hayes was sentenced to one(1)
year in the department of corrections for a community supervision
violation. See attached community supervision revocation order.

IV.

Hayes filed an application for Post-Conviction Relief(PCR) on October 26,2012 alleging the one year sentence for the community supervision violation extends his incarceration beyond his fifteen year sentence in violation of S.C.Code §24-21-560, State v. McGrier,378 S.C. 320, 663 S.E.2d 15(2008) and State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845(2010).

In McGrier the Supreme Court held S.C.Code §24-21-560(D)2007 we now read this language as limiting the total amount of time an inmate could be incarcerated after a CSP revocation to be the length of the remaining balance of the sentence for the no parole offense.

In Picklesimer the Supreme Court held the original sentence as referenced in statute governing revocation of community supervision and the maximum amount of time a prisoner could be required to serve after revocation, included the suspended and unsuspended portions of a circuit court's sentence; therefore, pursuant to statute, when a circuit court was faced with a defendant's violation of the Department of Probation, Parole and Pardon Services' community supervision program (CSP) or normal probationary term, the court could not revoke and impose a term of further incarceration, nor lengthen the term of the CSP or probation if that would result in the aggregate period of service extending beyond the end of the term of the original sentence.

STATE OF SOUTH CAROLINA)
 COUNTY OF Georgetown)
 STATE VS.)
Gary Leroy Hayes)
 AKA: _____)
 Race: W Sex: M)
 DOB: 02-13-55 Age: _____)
 SSN: 441-58-2999)
 DL#: _____)
 SID#: _____)

IN THE COURT OF GENERAL SESSIONS)
 INDICTMENT/CASE#: 26398)
98-OS-22-839)
 A/W#: F757213)
 Date of Offense: 1-12-98)
 S.C. Code § : _____)
 CDR Code #: 011116)

SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Voluntary manslaughter
 in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0121117
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST:

 Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for _____ days/months jail time from 23, 1998
 CONCURRENT or CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

RESTITUTION Heard, Waived, Ordered
 Total: \$ _____ plus 20% fee \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc Rehab. or Job Corps _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 30 days after
 \$ _____ paid to Public Defender Fund. Release
 Other: _____

Recipient: _____
 *Fine: \$ _____
 § 14-1-206 - Assessments 100%..... \$ _____
 § 14-1-211 - Surcharge..... \$ 106.00
 (Exceptions: See § 14-1-211)
 § 56-5-2995 (DUI)..... \$ _____
 County (3%)..... \$ 3.00
 TOTAL..... \$ 103.00

Clerk of Court/Deputy Clerk Bonnie Harde
 Court Reporter: Grace Hurley

 White - Clerk Green - Corrections Canary - Probation Pink - Defendant

PRESIDING JUDGE Howard P. King
 Judge Code: 11017
 Sentence Date: Jan 23, 1998

Created by the South Carolina Department of Probation, Parole and Pardon Services

State of South Carolina

County of Georgetown

State

-VS-

IN THE COURT OF GENERAL SESSIONS

No. 89-GS-22-839 1/
Cot

Community Supervision

REVOCATION ORDER

Defendant Gary Leroy Hayes

SID# 01300776 SCDC# or DOB 2163985

This matter was brought before me on the 30th day of August, 2012, pursuant to warrant/citation (strike one) charging the Defendant with violating the Defendant's Community Supervision Program and asking the Court to revoke the Defendant's community supervision. I find:

1. The terms of the Community Supervision Program are fair and reasonable;
2. The Defendant has not complied with all terms of the Community Supervision Program;
3. The Defendant has willfully violated terms of the Community Supervision Program;
4. The Defendant should not be continued in the Community Supervision Program under its current terms or under other terms and conditions.

IT IS ORDERED that the Defendant be in the custody of the South Carolina Department of Corrections for a term of _____ days _____ months One (1) year (total may not exceed one (1) year).

This 30th day of August, 2012
Georgetown, SC

Presiding Judge [Signature] 2012
1 15th Judicial Circuit

I have received a copy of this order.

