

The Supreme Court of South Carolina

Hazel Stoudemire,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable William H. Seals, Jr.
Spartanburg County
Trial Court Case No. 2008-CP-42-01056

ORDER

For good cause shown, the request for an extension until April 13, 2012 to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Arenda J. Stealy*
Clerk

Chief Deputy
Columbia, South Carolina

March 16, 2012

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

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

William H. Seals, Jr., Circuit Court Judge

RECEIVED
MAR 14 2012
S.C. Supreme Court

HAZEL STOUDEMIRE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

(3)

The undersigned counsel would respectfully request a **final thirty-day extension, until April 13, 2012**, 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 had an oral argument in the case of State v. Lewis Williams in the Court of Appeals on March 12, 2012. Counsel had an oral argument in the case of State v. Otis Lamar Bland in the Court of Appeals on February 29, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Sherinette

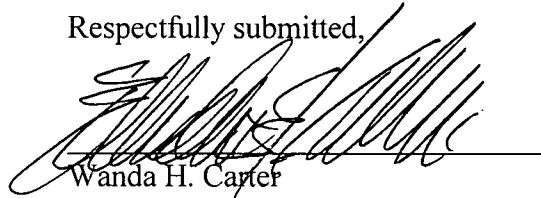
Wannamaker v. State in the Supreme Court, and the initial brief of appellant and designation of matter in the case of State v. Lawrence Brown in the Court of Appeals on February 27, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Henry Belton v. State in the Supreme Court on February 24, 2012. Counsel had an oral argument in the case of Benjamin Green v. State in the Supreme Court on Thursday, February 23, 2012. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Tony Drayton v. State and William Hickman v. State with the Supreme Court on February 16, 2012. Counsel had an oral argument in the case of State v. James Babb in the Court of Appeals on February 14, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of John E. Prigmore v. State with the Supreme Court on February 6, 2012. In January, 2012, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of James Blanding v. State, Trenton Bennett v. State, Bobby Gibson v. State and Jorge Rodriguez v. State.

3. This request is made in good faith, and not for purposes of delay. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

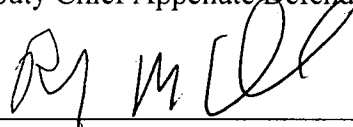
4. As indicated by her consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final thirty-day extension, until April 13, 2012**, 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,



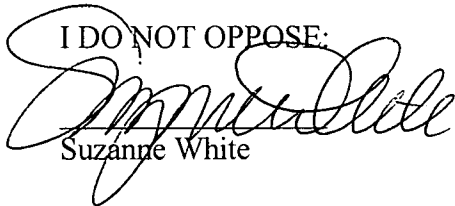
Wanda H. Carter
Deputy Chief Appellate Defender



Robert M. Dudek
Chief Appellate Defender

March 14, 2012

I DO NOT OPPOSE:



Suzanne White

The Supreme Court of South Carolina

Hazel Stoudemire,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable William H. Seals, Jr.
Spartanburg County
Trial Court Case No. 2008-CP-42-01056

ORDER

For good cause shown, the request for an extension until March 14, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Brenda L. Shealy*
Clerk

Chief Deputy
Columbia, South Carolina

February 14, 2012

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 Spartanburg County

William H. Seals, Jr., Circuit Court Judge

RECEIVED

FEB 13 2012

S.C. Supreme Court

HAZEL STOUDEMIRE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

2

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

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

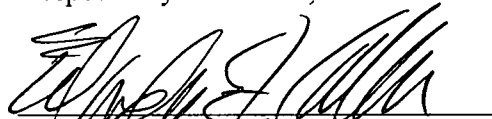
2. Counsel is preparing for an oral argument in the case of State v. James Babb in the Court of Appeals tomorrow, February 14, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of John E. Prigmore v. State with the Supreme Court on February 6, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of James Blanding v. State with the Supreme Court on January 20, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Trenton Bennett v. State the Supreme Court on

January 17, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Bobby Gibson v. State with the Supreme Court on January 9, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Jorge Rodriguez v. State with the Supreme Court on January 3, 2012. In December, 2011, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Jonathan Vick v. State, John Lewis Mills v. State and Mark Daniel Cureton v. State. Additionally, Counsel filed the initial briefs of appellant and designations of matter in the cases of John Henry Stokes v. State and Lewis C. Landreth v. State, as well as the brief of petitioner in the case of Tommy Novack Lloyd v. State in December, 2011. In November 2011, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Leonard G. Stanfield v. State, William Avinger v. State, Mark Bolte v. State and Stanley DeHart v. State, as well as the initial brief of appellant and designation of matter in the case of State v. Randy Edward Anderson.

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

February 13, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

William H. Seals, Jr., Circuit Court Judge

HAZEL STOUDEMIRE,

PETITIONER,

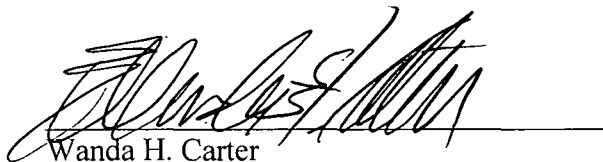
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Suzanne H. White, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 13th day of February, 2012.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 13th day of February, 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 2, 2013 .

ORIGINAL



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

January 13, 2012

RECEIVED

JAN 13 2012

S.C. Supreme Court

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

Re: Hazel Stoudemire v. State of South Carolina

Dear Mr. Shearouse:

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

By copy of this letter, I am informing Suzanne H. White, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/kam

cc: Suzanne H. White



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

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

RECEIVED

NOV 16 2011

November 15, 2011

S.C. Supreme Court

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

Dear Mr. Shearouse:

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

Hazel Stoudemire v. State of South Carolina

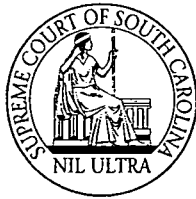
11/14/2011

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

November 15, 2011

Mr. Hazel Stoudemire, #220501
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

Re: Stoudemire, Hazel v. The State

Dear Mr. Stoudemire:

This responds to your letter dated November 7, 2011. If you have questions about what issues should be raised in this matter, you will need to contact the Division of Appellate Defense.

As for your request for documents, the file in this matter is currently composed of 63 pages. I can provide you with a copy for \$18.15. This represents the cost of copying 63 pages at our standard rate of 25 cents a page plus a mailing fee of \$2.40. If you would like a copy, please send a check or money order in the above amount payable to the South Carolina Judicial Department.

