

The Supreme Court of South Carolina

Michael Anthony Sarratt, Petitioner,

v.


State of South Carolina, Respondent.

The Honorable G. Edward Welmaker
Greenville County
Trial Court Case No. 2010-CP-23-03720

ORDER

Petitioner seeks an extension until May 23, 2012 to serve and file the Petition for Writ of Certiorari and Appendix, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension 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 actions are being taken to insure that no further extensions will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.


C.J.
For the Court

Columbia, South Carolina

April 25, 2012

cc: Appellate Defender Elizabeth A. Franklin-Best
Assistant Attorney General Karen Ratigan

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

RECEIVED

APR 23 2012

Certiorari to Greenville County
G. Edward Welmaker, Circuit Court Judge

S.C. Supreme Court

MICHAEL ANTHONY SARRATT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

4

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

Counsel for Michael Anthony Sarratt respectfully petitions this Court for a **final 30 days, until May 23, 2012**, to file the petition for writ of certiorari and appendix on behalf of her client. Counsel intended the last granted extension to be the last, but, due to counsel leaving the Office of Appellate Defense, **the case is being reassigned**. In support of this petition, counsel shows:

1. The petition for writ of certiorari and appendix is due today. The Court has granted three previous extensions.
2. Counsel respectfully submits that good cause exists to warrant the granting of an additional extension of time.

3. Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. *See* Evitts v. Lucey, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair). *See also* Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); South Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA maximum caseload standards of 25 appeals). *See generally* Polk County v. Dodson, 454 U.S. 312 (1981); Gideon v. Wainwright, 372 U.S. 335 (1963). Counsel has prioritized her caseload to complete the cases with the largest number of extensions first.

4. Counsel diligently works to keep up with her case load. Counsel filed brief of petitioner in Robert Anthony James v. State with this Court on April 19, 2012. Counsel also filed the initial brief of appellant and designation of matter in State v. Anthony Lounds with the Court of Appeals on April 19, 2012. Counsel had an oral argument in State v. K.C. Langford, III before this Court today, April 18, 2012. Counsel filed the petition for rehearing in State v. George Salisbury with the Court of Appeals on April 12, 2012. Counsel filed the return to petition for writ of certiorari in Jeremiah Dicapua v. State with this Court on April 11, 2012. Counsel filed the petition for writ of certiorari from the Court of Appeals in State v. James P. Austin with this Court on March 28, 2012. Counsel also filed the petition for writ of certiorari from the Court of Appeals in State v. Michael D. Jackson with this Court on March 28, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Cedric Flood with the Court of Appeals on

March 27, 2012. Counsel also filed the petition for writ of certiorari in Reina Garrido v. State with this Court on March 27, 2012.

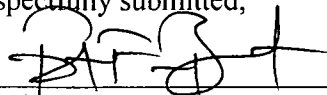
5. In the month of April, counsel is assigned to file 24 briefs and writ of certioraris.

6. As indicated by the signature below, the Attorney General's Office does not oppose the request.

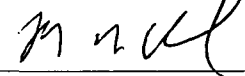
7. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a 30 day extension in which to file her client's petition for writ of certiorari and appendix.

Respectfully submitted,



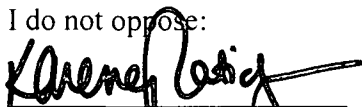
Elizabeth A. Franklin-Best
Appellate Defender



Robert M. Dudek
Chief Appellate Defender

April 23, 2012

I do not oppose:



Karen Ratigan, Esquire

The Supreme Court of South Carolina

Michael Anthony Sarratt, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable G. Edward Welmaker
Greenville County
Trial Court Case No. 2010-CP-23-03720

ORDER

For good cause shown, the request for an extension until April 23, 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



Clerk

Columbia, South Carolina

March 23, 2012

cc: Appellate Defender Elizabeth A. Franklin-Best
Assistant Attorney General Karen Ratigan

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
G. Edward Welmaker, Circuit Court Judge

RECEIVED

MAR 21 2012

S.C. Supreme Court

MICHAEL ANTHONY SARRATT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

(3)

Counsel for Michael Anthony Sarratt respectfully petitions this Court for a **final 30 days, until April 23, 2012**, to file the petition for writ of certiorari and appendix on behalf of her client. In support of this petition, counsel shows:

1. The petition for writ of certiorari and appendix is due Friday, March 23, 2012. The Court has granted two previous extensions.
2. Counsel respectfully submits that good cause exists to warrant the granting of an additional extension of time.
3. Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of

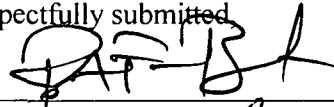
counsel as guaranteed by the U.S.C.A. 6, 14. *See* Evitts v. Lucey, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair). *See also* Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); South Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA maximum caseload standards of 25 appeals). *See generally* Polk County v. Dodson, 454 U.S. 312 (1981); Gideon v. Wainwright, 372 U.S. 335 (1963). Counsel has prioritized her caseload to complete the cases with the largest number of extensions first.