Offender's Signature	Offender's Date
----------------------	-----------------

CONCLUSION

By the plain and ordinary meaning of S.C. Code §24-21-560(D), State v. McGrier and State v. Picklesimer, Hayes is granted his MOTION FOR SUMMARY JUDGEMENT and is to be released from incarceration immediately.

IT IS SO ORDERED this

_____ day of _____, 2013.

Honorable Benjamin Culbertson
Chief Administrative Judge
15th Judicial Circuit

_____, South Carolina

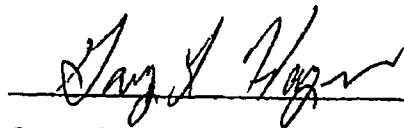
CERTIFICATE OF SERVICE

I, Gary L. Hayes hereby certify that on this date I served a true and correct copy of the foregoing document(s) on the below listed individual(s) by placing the same in the U.S. mail postage prepaid and sent to their last known address as follows:

Honorable Benjamin Culbertson
Chief Administrative Judge
P.O. Box 479
Georgetown, South Carolina 29442

Tyson A. Johnson
Asst. Attorney General
P.O. Box 11549
Columbia, South Carolina
29211

Alma White, Clerk of Court
Georgetown County
P.O. Box 479
Georgetown, South Carolina 29442



Gary L. Hayes
Walden Corr. Inst. 3-W3 11-B
4340 Broad River Road
Columbia, South Carolina
29210

SWORN to and subscribed before me

this 8th day of January, 2013

Golanda Long
Notary Public

My commission expires: 1/20/2022

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
)
 Gary Leroy Hayes, 263985)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

12-CP-22-1167

CONDITIONAL ORDER OF DISMISSAL

FILED
 GEORGETOWN COUNTY
 2013 FEB 20 AM 11:25
 ALMA T. WILSON
 CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 26, 2012. Respondent made its Return on December 19, 2012, requesting summary dismissal of the matter. This Court also has before it the records of the Clerk of Court regarding the subject convictions.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. The Applicant was indicted at the October 1998 term of the Georgetown County Grand Jury for Murder (98-GS-22-839). He was represented by David Hood, Esquire. On January 24-28, 2000, the Applicant proceeded to trial after which he was found guilty of Voluntary Manslaughter. He was sentenced by the Honorable Howard P. King to confinement for a period of fifteen (15) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Hayes, Op. No. 2001-UP-415 (S.C. Ct. App. filed September 27, 2001).

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Respondent filed his first PCR July 23, 2002. On June 15, 2004 the PCR trial court denied PCR and dismissed the Application. Applicant filed a pro se Petition for Writ of Certiorari and the court denied Certiorari. The remittitur was sent June 7, 2006.

Applicant was released on Community Supervision on or about October 1, 2010. On May 20, 2011 a community supervision arrest warrant was issued for violations of the community supervision order. Applicant's warrant was served on June 29, 2012. On August 30, 2012, Applicant's community supervision was revoked and he was remanded to the Department of Corrections for one year.

ALLEGATIONS

Applicant alleges in a two page handwritten amendment that he is being held in custody unlawfully as he claims he "should be discharged and released from incarceration on or before January 1, 2013." Respondent asserts Applicant's sentence has not expired.

DISCUSSION

This Court finds that the Application should be dismissed as Applicant has failed to make out a case of sentence expiration.

Applicant Absconded and received a revocation

Applicant has failed to comply with the filing procedures of the Act. S.C. Code Ann § 17-27-10 to -160 (1976 & Supp. 1997). Applicant was released on Community Supervision on or about October 1, 2010. On May 20, 2011 a community supervision arrest warrant was issued for violations of the community supervision order. (warrant number W-22-11-0041). The supporting information in the warrant included, "failure to follow advice and instructions of Agent. Failure to report as instructed by Agent. Offender was given verbal instructions to report

to the Georgetown county Probation office on 5-18-11. He failed to report as instructed." The information also detailed a criminal domestic violence charge and failure to pay supervision fees (3 payments) and failure to pay EM fees (13 payments).