Very truly yours,



CLERK

cc: Assistant Attorney General Suzanne H. White
Appellate Defense

November 7, 2011

The Honorable Daniel E. Shearouse
P.O. Box 11330
Columbia, SC 29211

Re: Stoudemire, Hazel v. The State

Dear Mr. Shearouse:

Will you ask the Court whether the Division of Appellate Practice endorse the constitutional violation in my direct appeal.

Also, I would like copies of every document, please.

Sincerely,

Hazel Stoudemire

RECEIVED

NOV 09 2011

S.C. SUPREME COURT

Mr. Hans Stauben, # 220501
Lieber C.I. SMV 29873
P.O. Box 208
Ridgeville, SC 29472

FIRST CLASS



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MAIL ROOM
LIEBER C.I.

The Supreme Court of South Carolina
The Honorable Marjorie E. Shearman
P.O. Box 11330
Columbia South Carolina 29211

LEGAL MAIL ONLY



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

November 2, 2011

Ms. Pamela S. Faucette
Circuit Court Reporter
40 Somerset Drive
Spartanburg, SC 29301

Dear Ms. Faucette:

RECEIVED
NOV 2 2011
S.C. Supreme Court

Please provide us with the following transcript:

Hazel Stoudemire v. State of South Carolina Case #: 08-CP-42-01056

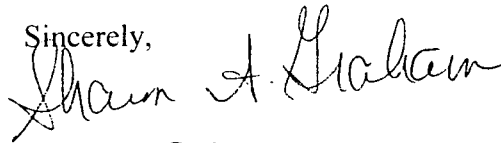
County: Spartanburg Date of Trial: November 4, 2009

Presiding Judge: William H. Seals, Jr.

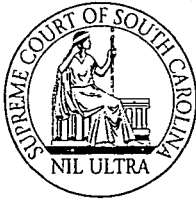
To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

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

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

Sincerely,

Sharon A. Graham
Administrative Coordinator

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



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

November 2, 2011

Hazel Stoudemire #220501
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: Stoudemire, Hazel v. The State

Dear Mr. Stoudemire:

Since you have not notified this Court with regard to your intentions about legal representation, we are marking our records to reflect that you are represented by the Division of Appellate Defense.

With regard to your letter of October 20, 2011, we have changed you location within the SC Department of Corrections. Your habeas corpus petition has been received by this office.

Very truly yours,



CLERK

DES/jj

cc: Appellate Defense
Assistant Attorney General Suzanne H. White

October 20, 2011

Honorable Daniel E. Shearouse
P.O. Box 11330
Columbia, SC 29211

Re: Stoudemire, Hazel v. The State

Dear Mr. Shearouse:

I just wanted to inform this office that I was transferred from Lee Correctional to "Wieber Correctional."

Also, I sent in a habeas corpus on October 12, 2011 to be consolidated with my writ of certiorari and did this office received that petition.

Sincerely,
Hazel Stoudemire

RECEIVED

OCT 24 2011

S.C. SUPREME COURT

Mr. Hazel Stoudamire, # 220801
Lieber C.I. SMU 2488
P.O. Box 205
Ridgeville, S.C. 29472

FIRST CLASS



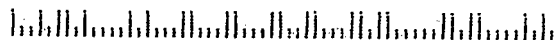
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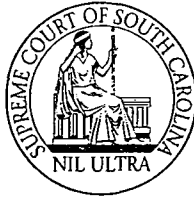
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OCT 21 2011
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LIEBER C.I.

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

LEGAL MAIL ONLY 2521131330





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

October 10, 2011

Mr. Hazel Stoudemire #220501
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Stoudemire, Hazel v. The State

Dear Mr. Stoudemire:

This responds to your petition for rehearing (reconsideration) regarding this Court's order of August 17, 2011. This petition was received by this Court on October 7, 2011.

No action will be taken on this petition for rehearing for two reasons. First, the rehearing petition is not timely. Rule 221(a), SCACR (petition for rehearing must actually be received within fifteen days of the date of filing of the order). Second, the order of August 17 is not subject to rehearing since that order did not have the effect of finally deciding or dismissing this case. Rule 240(i), SCACR ("The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal.").

I do call you attention to this Court's order of October 5, 2011. A copy of this order was previously sent to you.

Very truly yours,

CLERK

cc: Appellate Defense
Assistant Attorney General Suzanne H. White

October 3, 2011

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

RE: Hazel Stoubenine v. State of South Carolina
2008-CP-42-1056

Dear Mr. Shearouse:

Enclosed please find the original petition
for reconsideration in the above matter for
filing in your office.

With highest regards,

Hazel Stoubenine, #220307
Hazel Stoubenine, #220307

RECEIVED

OCT 07 2011

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Court of Common Pleas

The Honorable William H. Seals, Jr., Circuit Court Judge

HAZEL STOUDEMIRE

PETITIONER,

v.

STATE OF SOUTH CAROLINA

RESPONDENT

PETITION FOR RECONSIDERATION

HAZEL Stoudemire, #220501
pro se

This motion takes matters with this Court August 17, 2016, order relating to the appointment of counsel outside the Division of Appellate Defense.

The question presented in this motion is whether petitioner received adequate assisted of counsel by Joseph L. Sawitz, III, of South Carolina office of Appellate Defense in his first appeal.

The Sixth Amendment does more than require ~~that~~ the states to appoint counsel for indigent

DEFENDANTS. The right to counsel prevents the States from conducting trials at which persons who face incarceration must defend themselves without adequate legal assistance.

The South Carolina Court of Appeal Affirmed Petitioner's First Appeal. *State v. Stoudermire, Op. No. 2002-UP-020* (S.C. Ct. App. Filed January 15, 2002). In that Appeal, here, Mr. SAVITZ ignored issues are clearly stronger than those actually raised on Appeal. Gray v. Greer, 800 F.2d 644 (7th Cir. 1986). Furthermore, the issue counsel failed to brief in petitioner's First Appeal constituted an independent ruling by itself. Therefore, had counsel brief the trial's court alternative ruling, the Court of Appeals' outcome of Petitioner's direct appeals would have been different. See, State v. Whisenant, 515 S.E.2d 768 (S.C. App. 1999).