4. Counsel diligently works to keep up with her case load. Counsel filed the petition for writ of certiorari from the Court of Appeals in State v. Reico Lamont Welch with this Court on March 19, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Marquis Breeland with the Court of Appeals on March 14, 2012. Counsel also filed the initial brief of appellant and designation of matter in State v. Ervin Outz with the Court of Appeals on March 14, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Anthony Hackshaw, which included seven issues on appeal, with the Court of Appeals on March 8, 2012. Counsel had an oral argument before the Court of Appeals in State v. Nathaniel Murray on March 1, 2012. Counsel filed the petition for rehearing in State v. Jomar Antavis Robinson with the Court of Appeals on March 1, 2012. Counsel had an oral argument before the Court of Appeals in State v. Donna Buie on February 28, 2012. Counsel filed the petition for writ of certiorari from the Court of Appeals and accompanying appendix on February 27, 2012, with this Court in State v. David Lee Coward. Counsel filed the five issue death penalty brief in the case of State v. Steven Barnes with this Court on February 24, 2012.

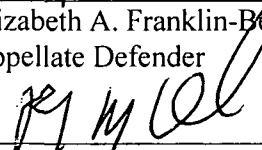
5. In the month of March, counsel is assigned to file 22 briefs and writ of certioraris.
6. As indicated by the signature below, the Attorney General's Office does not oppose the request.
7. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a 30 day extension in which to file her client's petition for writ of certiorari and appendix.

Respectfully submitted



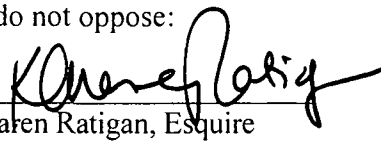
Elizabeth A. Franklin-Best
Appellate Defender



Robert M. Dudek
Chief Appellate Defender

March 21, 2012

I do not oppose:



Karen Ratigan, Esquire

The Supreme Court of South Carolina

Michael Anthony Sarratt, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable G. Edward Welmaker
Greenville County
Trial Court Case No. 2010-CP-23-03720

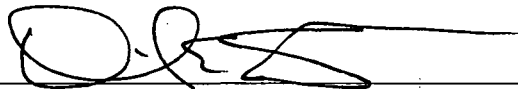
ORDER

For good cause shown, the request for an extension until March 23, 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



Clerk

Columbia, South Carolina

February 23, 2012

cc: Appellate Defender Elizabeth A. Franklin-Best
Assistant Attorney General Karen Ratigan

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE SUPREME COURT

RECEIVED

Certiorari to Greenville County

FEB 22 2012

G. Edward Welmaker, Circuit Court Judge

S.C. Supreme Court

MICHAEL ANTHONY SARRATT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT (2)

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

Counsel for Michael Anthony Sarratt respectfully petitions this Court for an additional 30 days to file the petition for writ of certiorari and appendix on behalf of her client. In support of this petition, counsel shows:

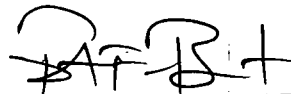
1. The petition for writ of certiorari and appendix is due today. The Court has granted one previous extension.
2. Counsel respectfully submits that good cause exists to warrant the granting of an additional extension of time.
3. Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of

counsel as guaranteed by the U.S.C.A. 6, 14. *See* Evitts v. Lucey, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair). *See also* Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); South Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA maximum caseload standards of 25 appeals). *See generally* Polk County v. Dodson, 454 U.S. 312 (1981); Gideon v. Wainwright, 372 U.S. 335 (1963). Counsel has prioritized her caseload to complete the cases with the largest number of extensions first.

4. Counsel diligently works to keep up with her case load.
5. In the month of February, counsel is assigned to file 24 briefs and writ of certioraris.
6. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a 30 day extension in which to file her client's petition for writ of certiorari and appendix.