It appears that 406 days were added to Applicant's sentence because he absconded supervision. Applicant's warrant was issued on May 20, 2011 and served on June 29, 2012. (406 days). On August 30, 2012, Applicant's community supervision was revoked and he was remanded to the Department of Corrections for one year. Applicant is still serving time on his CSP sentence. After serving his one year CSP revocation, DPPS indicates Applicant may be released on CSP again with a new ending date of 3-1-14.

The current allegations that Applicant's sentence has expired are not supported by the record. Applicant has failed to establish sufficient justification for post-conviction relief; accordingly, this Court finds the Application should be summarily dismissed.

CONCLUSION

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court, and serving such reasons with the SC Office of the Attorney General: Attn. Assistant Attorney General Tyson A. Johnson, Sr., Post Office Box 11549, Columbia, SC 29211.

AND IT IS SO ORDERED this

8th day of Feb., 2013.

Georgetown, South Carolina.

Benjamin Culbertson
Honorable Benjamin Culbertson
Chief Administrative Judge
15th Circuit

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRPC, the Director of the South Carolina Department of Corrections has designated Katherine Dove (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA)
AFFIDAVIT OF PERSONAL SERVICE
COUNTY OF)

On this 14th day of March, 2013, I served the signed Conditional Order of Dismissal on Inmate Gary Leroy Hayes No. 263985, by delivering personally and leaving a copy of the same at Walden Correctional Institution, Columbia, South Carolina. Deponent is not a party to this action.

s/ Katherine Dove
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 14th day of March, 2013
[Signature] (L.S.)
Notary Public for South Carolina

My Commission Expires 11 May 2015

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, Walden Correctional Institution, Columbia, Richland County, South Carolina, this 14th day of March, 2013.

s/ [Signature]
Inmate Signature
SCDC No. 263985

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
12-CP-22-1167

Gary Leroy Hayes #263985,)
Applicant pro se,)

v.)

State of South Carolina,)
Respondent.)

AMENDED
REPLY BRIEF AND
NOTION FOR SUMMARY JUDGEMENT

Applicant makes his REPLY BRIEF AND NOTION FOR SUMMARY JUDGE-
MENT in the above captioned case.

I.

Hayes was arrested in January 1998 and proceeded to trial
January 2000 where he was sentenced to fifteen(15) years.

II.

Hayes was given credit for two(2) years jail time he served
awaiting trial in accordance with S.C.Code §24-13-40. See attach-
ed sentencing sheet. With two(2) years jail time credit Hayes'
fifteen year sentence expires in January 2013. This date is calcu-
lated without any good time, earned work credits or education
credits applied.

III.

Hayes was released on the Community Supervision Program(CSP)
October 1,2010. On August 30,2012 Hayes was sentenced to one(1)
year in the department of corrections for a community supervision
violation. See attached community supervision revocation order.

ALMA E. WHITE
CLERK OF COURT

2013 FEB 25 PM 3:32

FILED
GEORGETOWN COUNTY, S.C.

IV.

Hayes filed an application for Post-Conviction Relief (PCR) on October 26, 2012 alleging the one year sentence for the community supervision violation extends his incarceration beyond his fifteen year sentence in violation of S.C. Code §24-21-560, State v. McGrier, 378 S.C. 320, 663 S.R.2d 15(2008) and State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845(2010).

In McGrier the Supreme Court held S.C. Code §24-21-560(D)2007 we now read this language as limiting the total amount of time an inmate could be incarcerated after a CSP revocation to be the length of the remaining balance of the sentence for the no parole offense.

In Picklesimer the Supreme Court held the original sentence as referenced in statute governing revocation of community supervision and the maximum amount of time a prisoner could be required to serve after revocation, included the suspended and unsuspended portions of a circuit court's sentence; therefore, pursuant to statute, when a circuit court was faced with a defendant's violation of the Department of Probation, Parole and Pardon Services' community supervision program (CSP) or normal probationary term, the court could not revoke and impose a term of further incarceration, nor lengthen the term of the CSP or probation if that would result in the aggregate period of service extending beyond the end of the term of the original sentence.

V.