Finally, the failure to grant this indigent petitioner the appointment of counsel outside the Division of Appellate Defense seeking initial review of his conviction the services of an advocate, as contrasted with an *Amicus Curiae*, which would have been available to an appellant with financial means, violates petitioner's rights to fair procedure and equality under the

Fourteenth Amendment.

In Douglas v. California, 372 U.S. 353 (1963), the United States Supreme Court has consistently held invalid those procedures "where the rich man," who appeals as of right, enjoys the benefit of counsel's examination into the record, research of law, and marshalling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself.

If this Court find that counsel of SC office of Appellate Defense deprived petitioner of the adequate assistance on first appeal, by failing to preserve a sufficient appellate record, Jolly v. State 314 S.W. 2d 17, 443 S.E.2d 566 (1994). This Court should reconsider its August 17, 2011, order and avoid an amicus curiae and appoint outside counsel. A state's action does not comport with fair procedure and lacks that equality which is required by the Fourteenth Amendment where it refuses an indigent's request for appointment of an attorney to prosecute a first appeal from his criminal conviction after an attorney first appointed to him, has

Failed to preserve a sufficient Appellate record. Jelly v. State, supra.

CONCLUSION

This Court should find that Petitioner First Appeal as of right therefore was not adjudicated in accord with due process of law and the representation of the Division of Appellate Practice would amount to an amicus curiae. Therefore, this Court should appoint outside counsel.

Respectfully submitted,

Haral Stabenira Jr., #220057

By: Haral Stabenira Jr.
Pro se

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Spartanburg County
The Honorable William H. Seal, Jr., Circuit Court Judge

HAZEL STOUPEMIRE

Petitioner,

v.

STATE OF SOUTH CAROLINA

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the petition for Reconsideration have been served upon the person listed below by depositing same in the United States mail, postage prepaid this 23rd day of October, 2011.

Clerk of the Supreme Court of South Carolina
Post Office Box 11330

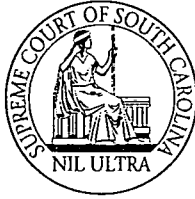
Columbia, South Carolina 29221

Hazel Stoupe Mirett
Hazel Stoupe Mirett 220001

Mr. Hazel Standamire, #220801
Case C.F. JMU N. 87
990 Wisbeck Hwy
Bishopville, S.C. 29010

AN

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of S.C.
Post Office Box 16330
Columbia, South Carolina 29211



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

October 5, 2011

Hazel Stoudemire #220501
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Stoudemire, Hazel v. The State

Dear Mr. Stoudemire:

Enclosed is the order issued in the above entitled matter.

By copy of this letter and order, we are advising all interested parties of the action by the Court.

Very truly yours,



CLERK

DES/jj

cc: Appellate Defense
Assistant Attorney General Suzanne H. White

The Supreme Court of South Carolina

Hazel Stoudemire,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER

By order dated August 17, 2011, petitioner's request for the appointment of counsel outside the Commission on Indigent Defense, Division of Appellate Defense, was denied. By order dated August 26, 2011, this Court, responding to an earlier motion by petitioner to proceed pro se, warned petitioner of the dangers and disadvantages of self-representation and gave petitioner twenty days to inform the Court whether he wishes to proceed pro se or with representation from the Division of Appellate Defense.


Petitioner has now written a letter to the Clerk of Court in which he acknowledges the dangers and disadvantages of self-representation, but asserts that to accept representation from the Division of Appellate Defense could be detrimental to his case because his case involves a claim against a former employee of the division who represented petitioner on direct appeal.


Petitioner admits he needs counsel, "but not a counsel who will have a conflict in raising the direct appeal issue properly with this Court."


Accordingly, petitioner requests the Court reconsider appointing outside counsel. That request is denied. State v. Jones, 270 S.C. 587, 243 S.E.2d 461 (1978).

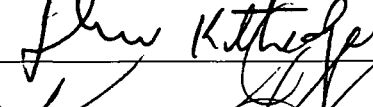
Petitioner's only options, assuming he is unable to retain counsel, are to proceed pro se or proceed with representation by the Division of Appellate Defense. No further motions will be entertained in that regard. Petitioner shall, within twenty days of the date of this order, notify this Court of his intentions regarding representation. If petitioner fails to notify this Court of his intentions within twenty days, the Division of Appellate Defense will be designated as petitioner's counsel of record in this matter.


IT IS SO ORDERED.



C.I.


J.


J.


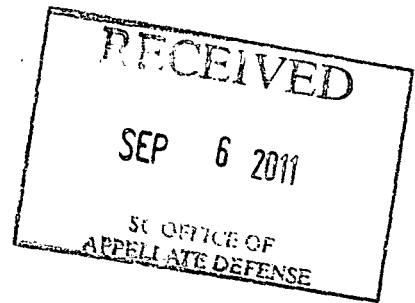
J.


J.

Columbia, South Carolina

October 5, 2011

August 31, 2011



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

RE: Writ of Certiorari

RECEIVED

SEP 06 2011

Dear Mr. Shearouse:

S.C. SUPREME COURT

I AM in receipt of A order dated August 26, 2011, by the Supreme Court. Please accept this letter in lieu of A formal Return in this matter.

The pro se Petitioner acknowledge the dangers and disadvantages of self-representation. But, to accept representation from the Commission on Inigent Defense, would be detrimental to Petitioner writ of certiorari because there is a claim that concern A former counsel who represented Petitioner on [Direct Appeal] AND Petitioner contends that he did not have the benefit of a Direct Appeal, because of his Attorney Failure

to file an Appellate brief.

Petitioner admit that he do need counsel but not a counsel who will have a conflict in raising the [Direct Appeal] issue properly with this Court.

For the stated reasons, the Petitioner respectfully regards that this Court reconsider appointing outside counsel.