Respectfully submitted,



Elizabeth A. Franklin-Best
Appellate Defender

February 22, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

MICHAEL ANTHONY SARRATT,

PETITIONER,

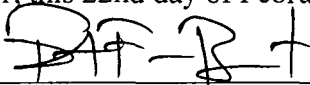
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

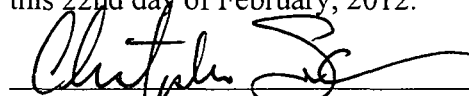
The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of February, 2012.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 22nd day of February, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 16, 2021.

The Supreme Court of South Carolina

Michael Anthony Sarratt, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable G. Edward Welmaker
Greenville County
Trial Court Case No. 2010-CP-23-03720

ORDER

The request for an extension until February 22, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Amanda J. Shealy*
Chief Deputy Clerk

Columbia, South Carolina

January 24, 2012

cc: Appellate Defender Elizabeth A. Franklin-Best
Assistant Attorney General Karen Ratigan

ORIGINAL



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
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

January 23, 2012

RECEIVED

JAN 23 2012

S.C. Supreme Court

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

Re: Michael Anthony Sarratt v. State

Dear Mr. Shearouse:

The Petition for Writ of Certiorari from the Court of Appeals and accompanying appendix are due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the petition.

By copy of this letter, I am informing Karen Ratigan, Esquire, of the Attorney General's Office, of my request.

Sincerely,

Elizabeth A. Franklin-Best
Appellate Defender

EAF/cms

cc: Karen Ratigan, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

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

RECEIVED

NOV 23 2011

S.C. Supreme Court

November 23, 2011

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

Dear Mr. Shearouse:

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

Michael Anthony Sarratt v. State of South Carolina

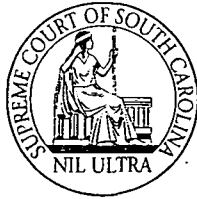
11/23/2011

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

Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator



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 7, 2011

Mr. Michael A. Sarratt, # 299026
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Sarratt, Michael Anthony v. The State

Dear Mr. Sarratt:

This responds to three *pro se* petitions. As to the petition seeking a return of your real property, you will be advised when the Court takes action on that petition.

As to the other two petitions, no action will be taken on these petitions since they are related to the above matter, and you are represented by the Division of Appellate Defense in the above matter. Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989). Any concerns that you have should be raised to the Appellate Defense.

As to your request to be provided with a copy of these petitions, I decline to do so since I do not find that doing so would primarily benefit the general public. If you would like a copy of these documents, you will need to pay for them at our standard rate of 25 cents a page plus a mailing fee of 40 cents for each 10 pages that are mailed.

Very truly yours,



CLERK

cc: Assistant Attorney General Karen Ratigan
Appellate Defense

September 30, 2011

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

RECEIVED
OCT 05 2011
S.C. SUPREME COURT

Re: State v. Sarratt, 2005-GS-23-4106, 4107, 4108, 2010-UP-046,
210-CP-23-3720

Dear, Clerk

Please find Enclosed three Petitions and Proof of Service to be
filed with this Court, related to Reinstatement of Personal Property, ^{Process}
Production of Documents and Appeal for New Trial. ^{Separation}

As a result of Petitioner being housed in a Lock-up unit, as
a ward of the state, he is limited to very few legal materials and
access to photo copies. Petitioner seeks the assistance of the court
to provide him a copy of Each Petition upon being Stamped, dated,
clocked and filed by the court. Petitioner makes such request without
prepayment, as he is indigent as a result of his incarceration.

I truly thank you for your time, assistance and True Concern.

Sincerely,

michael A. Sarratt #299026

Michael A. Sarratt

Perry Corr. Inst.

430 Oaklawn Rd.

Pelzer, S.C. 29669

Proof of Service

The undersigned hereby certifies that a true copy of the attached matters have been properly served upon the parties listed below, by way of Institutional Mail, postage prepaid, this 30th day, of September 2011, such matters being: three petitions, related to Reimberstment of Property, Production of Documents and appeal for New Trial

1) S.C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

2) Attorney General's office
P.O. Box 11549
Columbia, S.C. 29211

Michael A. Sarratt # 299026
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, S.C. 29669

I declare under the penalty of perjury that the foregoing is true and correct.

September 30, 2011
Pelzer, S.C.

Michael A. Sarratt

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

OCT 05 2011

Appeal From Greenville County
Edward W. Miller, Circuit Court Judge **S.O. SUPREME COURT**

Case No. 2005-GS-23-4106, 4108,
2010-UP-046, 2010-CP-23-3720.

Michael A. Sarratt,

Petitioner,

v.