On or about February 5, 2013 the State submitted a revised conditional order of dismissal "after a Picklesimer review." The State then alleges that 406 days were added to Applicant's (Hayes) sentence because he absconded supervision. The State does not mention who or what entity it is that extended Hayes' sentence nor their legal authority to do so.

The Picklesimer court and the Mc Grier court both specifically state a prisoner's term of incarceration could not extend beyond the end of the term of the original sentence.

CONCLUSION

By the plain and ordinary meaning of S.C. Code §24-21-560(D), State v. McGrier and State v. Picklesimer, Hayes is granted his MOTION FOR SUMMARY JUDGEMENT and is to be released from incarceration immediately.

IT IS SO ORDERED this

_____ day of _____, 2013.

Honorable Benjamin Culbertson
Chief Administrative Judge
15th Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 Gary Leroy Hayes, 263985)
)
 Applicant,)
)
 VS.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. NO. 12-CP-22-1167

FILED
 GEORGETOWN COUNTY, S.C.
 2013 JUN -3 PM 12:26
 ALMA Y. WHITE
 CLERK OF COURT

**FINAL ORDER
 OF DISMISSAL**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 26, 2012. Respondent (the State) made timely Return and Motion to Dismiss, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed February 20, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Personnel in the South Carolina Department of Corrections caused the Conditional Order of Dismissal to be served upon Applicant on or after March 14, 2013. Applicant sent a response thereto objecting to summary dismissal.

Applicant's response

In a document captioned "Reply Brief and Motion for Summary Judgment" Applicant objects to summary dismissal of his action. Among his arguments, Applicant alleges "...therefore, pursuant to statute, when a circuit court was faced with a defendant's violation of the Department of

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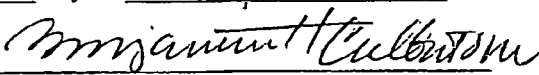
Probation, Parole and Pardon Services' community supervision program (CSP) or normal probationary term, the court could not revoke and impose a term of further incarceration, nor lengthen the term fo the CSP or probation if that would result in the aggregate period of service extending beyond the end of the term of the original sentence."

Applicant fails to address that portion of the Conditional Order of Dismissal which details his failure to report to the Georgetown County Probation office on May 18, 2011, failure to pay supervision fees, or failure to pay EM fees. On March 27, 2013, Applicant filed a pro-se document styled as a "INITIAL BRIEF ON APPEAL" which purports to be filed with the South Carolina Supreme Court, where he discusses the history of his release on the Community Supervision Program October 1, 2010 and his subsequent re-arrest and sentencing on August 30, 2012. He fails again to account for his decision to abscond, and failure to report to the Georgetown County Probation office on May 18, 2011. Applicant fails to provide facts or law which would permit him to abscond for 406 days and not have to account for that portion of his sentence.

This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient factual or legal reason has not been shown as to why the Conditional Order of Dismissal should not become final. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become the final Order of the Court.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 21st day of May, 2013.


Honorable Benjamin Culbertson

Chief Administrative Judge
15th Judicial Circuit

Georgetown, South Carolina.

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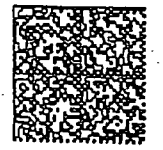
Karey L. Hayes # 263985
Manning CI W9
502 Beckman Dr.
Columbia, S.C. 29203

RECEIVED

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MCJ MAIL ROOM

HONORABLE Daniel SHANKS
CLERK, SOUTH CAROLINA SUPREME COURT
P.O. Box 11330
Columbia, S.C. 29211



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PAI MAIL 263985

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STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF
COMMON PLEAS

Case No: 2012-CP-12-1167

Gary Leroy Hayes #263985,)

Applicant pro se,)

vs)

State of South Carolina,)

Respondent.)

REPLY TO FINAL
ORDER OF DISMISSAL

This case is before this Honorable Court by an application for post-conviction relief (PCR) filed on October 26, 2012, alleging the one year sentence for a community supervision violation extends the Applicant's incarceration beyond his original sentence in violation of S.C. Code § 24-21-560,

State v. McGrier, 378 S.C. 320, 663 S.E.2d 15 (2008)
and State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010).