Sincerely,
~~Harold Sturman, Jr.~~
Harold Sturman, Jr., #220501

Mr. Hazel Steadman #220501
Lae C.F. 8th South 274
990 W. Wackerly Hwy
Bishopville, S.C. 29010

AMS

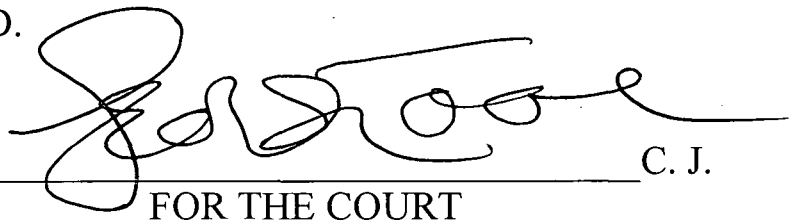
Honorable DANIEL E. Shearouse
Clerk of the Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

LEGAL MAIL ONLY

warn petitioner that if he chooses to proceed pro se, this Court will require full compliance with all applicable rules and procedures, and failure to comply with such rules and procedures could result in the dismissal of the petition and forfeiture of the right to discretionary review. Petitioner is certain to be unlearned in other aspects of the law as well. Representation by an attorney trained in the law would be highly beneficial, and we strongly encourage petitioner to proceed with representation by the Division of Appellate Defense.

After considering this information, petitioner shall, within twenty (20) days of the date of this order, notify this Court whether he wishes to proceed pro se or be represented by the Division of Appellate Defense. If petitioner fails to notify this Court of his intentions within twenty (20) days, the Division of Appellate Defense will be designated as petitioner's counsel of record in this matter.

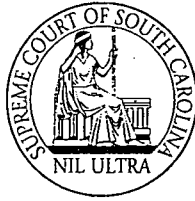
IT IS SO ORDERED.


C. J.
FOR THE COURT

Columbia, South Carolina

August 26, 2011

cc: Appellate Defense
Hazel Stoudemire #220501
Assistant Attorney General Suzanne H. White



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

August 17, 2011

Mr. Hazel Stoudemire, #220501
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Stoudemire, Hazel v. The State

Dear Mr. Stoudemire:

The following has been endorsed on your letter of August 8, 2011, relating to the appointment of counsel outside the Division of Appellate Defense:

Motion to appoint outside counsel is denied.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina
August 17, 2011

In reviewing the file, I noticed that in April you made a motion to proceed *pro se* in this matter. You will be advised when Court takes action on this motion. Until then, the time limits for perfecting this matter will be held in abeyance.

Very truly yours,



CLERK

cc: Alexandria Marie Wolf, Esquire
Appellate Defense
Assistant Attorney General Suzanne H. White

August 8, 2011

The Honorable Daniel E. Shearouse
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

AUG 10 2011

S.C. SUPREME COURT

Re: Stoudemire, Hazel v. The State

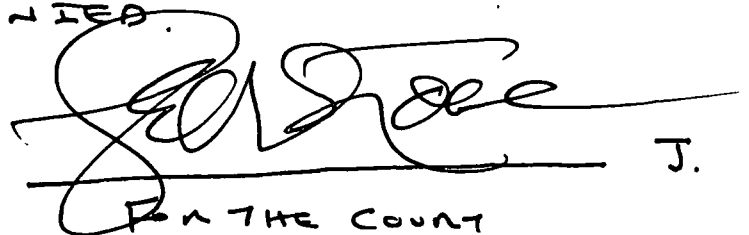
Dear Mr. Shearouse

This is a reply to your letter of August 2, 2011. I would like to see if I qualify for a referral of counsel outside the Division of Appellate Defense because I have a issue concerning my (Direct Appeal) and Joseph L. Savitz, III Esq. was the counsel of that appeal. (See Attachment).

Sincerely

Hazel Stoudemire

MOTION TO APPOINT
OUTSIDE COUNSEL IS
DENIED.


J.
FOR THE COURT

COLUMBIA, SOUTH CAROLINA
AUGUST 17, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Hazel Stoudemire, Jr.,

Appellant.

Appeal From Spartanburg County
Lee S. Alford, Circuit Court Judge

Unpublished Opinion No. 2002-UP-020
Submitted October 22, 2001 - Filed January 15, 2002

AFFIRMED

Deputy Chief Attorney Joseph L. Savitz, III, of SC
Office of Appellate Defense, of Columbia, for
appellant.

Attorney General Charles M. Condon, Chief Deputy
Attorney General John W. McIntosh and Assistant
Deputy Attorney General Donald J. Zelenka, all of
Columbia; Solicitor Harold W. Gowdy, III, of
Spartanburg, for respondent.

PER CURIAM: Hazel Stoudemire, Jr., appeals his conviction for murder. We affirm.¹

At trial, the two key witnesses against Stoudemire were codefendants Marc Bagby and Donnie Young, both of whom turned state's evidence and testified that, while riding with Stoudemire in his car, they had witnessed Stoudemire shoot the victim over a stolen set of tires or tire rims. Stoudemire, however, maintained he was not present during the murder.

The sole issue on appeal is whether the trial court erred by admitting testimony from Jessica Kelly that, the day after the murder, Bagby told her Stoudemire shot the victim. Stoudemire contends this testimony amounted to improper bolstering of Bagby's statements at trial.

The State sought to admit this testimony after defense counsel, while cross-examining Bagby, pointed out inconsistencies between Bagby's testimony and earlier statements he had given police. Stoudemire maintained Kelly's testimony amounted to improper bolstering of Bagby's statements. After the State proffered the disputed testimony, however, the trial court found (1) the statement was reliable and relevant to the issue of whether Bagby fabricated his trial testimony and was therefore not hearsay under the South Carolina Rules of

¹ Because oral argument would not aid the court in resolving the issue on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

Evidence²; and (2) as an additional ground, the statement, even if it were hearsay, would be admissible as an excited utterance.³

Stoudemire's brief acknowledges both bases for the appealed ruling; however, he takes issue only with the trial court's finding that defense counsel sought to discredit Bagby by suggesting his statements were of recent fabrication.⁴ Because Stoudemire has offered no argument challenging the trial court's alternative ruling that Bagby's statement to Kelly was admissible as an excited utterance, we affirm the admission of Kelly's testimony on that ground.⁵

AFFIRMED.

HEARN, C.J., and GOOLSBY and HUFF, JJ., concur.

² See Rule 801(d)(1)(B), SCRE (providing a prior consistent statement is admissible if the declarant testifies at trial and is subject to cross-examination concerning the statement, the statement is consistent with the declarant's testimony, and the statement is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, provided the statement was made before the alleged fabrication or before the alleged improper influence or motive had arisen).

³ See Rule 803(2), SCRE (defining the "excited utterance" exception to the hearsay rule).

⁴ In his brief, Stoudemire asserts, "Defense counsel did not accuse Bagby of recent fabrication, only of lying."