The State,

Respondent.

"Petition"

Petitioner was tried before trial judge, Edward W. Miller, on June 14, 2007 he was found guilty by the court, and upon Petitioner's instructions, trial counsel moved for a Motion for a New Trial. Trial judge denied Petitioner's motion for a new trial without hearing his arguments. See, tr. p. 607-608, line 25-1. Petitioner was denied the adequate opportunity to present his issues of prosecutor misconduct, ineffective assistance of trial counsel, judicial errors, numerous constitutional violations and Brady violations before the Court, as a result of such motion being denied without being heard.

As a result of counsel's error, no appeal was filed related

to his Motion for a New Trial being denied, as Counsel filed a direct appeal on his behalf, on June 15, 2007, but failed to appeal his denied Motion for a New Trial. While not represented by Counsel of record, Petitioner filed a pro se notice of appeal for a New Trial, on June 21, 2007. See, attached Exhibit (A), pg. 4-11.

Petitioner was appointed Appellate Counsel, by the Division of Appellate Defense to represent him with his appeals. Appellate counsel was aware that Petitioner had two separate appeals pending with the S.C. court of Appeals, a Direct Appeal and Appeal for a New Trial. After being consulted by such counsel, an agreement was made that appellate Counsel move before the Court to have both appeals consolidated.

Records show that Appellate Counsel neglected to have both appeals consolidated by the Court, neither did he take action on Petitioner's appeal for a New Trial. Records show that neither did the Respondent respond to Petitioner's Appeal for a New Trial. Furthermore, the S.C. Court of Appeals failed to take action on such appeal, being in error, as they claimed that no action was taken on Petitioner's appeal for a New Trial because he was represented by counsel at the time such appeal was filed. See, attached Exhibit (B), pg. 12-30. Records show that Petitioner was not represented by any Counsel of record at the time his Notice of Appeal for a New Trial was properly filed by the Court.

Petitioner then filed for Post Conviction Relief (PCR). Within his application, he did not present such issue, as a result of his limited knowledge of the Law and Court Procedures he did

not know how to accurately present such issue. Upon Petitioner being appointed PCR Counsel, he sought counsel's assistance with such issue, to investigate the matter and amend his PCR application to argue this issue. Whereas, Petitioner received attached Exhibit (C), pg. 31, dated November 03, 2010, from PCR Counsel, that explains how to amend the original application for Post Conviction Relief. Petitioner provided counsel with all attached information, as he has this Honorable Court. Petitioner's PCR Counsel failed to amend such application on Petitioner's behalf to present this matter to the Court. Petitioner was denied effective assistance of PCR Counsel and Due Process, as such issue was not presented, nor heard by the Court.

Whereas, Petitioner seeks the assistance of this Court to see that he is provided Due Process. Petitioner accurately filed a Notice of Appeal for a New Trial, that is still pending and has never been acted upon. Petitioner seeks the Court's assistance to see that his Notice of Appeal for a New Trial is investigated and properly acted upon by the Responsible Party(s).

September 30, 2011

Pelzer, S.C.

Michael A. Sarratt

Respectfully submitted,
 Michael A. Sarratt # 249026
 Perry Corr. Inst.,
 430 Oaklawn Rd.
 Pelzer, S.C. 29669

Exhibit (A)



Office of the Clerk of Court

Paul B. Wickensimer
Clerk of Court

Circuit Court Division
Greenville County Courthouse
305 East North Street
Greenville, SC 29601
(864) 467-8551 FAX 467-8540

Family Court Division
301 University Ridge
Post Office Box 757
Greenville, SC 29602
(864) 467-5800 FAX 467-5856

July 18, 2007

Michael A. Sarratt #299026
Kirkland Correctional Inst.
4344 Broad River Rd.
Columbia, SC 29210

Dear Mr. Sarratt:

Enclosed you will find your clocked copy of your Notice of Appeal.

Please forward any other correspondence to your Appellate attorney.

Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

Sincerely,

Paul B. Wickensimer

Notice of Appeal From Decision By The Court
of General Sessions.

The state of South Carolina
In the court of Appeals
[In the supreme court]

Appeal from Greenville County
Court of General sessions

Edward W. Miller, Circuit Court Judge

Case Nos. 2005-GS-23-4106, 4108

The state, Respondent,
v.

Michael A. Sarratt, Appellant.

Notice of Appeal

Michael A. Sarratt appeals the decision of
Honorable Edward W. Miller that was imposed on
June 14, 2007, which denied appellant's motion for
a new trial.