On or about April 9, 2013, Respondent filed a Final Order of Dismissal stating Applicant alleges "... therefore, pursuant to statute, when a circuit court was faced with a defendant's violation of the Department of Probation, Parole and Pardon Services' community supervision program (CSP) or normal probationary term, the court could not revoke and impose a term of further incarceration, nor lengthen the term of the CSP or probation if that would result in the aggregate period of service extending beyond the end of the term of the original sentence." This is not an allegation of the Applicant, it's a quote from State v.

Picklesimer.

The issues of Applicant's failure to report to the Georgetown County Probation office and failure to pay supervision fees was addressed and settled at the community supervision revocation hearing and is not a part of this PCR.

The issue in this PCR is the one year sentence Hayes received for a community supervision violation that extends his incarceration beyond the end of the term of his original sentence. The Respondent has failed to address this issue. The Respondent has also failed to inform the court or Hayes who added 406 days to his sentence or their legal authority to do so.

Hayes does not claim he could not be prosecuted and incarcerated as a result of a community supervision

violation, the Applicant asserts he cannot be required to serve a term of incarceration or a term of further community supervision that extends beyond the end of the term of his original sentence.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Applicant's REPLY TO FINAL ORDER OF DISMISSAL, the Application for post-conviction relief is granted and the Applicant is to be released from incarceration.

IT IS SO ORDERED this _____ day of _____, 2013

Honorable Benjamin Culbertson

Certificate of Service

I, Gary L. Hayes, hereby certify that on this date I served a true and correct copy of the foregoing document(s) on the below listed individual(s) by placing the same in the U.S. mail, postage prepaid and sent to their last known address as follows:

Hon. Alma White
Clerk of Court
Georgetown County
P.O. Box 479
Georgetown, S.C. 29442

Tyson A. Johnson
Asst. Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Gary L. Hayes
Gary L. Hayes
Manning CI W-290
502 Beckman Dr.
Columbia, S.C. 29203

Sworn to and subscribed before me
this 22nd day of April, 2013

Elizabeth Woodson

Notary Public

My commission expires: My Commission Expires May 30, 2017

Alma Y. White
Georgetown County Clerk of Court,
Court of Common Pleas
P.O. BOX 479
Georgetown, SC 29442

February 15, 2012

RE: Corey Juan Robinson v. State of South Carolina 9/1 No. 2011-CP-22-00884

Dear Ms. White,

Enclosed is my Amended Application for Post-Conviction Relief, this Amended Application is only to be attached to the end of my original PCR application, I am just adding new issues and new grounds so please keep my original PCR application on file but add this to it so the PCR judge can hear them also. I am having some problems, your clerk office sent me a appointed counsel sheet saying I was appointed ~~James B. Moore Jr.~~ James B. Moore Jr. McNair Law Firm but I had my dad check into it and he said no one out the McNair Law Firm is appointed to my PCR case but he gave me the name of a lawyer name Band Jason or Jason Band out of surfside Beach S.C. who said he was my PCR appointed counsel but I tried to write him and the mailroom lady said she called the Bar Association and he is not listed as an attorney, I was sending all my paper work to James B. Moore Jr. McNair Law Firm in Pawleys Island, which included Motion for New Trial, Motion for Franks v. Delaware hearing, Motion for grand jury record, Motion for Discovery and Amended PCR Application and he never returned my mail or wrote me saying he received them, so therefore I am filing my motions through this Clerk of Court like the Honorable Benjamin Culbertson informed me to do, I also would like this Clerk office to send me something in writing to inform me who was appointed to represent me in my PCR case.

Respectfully Submitted,

Corey Juan Robinson

Corey Juan Robinson 294283
Lieber Corr. Inst. SMV-A-104
P.O. BOX 205
Ridgeville, S.C. 29472

FILED
GEORGETOWN COUNTY, S.C.
2012 MAR -1 AM 11:45
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Corey Jawan Robinson #294233
Applicant

v.