⁵ See Carolina Business Brokers v. Strickland, 301 S.C. 434, 438, 392 S.E.2d 469, 472 (Ct. App. 1990) ("There being no exception to this holding, right or wrong, it is now the law of the case. . . . This alternative ruling constitutes an independent ground to support the master's ruling."), cert. denied (June 20, 1990).

Mr. Hazel Stouberire, #220801
Area C.F. 5NW South 179
790 W. 10th Hwy.
Bishopville, S.C. 29010

AMS

7
The Supreme Court of South Carolina
The Honorable Daniel E. Shearouse
P.O. Box 11330
Columbia, S.C. 29211

LEGAL MAIL ONLY

The Supreme Court of South Carolina

Hazel Staudenire,

Petitioner,

v.

State of South Carolina

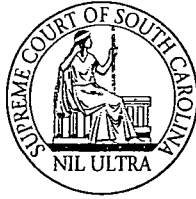
Respondent.

MOTION TO PROCEED PRO SE

Petitioner wishes to proceed pro se in case number 2008-CP-42-1056. This court granted petitioner's motion to proceed pro se in another matter in August 25, 2006. Petitioner will now take that same position as he did before.

April 19, 2011

Hazel Staudenire
Hazel Staudenire, #220591
pro se



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

August 2, 2011

Hazel Stoudemire #220501
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Stoudemire, Hazel v. The State

Dear Mr. Stoudemire:

This responds to your letter of July 19, 2011. The *pro se* notice of appeal that you filed in April is being allowed to go forward. A referral has been sent to the Division of Appellate Defense for them to assess your indigent status and determine if their office will be able to represent you for purposes of this appeal. They will be in contact with you, and if you are accepted as indigent, contact your previous counsel of record and obtain the required documents along with a transcript of the PCR hearing.

Very truly yours,

Daniel E. Shearouse
CLERK

DES/jj

cc: Alexandria Marie Wolf, Esquire
Appellate Defense
Assistant Attorney General Suzanne H. White

July 19, 2011

The Honorable Daniel E. Shearouse
P.O. Box 11330
Columbia, South Carolina 29211

Re: Staudemire, Hazel v. The State, 2008-CF-42-1056

Dear Mr. Shearouse:

I AM writing to get an update on the status of my pro se petition for a writ of certiorari.

I have not heard back from this office since April 29, 2011 and I would like to know if everything is properly filed?

Sincerely,

Hazel Staudemire

RECEIVED

JUL 22 2011

S.C. SUPREME COURT

April 19, 2011

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

Re: Hazel Staudemire v. The State of South Carolina
Case No. 08-CP-42-1056

Dear Mr. Shearouse:

Enclosed for filing is a Notice of Intent
to Appeal in the above case, and a motion to
proceed pro se in this matter.

Respectfully submitted,
~~Hazel Staudemire~~
Hazel Staudemire #220501
pro se

RECEIVED

MAY 04 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN the Court of Appeals

APPEAL OF SPARTANBURG COUNTY
COURT OF COMMON PLEAS

Williams H. Seals, Jr., Circuit Court Judge

CASE No. 2008-CF-42-1056

Hazel Stoudemire
Appellant.

v.

State of South Carolina
Respondent

NOTICE OF INTENT TO APPEAL

Hazel Stoudemire intends to and hereby Appeals
the Judgement of the Honorable Williams H. Seals Jr.,
dated April 8, 2011 received by Appellant on
April 14, 2011.

April 19, 2011

Hazel Stoudemire
HAZEL Stoudemire, #220501
pro se

RECEIVED

MAY 04 2011

S.C. SUPREME COURT

MAY 3, 2011

Honorable Daniel E. Shearouse
P.O. Box 11330
Columbia, S.C. 29211

RE: Stoulemire, Hazel v. The State, 2008-CF-42-156

Dear Mr. Shearouse:

I have received your letter dated April 29, 2011. I AM sending the original order from the lower court in the above caption case. I AM send A notice of appeal and A motion to relieve counsel as well.

Please, understand that this mail room
MAKES it very hard for an individual to
file documents to any court. I MAIL out
An appeal notice and A motion to relieve
counsel before I MAIL out the pro se
petition for writ of certiorari.

Sincerely yours
Hazel Stoulemire

RECEIVED

MAY 09 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

William H. Seals, Jr.
Seventh Judicial Circuit Court Judge

CASE No. 2008-CP-42-1056

Hazel Stoudemire, Appellant

v.

The State of South Carolina Respondent

NOTICE OF APPEAL

Hazel Stoudemire appeals the dismissal of the motion of Seals the order was signed April 8, 2011, as well as the order of dismissal, which was filed on December 31, 2010 and signed by William H. Seals, Jr.

Hazel Stoudemire
Mr. Hazel Stoudemire
pro se

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

William H. Seale, Jr.
Seventh Judicial Circuit Court Judge

CASE No. 2008-CF-92-1056

Hazel Staudemire Appellant

vs

The State of South Carolina Respondent

MOTION TO Relieve Counsel

Appellant will assert his fundamental 5th C. Constitutional right to proceed pro se, but will accept any assistance that this Court deems necessary from a counsel in the above matter.

Hazel Staudemire
Mr. Hazel Staudemire
pro se

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Hazel Stoudemire, #220501,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

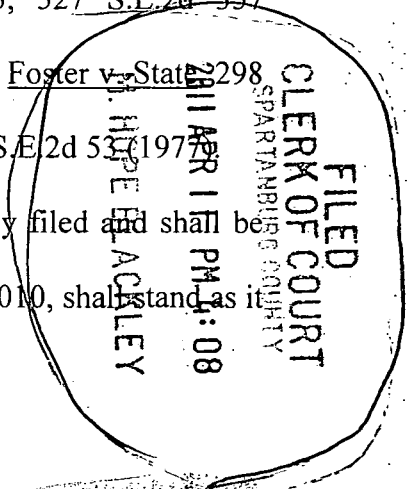
2008-CP-42-1056

ORDER

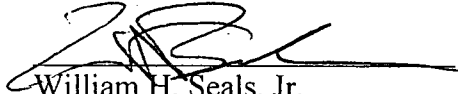
This matter comes before the Court by way of Applicant's *pro se* 59(e) Motion, filed January 13, 2010. The Respondent made its Return to this response on March 18, 2011.