June 21, 2007
Columbia, S.C.

Michael A. Sarratt #299026
Michael A. Sarratt #299026
Appellant

Proof of Service of a Notice of Appeal

The State of South Carolina
 In the Court of Appeals
[In the Supreme Court]

Appeal From Greenville County
 Court of General Sessions

Edward W. Miller, Circuit Court Judge

Case Nos. 2005-GS-23-4106, 4108

The State, Respondent,

v.

Michael A. Sarratt, Appellant.

Proof of Service

I certify that I have served the Notice of Appeal on the following by depositing a copy of it in the U.S. mail, postage prepaid, on June 22, 2007, addressed as follows:

- 1.) Assistant Solicitor Kris Hodge
 Thirteenth Circuit Solicitor's office, Greenville Co. Courthouse
 305 East North Street
 Greenville, S.C. 29601

2.) Henry mcmaster, Attorney General
P. o. Box 11549
Columbia, S. C. 29 211

3.) Joseph L. Savitz, III
Chief Appellate Attorney
1330 Lady Street, Suite 401
Columbia, S. C. 29201

michael A. Sarratt # 299026
michael a. Sarratt # 299026
Kirkland Correctional Institution
4344 Broad River Road
Columbia, S. C. 29210

Notice of Appeal From Decision By The Court
of General Sessions

The state of South Carolina
In the court of Appeals
[In the supreme court]

Appeal from Greenville County
Court of General sessions

Edward W. Miller, Circuit Court Judge

Case Nos. 2005-GS-23-4106, 4108

The state, Respondent,

v.

Michael A. Sarratt, Appellant,

Notice of Appeal

Michael A. Sarratt appeals the decision of
Honorable Edward W. Miller that was imposed on
June 14, 2007, which denied appellant's motion for
a new trial.

June 21, 2007
Columbia, S.C.

Michael A. Sarratt #217026
Michael A. Sarratt #217026
Appellant

Proof of Service of a Notice of Appeal

The State of South Carolina
In the Court of Appeals
[In the Supreme Court]

Appeal from Greenville County
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Case Nos. 2005-GS-23-4106, 4108

The State, Respondent,
V.
Michael A. Sarratt, Appellant.

Proof of Service

I certify that I have served the Notice of Appeal on the following by depositing a copy of it in the U.S. mail, postage prepaid, on June 22, 2007, addressed as follows:

- 1.) Assistant Solicitor Kris Hatye
Thirteenth Circuit Solicitor's office, Greenville Co. Courthouse
305 East North Street
Greenville, S.C. 29601

2.) Henry McMaster, Attorney General
P.O. Box 11549
Columbia, S.C. 29211

3.) Joseph L. Savitz, III
Chief Appellate Attorney
1330 Lady Street, Suite 401
Columbia, S.C. 29201

Michael A. Sarratt #299026
Michael A. Sarratt #299026
Kirkland Correctional Institution
4344 Broad River Road
Columbia, S.C. 29210

AFTER FIVE DAYS RETURN TO

PAUL B. WICKENSIMER
GREENVILLE COUNTY CLERK OF COURT
305 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

F3-260A

Michael Sarratt #299026
Kirkland Corr Inst
4344 Broad River Rd.
Columbia, SC 29210

KIRKLAND

29210

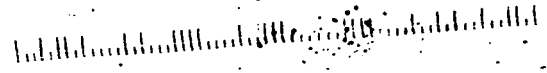


EXhibit (u)

12



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMNER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 21, 2008

Michael A. Sarratt, #299026
Lee Correctional Institution
990 Wasacky Highway
Bishopville, SC 29010

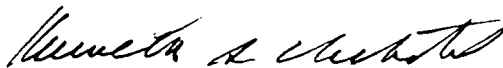
Re: The State v. Sarratt, Michael A.

Dear Mr. Sarratt:

This responds to your motions received by this office of November 13, 2008. Since you are represented by counsel in this matter, no action will be taken on your Motion to consolidate and Motion for Extension of Time. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

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

Very truly yours,


CLERK

KAR/ab

cc: Chief Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 13 2008

SC Court of Appeals

Appeal from Greenville County
Edward W. Miller, Circuit Court Judge

Case No. 2005-GS-23-4106, 4108

The State, Respondent,
Michael A. Sarratt, Appellant,
V.

"Motion For Consolidation"

Now comes Appellant, Michael A. Sarratt, who moves before this Honorable Court to Request the Court to consolidate his ~~two~~ pending Appeals.