State of South Carolina
Respondent

IN THE COURT OF COMMON PLEAS
CA No. 2011-CP-22-00884

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

Applicant Corey Jawan Robinson through his undersigned counsel, pursuant to Rule SCRPC Rule 15(A)(C) Requests Leave To File an Amended Application For Post-Conviction Relief.

1) Applicant is Amending his original PCR Application only adding to it the grounds of Ineffective Assistance of Appellate Counsel raising issues of facts.

2) Applicant is Amending the grounds of 14th Amendment Fair and Impartial Trial in his original PCR Application only adding two (2) additional issues of abuse of trial judge discretion of relieving Appointed Counsel and not giving curative instruction on improper incompetent evidence of money to be disregard.

3) This Court should grant leave freely to Amend PCR Application (Forman v. Davis, 33 S.Ct 227 (1962)).

SWORN to and subscribed before me this

15 day of February, 2018

Sybilina Jones
Notary Public

My Comm. Exp. 11/24/2018

Corey Jawan Robinson

Corey Jawan Robinson #294233
Lieber Corr. Inst. SMU-A-104

P.O. Box 205

Ridgeway, S.C. 29472

adding to D.) 14th Amendment Fair and Impartial Trial: The trial judge abused his discretion by relieving appointed counsel, not appointing another counsel and allowing applicant to proceed pro se at trial.

Woods was convicted in a jury trial of escaping from the custody of the Attorney General of the United States in violation of 18 U.S.C. A § 751. In this appeal, the central issue is whether the trial court's action in requiring woods to stand trial without benefit of counsel after discharging wood's court-appointed attorney, at wood's request, was violative of his sixth Amendment right to assistance of counsel. Woods also contends that his Fifth Amendment privilege against self-incrimination was violated and that evidence of wood's state court conviction was error. We reversed and remand for a new trial. United States v. Woods, 487 F.2d 1218-1219 (1973). At no time did the trial judge inquire as to the merit of wood's allegation nor did counsel proffer any statement as to his ability or willingness to proceed. Id. 487 F.2d at 1219. There is nothing on record that applicant waived his right to counsel. R.p. 39, line 16 - R.p. 48, line 1. The Court stated on record but you could have filed, as you have now filed, a motion to relieve him --- R.p. 46, line 4 - line 8. Which prove I file a motion to relieve my appointed counsel. The court question me on record You can waive that right if the court finds that that is a knowing and intelligent decision. Do you understand that? I stated Yes, sir R.p. 40, line 25 - R.p. 41, line 3. The Court only ask me if I understand that, never did the court ask me generally or specifically do I want to waive my right to counsel. In woods the trial judge there upon reminded woods that he was enjoying the services of highly competent counsel and that woods must either accept these services or be relegated to defending himself. United States v. Woods, 487 F.2d at 1219 (1973). On record of Applicant case the judge basically said the same thing the court stated on record You understand obviously if you can not afford an attorney, the court would appoint and has appointed Mr. Goude to represent you in this matter. R.p. 41, line 4 - line 7. The Court stated All right, sir You understand and that we have started the case and we are going to go forward with this trial at the present time; you understand that? R.p. 43, line 13 - line 16. The Court also stated for the record You understand that if I accede to your request to represent yourself, that will not delay the trial in this matter? R.p. 43, line 17 - line 19. The judge made applicant feel as either take Mr. Goude as an counsel or proceed on your own. Applicant testified and stated on record the mistreatment of Mr. Goude not arguing my motions, hiding evidence from me, running from me when I call, fabricating story, telling me this and telling me that, working against me, leading me in the blind and other mistreatments. R.p. 43, line 25 -

R.p. 47, line 4. Nor did counsel proffer any statement as to his ability and willingness to proceed. The Court stated on record Mr. Gowde, what's your position? Mr. Gowde stated on record My position is, Judge, that Mr. Robinson is saying here in open Court that he wishes to represent himself and that he is comfortable to do so. We have a state agency that's just recently examined Mr. Robinson and they say he is competent and they say he is sane, and under our state and Federal constitution, he has the right to represent himself. I therefore, join in his motion and ask that I be relieved and dismissed from the courtroom. R.p. 47, line 6 - line 14. The trial judge abused his discretion and prejudice me of a fair and impartial trial of my 14th Amendment due process right equal protection under the sixth (6th) Amendment right to counsel.