The Order of Dismissal in this matter was signed by me on December 31, 2010. This Court finds that Applicant's Motion was filed while represented by counsel, Alexandria M. Wolf, Esquire, in this matter and should not be considered as a substantive filing. See Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010)(stating because PCR Petitioner was represented by counsel, the pro se motion was not proper and should not have been accepted and was essentially a nullity). In addition, pursuant to Rule 11, SCRPC, and authority of our supreme court, every motion of a party represented by an attorney shall be signed and submitted by counsel. See Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002)(stating there is no hybrid representation at trial or on appeal in South Carolina); Koon v. Clare, 338 S.C. 423, 527 S.E.2d 357 (2000)(Same); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998)(Same); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989)(Same); State v. Sanders, 269 S.C. 215, 237 S.E.2d 533 (1977)(Same).

Therefore, this Court finds that Applicant's Motion was not properly filed and shall be dismissed, while the Order of Dismissal, which was filed on December 31, 2010, shall stand as it was written.



AND IT IS SO ORDERED this 8 day of April, 2011.


William H. Seals, Jr.
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Hazel Stoudemire, #220501,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2008-CP-42-1056

ORDER OF DISMISSAL

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 MARC KITCHENS

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 27, 2009. The Respondent made its Amended Return and Motion to Dismiss on or about June 19, 2009. An evidentiary hearing into the matter was convened on November 4, 2009, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Alexandria Wolf, Esquire. Salley W. Elliott, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Eleanor Duffy Cleary, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's direct appeal records, the Amended Return and Motion to Dismiss, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. In April 1995, the Applicant was charged in Cherokee and Spartanburg counties for ten (10) counts of burglary – 2nd degree (non-violent) (1995-GS-11-554, 1995-GS-42-1837, -1838, -1841, -1842, -1844, -

1851, -1853, -1855, & -1862). On April 21 1995, the Applicant waived presentment to the grand jury and entered a plea pursuant to Alford v. N.C. Upon information and belief Applicant was represented by counsel from the law firm of Bryant and Devine at the plea. Applicant was sentenced by the Honorable L. Casey Manning to fifteen (15) years suspended upon the service of five (5) years probation and restitution. Subsequently, Applicant was charged with violating probation as a result of failure to comply with conditions of probation due to the life sentence he received for murder on April 13, 2000. He was represented by Jason Chehoski, Esquire, at the probation revocation hearing. On June 17, 2005, the Honorable Gordon G. Cooper revoked Applicant's probation in full.

The Applicant appealed and the matter was affirmed by the South Carolina Court of Appeals on April 4, 2007. State v. Stoudemire, Up. Op. No. 2007-UP-150 (filed April 4, 2007). The Applicant was represented on appeal by Eleanor Duffy Cleary, Esquire.

ALLEGATIONS

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

1. Ineffective Assistance of Appellate Counsel; and
2. "Ex Post Facto Clause Violationing."

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80

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(2003).

Ineffective Assistance of Appellate Counsel

The Applicant alleges he received ineffective assistance of appellate counsel when counsel did not raise the issue in his appeal that his probation revocation counsel raised at Applicant's probation revocation hearing. This Court finds the issue is without merit and is denied and dismissed.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Applicant testified that he pled guilty in 1995 pursuant to N.C. v. Alford, to burglar

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and received probation, which was to commence after his service of six-years of a Youthful Offender Act sentence. Applicant testified that in 2000, prior to his beginning his probation, he was arrested for murder and subsequently had his probation revoked. Applicant also testified that since he was in prison for life, the Court converted his restitution to a civil judgment. Applicant testified that he wanted the Court to set aside the probation revocation hearing issues regarding the unrelated murder charge and he wanted the Court to look into the procedural due process issues he raised in his application.

Applicant further testified that he believed the South Carolina Court of Appeals stated that his probation revocation was affirmed because his appellate attorney did not raise issues that had been preserved for review. Applicant stated that the Court of Appeals did not even hear oral arguments on his case. Applicant testified that he never received a brief from Appellate Counsel. Applicant testified that he believed probation revocation counsel did a pretty good job raising and preserving issues, but that appellate counsel did not raise any of the issues on appeal. Applicant also testified that he was prejudiced because he did not have his appeal heard on other issues and believed his probation revocation would have been reversed had counsel raised the issues.

Appellate Counsel testified that while working for the South Carolina Office of Appellate Defense, she specialized in criminal appeals and prepared thousands of appeals during her eight (8) years working there. Counsel testified that she also prepared and argued hundreds of cases before the appellate courts; however, she testified that the courts do not designate every case for oral argument. Counsel testified that in preparation of appeals, she reviews advance sheets, conducts requisite research, and reviews information from a listserv for criminal defense lawyers.

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SPARTANBURG COUNTY
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MARC KITCHENS

Appellate Counsel testified that she reviewed the transcript in this case and prepared a brief for Applicant's appeal. Counsel testified that it was her opinion an inadequate factual basis for the revocation existed and chose that issue to present in a brief on the merits. Counsel stated that she is bound by the record in presenting and arguing issues and that Applicant would not have been able to expand on the record had he been provided with a copy of her proposed brief. Appellate counsel testified that her strategy was to spend more time on the factual based argument that she felt offered a greater likelihood of success on appeal. Appellate counsel testified that Applicant's probation revocation counsel argued Applicant's probation violation was not willful and probation had not even been violated at the time of the revocation hearing. Counsel testified that even though she did not raise the issue that probation revocation counsel argued at the hearing, the Court of Appeals addressed the "willfulness" issue and subsequently stated in the opinion that the appeal would not have been granted on that issue either.

On cross-examination, Appellate Counsel testified that the Court of Appeals summarily addressed the issue she raised and also considered what was in the record from the probation revocation hearing. Counsel testified that she was not aware of anything else she could have argued which would have led to a different result. Counsel testified that it is her obligation to choose issues she believes will be successful and not to present issues with little merit that might distract the Court from the stronger issues.

This Court finds that Applicant's interpretation of the Court of Appeals opinion affirming his probation revocation to be incorrect. This Court finds the record is clear that the Court of Appeals considered both the issue raised by appellate counsel and the issue of "willfulness" raised by probation revocation counsel during the revocation hearing. This Court, based on the record and testimony at the hearing, finds that appellate counsel raised the a viable issue on

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MARC KITCHENS

appeal.

Accordingly, this Court finds the Applicant has failed to prove that appellate counsel was deficient in her representation of the Applicant. This Court finds that counsel is a competent and experienced attorney who provided knowledgeable representation and who exercised reasonable appellate strategy in this appeal. The Applicant failed to present specific and compelling evidence that Appellate Counsel committed either errors or omissions in her representation of the Applicant or, specifically, that counsel failed to present significant and obvious issues on appeal. This Court also finds the Applicant has failed to prove that he was prejudiced by any alleged deficiencies of Appellate Counsel's performance. This Court concludes the Applicant has not met his burden of proof regarding this claim. Therefore, the allegation of ineffective assistance of appellate counsel is denied.

Due Process Violation

Applicant also presents the claim of "ex post facto violationing" in his application. This Court finds the issue is not cognizable as a post-conviction relief claim as this appears to be a matter for the probation revocation hearing on appeal therefrom. Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Accordingly, the allegation is denied and dismissed.

Other convictions

To the extent Applicant attempts to challenge the 1995 burglary convictions and sentences or the 2000 murder conviction and sentence, this Court finds that Applicant may only litigate allegations relating to matters related to his 2005 probation revocation. The 2000 murder conviction was not challenged in this application; it is unrelated to these proceedings and may not be challenged herein.

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MARC KITCHENS

This Court finds that Applicant's PCR Application, as it relates to allegations regarding Applicant's 1995 plea and convictions, should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on April 21, 1995. This Application was filed on February 27, 2008, which was more than twelve (12) years after the one-year statutory filing period had expired.

To the extent Applicant attempts to challenge his 1995 plea, this Court finds that the doctrine of laches also bars the Applicant from raising these allegations in a post-conviction relief application. The Applicant has filed this application nearly thirteen (13) years after he was convicted. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years

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SPARTANBURG COUNTY
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MARC KITCHENS

ago, where records and witnesses are no longer available." McElrath, 276 S.C. at 283. Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of laches. The Rule states in pertinent part:

A petition may be dismissed if it appears that the state of which the Respondent an officer has been prejudiced in its ability to respond to the Petition by delay its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

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SPARTANBURG COUNTY
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MARGARET HENS

Furthermore the South Carolina legislature has recognized this problem and instituted a one-year statute of limitations. See S.C. Code Ann. §17-27-45(a).

This Court finds that the Applicant's delay has greatly prejudiced the Respondent, as a transcript of the Applicant's plea is most likely now unavailable and the identity of plea counsel is not known. If the Applicant had sought post-conviction relief within a reasonable time after his plea, this problem would not exist.

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


Handwritten initials "H" and "G" circled in the top right corner.

applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

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

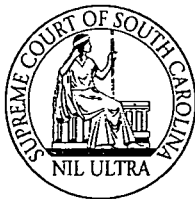
AND IT IS SO ORDERED this 29 day of December, 2009.



 Judge William H. Seals, Jr.
 Presiding Judge
 Seventh Judicial Circuit

Maulon, South Carolina

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The Supreme Court of South Carolina

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CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 29, 2011

Mr. Hazel Stoudemire, #220501
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Stoudemire, Hazel v. The State, 2008-CP-42-1056

Dear Mr. Stoudemire:

This office has received your *pro se* petition for a writ of certiorari. Since review in a post-conviction relief case is commenced by serving and filing a notice of appeal, this document has been construed as a notice of appeal.

For this matter to proceed, you will need to provide this Court with a copy of the order of dismissal and the order from which the appeal is being taken. These documents must be provided within ten (10) days of the date of this letter.

By copy of this letter, I am advising Alexandria M. Wolf, Esquire, that she remains counsel of record before this Court. Rule 71.1, SCRCF; Rule 264, SCACR.

Very truly yours,

CLERK

cc: Salley W. Elliot, Esquire
Alexandria Marie Wolf, Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr., Circuit Court Judge, 2008-CR42-1056

HAZEL STOUDEMIRE

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

RECEIVED

APR 29 2011

S.C. SUPREME COURT

HAZEL STOUDEMIRE, #220501
pro se

PRO SE LITIGANT

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QUESTIONS PRESENTED

- i. Whether post-conviction relief court erred in denying Petitioner to be fully heard in his defense by himself?
- ii. If post-conviction relief court was in error of Article I, Section Fourteen, than did that court properly conclude that Petitioner was barred from raising that his direct Appeal counsel's performance violated the Due Process Clause of the Fourteenth Amendment?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the clerk of court for Spartanburg County. In April, 1999, the Petitioner was indicted by the Spartanburg County Grand Jury for Murder (1999-65-42-2188). He was represented by J. Michael Bartosh, Esquire. Petitioner proceeded to a jury trial on April 11, 2000, at the conclusion of which Petitioner was found guilty as charged. The Honorable Lee S. Alford sentenced him to confinement for life.

Petitioner filed a timely notice of intent to appeal, and an appeal was perfected. The South Carolina Court of Appeals affirmed his conviction and sentence. State v. Stoudemire, Op. No. 2002-up-020 (S.C. Ct. App. Filed January 15, 2002). The Remittitur was issued on January 21, 2002.

Petitioner filed his first PCR application on March 13, 2002; the Petitioner subsequently filed a second application for post-conviction relief (PCR) on June 23, 2004.

In his current application for post-conviction relief the Petitioner alleges that he is being held in custody unlawful following reasons in the petition for writ of certiorari.

STANDARD OF REVIEW

The proper STANDARD OF REVIEW OF A post-conviction relief evidentiary hearing is whether "ANY EVIDENCE OF PROBATIVE VALUE" EXISTS TO SUSTAIN THE post-conviction relief JUDGE'S FINDINGS. Cherry v. State, 300 S.C. 115, 386 S.E.2D 624 (1989).

Moreover, the post-conviction relief APPLICANT BEARS THE BURDEN OF PROVING THE ALLEGATIONS IN THEIR APPLICATION. Butler v. State, 286 S.C. 441, 334 S.E.2D 817 (1985).

1. Whether post-conviction relief court erred in denying Petitioner to be fully heard in his defense by himself?

The post-conviction relief ("PCR") court was in violation of South Carolina Article I, Section Fourteen AND the United States constitution.