D) Additional issue: Applicant assert the trial judge erred by abuse of his discretion for failure to give instruction curative instruction to disregard incompetent evidence of the improper admission of money allowed into evidence over applicant objection and violation of motion in limine. during motion in limine at pretrial the court stated on record I mean, you can certainly -- he can certainly say what he observed and saw and what the defendant had in his hand and presented to him, but not some conclusion that would then automatically have him dealing in drugs. R.p. 33, line 6 - line 16. Motion was violate by Mr. Andrew direct examination R.p. 110, line 20 - line 25. Applicant object to the money coming into evidence R.p. 111, line 17 - R.p. 112, line 2. Motion in limine violated again by Mr. Andrew in closing argument R.p. 112, line 6 - line 8. The trial judge erred in abusing his discretion by not instruction to disregard incompetent evidence. Instruction to disregard incompetent evidence usually is deemed to have cured error in its admission unless, on facts of particular case, it is probable that notwithstanding such instruction or withdrawal, accused was prejudice. State v. Simpson, 479 S.E.2d 58 (S.C. 1996).

H) Ineffective Assistance of Appellate Counsel: Appellate Counsel Wanda Carter was ineffective in neglecting to file a merit brief is that enunciated in Strickland and I was prejudiced.

As a practical matter, the equal protection and due process clauses of the fourteenth Amendment largely converge to require that a state's procedure afford adequate and effective appellate review to indigent defendant, and a state procedure provides such review so long as it reasonably ensure that an indigent's appeal will be resolved in a way that is related to the merit of that appeal. Although an indigent must receive substantial equality compared to the legal assistance that a defendant with paid counsel would receive in a criminal appeal, absolute equality is not required. In determining whether a particular state procedure satisfies the standard of ensuring that an indigent's appeal will be resolved in a way that is related to the merit of that appeal, it is important to focus on the underlying goals that the procedure should serve: to ensure that those indigent whose appeals are not frivolous receive the counsel and merits brief required by Douglas, and also to enable the state to protect itself so that frivolous appeals are not subsidized and public moneys not needlessly spent. In reviewing state criminal procedure, Supreme Court addresses not what is prudent or appropriate, but only what is constitutionally compelled. An "arguable issue", that is, an issue arguably supporting the appeal even though the appeal is initially frivolous, does not warrant a merits brief from appellate counsel, but "arguable" in the more normal sense of being non-frivolous warrants a merit brief. With a claim that appellate counsel erroneously failed to file a merit brief, a defendant can satisfy that first part of the Strickland test by showing that a reasonably competent attorney would have found one non-frivolous issue warranting a merit brief. Appellate counsel who files a merit brief need not, and should not, raise every non-frivolous claim, but rather may select from among them in order to maximize the likelihood of success on appeal; nonetheless, it is possible to bring a Strickland claim based on counsel's failure to raise a particular claim, though it is difficult to demonstrate that counsel's ~~was incompetent~~ and generally, only when ignored issues are clearly stronger than those presented will the presumption of effective assistance of counsel be overcome. Smith v. Robbins, 120 S.Ct. 748-49 (2000). Appellate counsel could have raised the trial judge erred in not granting motion to suppress and motion for direct verdict failure to prove actual or constructive possession it was ruled on so it was preserved for direct appeal. Appellate counsel could have raised in a merit brief the improper admission of money in to evidence by trial judge, the motion in limine was violated and applicant object to it coming into evidence with a specific reason so that was preserved for direct appeal review also. The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the level to determine whether Appellate

Counsel failed to present significant and obvious issues on Appeal. Generally, presumption of IAC will be overcome only when ignored issues are clearly stronger than those usually raised on appeal. Thrift v. State, 397 S.E.2d 523; Gilchrist v. State, 612 S.E.2d 707; Anderson v. State, 581 S.E.2d 834 (2003). Appellate Counsel errors was an effect on the judgment dismissing my direct appeal. The issues I raised warranted a merits brief she could of add my issues to her issue and file a merit brief and I would of prevailed on my direct appeal. Where result of Appeal would have been different had counsel not been deficient, the appropriate remedy is to grant a new trial. Ezell v. State, 549 S.E.2d 852 (2001).

Respectfully Submitted,

Corey Jawan Robinson

Corey Jawan Robinson #294233

Lieber Corr. Inst. SMU-A-104

P.O. BOX 205

Ridgeville, S.C. 29472

February 15, 2012
Ridgeville, South Carolina

STATE OF SOUTH CAROLINA)
County of GEORGETOWN)

VERIFICATION

FILED
GEORGETOWN COUNTY, S.C.

2012 MAR -1 AM 11:45

I Corey Jawon Robinson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing Amended Application For Post-Conviction Relief; that I know the contents thereof; that it includes every ground that I would like to amend to my original application for Post-conviction Relief only adding to it and relief on original Post-conviction Relief Application remains the same; and that the matters and allegations therein set forth are true.

Corey Jawon Robinson

sworn to and subscribed before me this
15th day of February, 2012

Sybil Jones
Notary Public

My Comm. Exp. 1/24/2018

FILED
GEORGETOWN COUNTY, S.C.
2012 MAR -1 AM 11:45
ALMA Y. WHITE
CLERK OF COURT

WITNESSES

SHERIFF

ARREST WARRANT NO. F-757213

CDR 0016 16-03-0010,0020

CDR

CDR

CDR

ACTION OF GRAND JURY
1706 B. 17 1992

FOREMAN OF GRAND JURY

Wife - Turner Wilson

VERDICT

FOREMAN OF PETIT JURY

DATE

DOCKET NO. 98 GS22 839 X /

THE STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

14929 1

9-6-94 BAW

COURT OF GENERAL SESSIONS

OCTOBER TERM 1998

THE STATE

VS.

GARY LEROY HAYES
ANDREWS SC 29510

ORIGINAL

INDICTMENT FOR:

MURDER

Ralph J. Wilson, Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN) INDICTMENT FOR
)
) MURDER ,

At a Court of General Sessions convened on October 7, 1998, the Grand Jurors of Georgetown County present upon their oath:

That GARY LEROY HAYES did in Georgetown County on or about the 12th day of January, 1998, wilfully, knowingly, intentionally, wickedly, and with malice aforethought, assault and beat Patsy Gail Etheridge about the head and other parts of her body; that as a result of said beating, Patsy Gail Etheridge did die on January 13, 1998, after having been transported and admitted to the Medical University of South Carolina.

Against the peace and dignity of the State and contrary to the statute in such case made and provided.



SOLICITOR

Created by the South Carolina Department of Probation, Parole and Pardon Services

State of South Carolina

County of Georgetown

State

-VS-

IN THE COURT OF GENERAL SESSIONS

No. 89 -GS- 22 - 839 1
Court

Community Supervision

REVOCATION ORDER

Defendant Gary Leroy Hayes

SID# [REDACTED] SCDC# or DOB 2163985

This matter was brought before me on the 30th day of August, 2012, pursuant to warrant/~~citation~~ (strike one) charging the Defendant with violating the Defendant's Community Supervision Program and asking the Court to revoke the Defendant's community supervision. I find:

1. The terms of the Community Supervision Program are fair and reasonable;
2. The Defendant has not complied with all terms of the Community Supervision Program;
3. The Defendant has willfully violated terms of the Community Supervision Program;
4. The Defendant should not be continued in the Community Supervision Program under its current terms or under other terms and conditions.

IT IS ORDERED that the Defendant be in the custody of the South Carolina Department of Corrections for a term of _____ days _____ months One (1) year (total may not exceed one (1) year).

This 30th day of August 2012
Georgetown SC

[Signature] 2012
Presiding Judge
1 15th
Judicial Circuit

I have received a copy of this order.

Offender's Signature _____ Offender's Date _____