When an individual of any proceedings file or orally submit a motion to relieve counsel in a judicial process where counsels are not a constitutional right and that court deny the right for that person to proceed pro se and use the fact that because that person is represented by counsel, no documents can be accepted by anyone but counsel on record, that court abuses its discretion. For instance, here petitioner filed a motion to relieve counsel and the (PCR) judge denied the motion. This course not only violated the petitioner due process, it also gives the (PCR) judge the alternative of refusing to decide the issues that an individual wishes to raise. An applicant can not raise any issue or submit any document unless submitted through counsel. Miller v. State, 388 S.C. 747, 697 S.E.2d 527 (2010) (stating because

PCR Petitioner was represented by counsel, the pro se motion was not proper AND should not have been accepted AND essentially a nullity). Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002) (Citing there is no hybrid representation at trial or on appeal in South Carolina).

The Petitioner filed a motion to relieve counsel before the hearing, during the hearing, AND AFTER the hearing. (See, Clerk of Court Files AND (PCR) trial transcript). Petitioner proceeded to pro se litigation. The PCR court denied the motion to relieve counsel AND denied Petitioner to be fully heard in his defense by himself. The state uses the appointment of Attorneys to an indigent defendant so that the indigent defendant is barred of fully being heard in his case, AND the PCR judge dismissing the application without actually having a fair hearing.

The Petitioner maintains that the government (either of the three branches) cannot interpose counsel to prevent Petitioner from presenting his claims, AND

right to proceed pro se is a viable option always inviolate. FARRETTA v. CALIFORNIA, 95 S.Ct. 2525 (1975), speaks of the assistance of counsel, and an assistant however expert, is still an assistant. The language and spirit of right to proceed pro se. State v. Reed, 503 S.E.2d 747 (1998), contemplate that counsel, like other defense tools ~~guaranteed~~ guaranteed by the Amendment shall be a aid to a willing defendant not an organ of the state interposed between an unwilling defendant and his right to defend himself personally. An unwanted counsel "represents" the defendant through a tenuous and unacceptable legal fiction, unless the defendant has acquiesce in such representation, the defense presented is not the defense guaranteed by the constitution, for in a very real sense it is not his defense at all.

In State v. Reed, supra, respect for the individual to represent his cause of action is the life blood of the law. The South Carolina Constitution Article I, Section fourteen, this constitutional provision

preserves AND guarantees to litigants certain trial rights.

This section provides:

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both.

Petitioner has a right to file a brief in cases submitted pursuant to the procedures established in Anders v. CALIFORNIA, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493 (1967), and Johnson v. State, 294 S.C. 310, 364 S.E. 2d 201 (1988). The PCR court abused its discretion in forcing appointed counsel on Petitioner and refusing to allow Petitioner to proceed pro se.

Accordingly, this Court should reverse and remand
this case for a new trial. Cherry v. State 300
S.C. 115, 286 S.E.2d 624 (1989); Butler v. State, 286
S.C. 441, 334 S.E.2d 813 (1985).

11. IF post-conviction relief court was in error of Article I, Section Fourteen, than did that court properly conclude that Petitioner was barred from raising that his direct appeal counsel's performance violate the Due Process Clause of the Fourteenth Amendment?

The post-conviction relief ("PCR") court erred in not allowing Petitioner to raise a constitutional issue in regards to his direct appeal.

The Petitioner did not have the benefit of a direct appeal, because his appellate counsel's violation of the Due Process Clause of the Fourteenth Amendment. The "sole issue" addressed in Petitioner case here whether Petitioner may maintain a successive application for post-conviction relief (PCR) on the ground that his due process was violated in his direct appeal. CASE V. STATE, 277 S.C. 474, 289 S.C. 2d 413 (1982). Even if his application is successive, the unique combination of facts in this case entitle him to the relief granted below.

The system has simply failed Petitioner in the due process violation of the direct appeal and where to continue the Petitioner's imprisonment

without review would amount to a gross miscarriage of justice. Butler v. State, 397 S.E.2d 87 S.C. (1990).

The state is depriving him of the right to effective assistance of counsel on [direct] appeal guaranteed by the Due Process Clause of the Fourteenth Amendment. "The only issue being whether the state court's action in dismissing petitioner's appeal violated the Due Process Clause."

The Due Process Clause of the Fourteenth Amendment guarantees a criminal defendant the effective assistance of counsel on his first appeal [Direct Appeal] as of right.

Petitioner contends that, although represented in name by appellate counsel on direct appeal, he has not received the type of assistance constitutionally required to render the appellate proceedings fair. Anders v. California, 396 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493 (1963), and Estrominger v. Iowa, 386 U.S. 748, 87 S.Ct. 1402, 18 L.Ed. 2d 501 (1967). In both cases, the United States Supreme Court has held that counsel's

Failure to submit a brief on appeal rendered the subsequent judgments against the petitioner's unconstitutional.

Petitioner contends that the continuance of the South Carolina Court's action in cutting off petitioner's [direct appeal] because of attorney's incompetence would be permissible under due process clause. The South Carolina Constitution requires that at least one appeal as of right is allowed in all cases civil and criminal.

Petitioner has not previously had an adequate opportunity to present his claims fairly in the context of the state appellate process.

Douglas v. California, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed. 816 (1963). Accordingly, this Court should reverse and remand petitioner's case for a new trial. Butler v. State, supra.

CONCLUSION

For the reasons stated Above, Petitioner respectfully Ask this Court to review this Writ of Certiorari AND grant the certiorari AND grant A new trial.

Respectfully Submitted,

By: ~~Hazel Stoudamire~~
HAZEL STODAMIRE, # 220501
pro se

April 25th 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Spartanburg County
The Honorable William H. Sails Jr., Circuit Court Judge, 2008-C9-42-1056

HAZEL STOUYEMIRE

Petitioner

v.

STATE OF SOUTH CAROLINA

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Petitioner for writ of certiorari has been served to the Clerk of the Supreme Court of South Carolina, AND the Attorney General office addressed listed below this 25th day of April, 2011

Honorable Daniel E. Shearouse
P.O. Box 11330
Columbia, SC 29211

ATTORNEY GENERAL
P.O. Box 11549
Columbia, SC 29211

Hazel Stouyemire
HAZEL Stouyemire, #220501
pro se

Mr. Hazel Stodumre, #220501
ee. C.Z. ASU South 174
40 W. Wadley Hwy.
Spartanburg, S.C. 29000

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