Appellant presently has two seperate appeals pending in the S.C. court of Appeals, in-reference to above listed case number. He has a pending appeal on his conviction and sentence that was filed by the Greenville County Clerk of Court, Paul B. Wickensimer, dated June 15, 2007. He also has a pending appeal for a New Trial that was filed by the Greenville County Clerk of Court, Paul B. Wickensimer, dated July 3, 2007.

Counsel for Appellant, Joseph L. Savitz, has served

~~a Petition to be Relieved as Counsel, on all parties of record, dated August 14, 2008. Counsel filed an Anders Brief on behalf of Appellant, as the Initial Brief.~~

At this time Counsel of record has not been relieved and neither has the Court heard the Anders Brief that has been filed on behalf of Appellant.

Appellant moves before this Honorable Court, on his own behalf to request an Order to consolidate afore listed appeals. Appellant moves for this Order as he has the intention to File a Pro-se Brief in-reference to afore listed appeals, consolidated into one Brief, to be heard at one time period.

I SO MOVE!

Respectfully Submitted,
Michael A. Sarratt
Michael A. Sarratt

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 13 2008

SC Court of Appeals

Appeal from Greenville County
Edward W. Miller, Circuit Court Judge

Case No. 2005-GS-23-4106, 4108

State,

Respondent,

v.

Michael A. Sarratt,

Appellant.

"Proof of Service"

The undersigned does hereby certify that a copy of Appellants motion for consolidation and Motion for Enlargement of time has been served on the following parties, by depositing it in Institutional mail, postage prepaid, on this 10th day of November 2008,

- 1.) South Carolina Court of Appeals, Clerk
P.O. Box 11629
Columbia, S.C. 29211

- 2.) Assistant Attorney General, Donald J. Zelenka

Rembert Dennis Building
1000 Assembly St., Suite 519
Columbia, S.C. 29201

I declare under the penalty of perjury the
afore going is true and correct.

Michael A. Sarratt
Michael A. Sarratt # 299026
Lee C.I.

998 Wisacky Hwy
Bishopville, S.C. 29010

Appellant

The South Carolina Court of Appeals
 Jenette F. Barber, clerk
 P.O. Box 11629
 Columbia, S.C. 29211

Re: State v. Michael A. Sarratt, Case No. 2005-GS-
 23-4106, 4108

Dear, Clerk

I seek your assistance to be informed of the present stage my Appeal for a New Trial is going through.

Records show that I filed and served a pro se appeal for a New Trial, on all parties of record, on June 21, 2007. The appeal was filed, clocked and dated, by Paul B. Wickensimer, clerk of court for Greenville County, on July 23, 2007.

Records show that I was appointed, Joseph L. Savitz III, Chief Appellate Defender, by the division of Appellate Defense, to represent me with this matter.

At this present time the court, as well as appointed counsel, has neglected to hear or assist me with my appeal for a New Trial.

Records show that I filed a pro se motion to seek Alternative Counsel, on all parties of record, on November 22, 2007. At this time I have been neglected a copy of this motion, stamped, timed and dated by the court. I have been neglect a response to this motion or an answer by any parties of record.

I seek your assistance to look into these matters as soon as possible and provide me an adequate response.

written copy
 Feb. 10, 2010
 Bishopville, S.C.

Sincerely,
 Michael A. Sarratt
 Michael A. Sarratt



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMNER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 18, 2010

Michael A. Sarratt, #299026
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: The State v. Sarratt, Michael A.
2005-GS-23-04106; 2005-GS-23-04108

Dear Mr. Sarratt:

The Court has received your letter dated February 10, 2010. The above mentioned matter was remitted to the lower court on February 12, 2010. The Remittitur is a document prepared by the clerk of court to which the judgment of the appellate court is attached and sent to the lower court. The Remittitur ends the jurisdiction of this court in a case.

In response to your concern regarding a lack of assistance in filing an appeal for a new trial, please be advised that I cannot answer legal questions or give legal advice.

Sincerely,

A handwritten signature in cursive script, appearing to read "V. Claire Allen".

V. Claire Allen
Deputy Clerk of Court

VCA/lm

cc: Chief Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka
Robert Mills Ariail, Esquire

The S.C. Court of Appeals
V. Claire Allen, clerk
P.O. Box 11629
Columbia, S.C. 29211

Re: State v. Michael A. Sarratt, case No. 2005-GS-23-4106,
4108

Dear, clerk

I have received your response to my last letter, concerning my pending appeal for a New Trial, dated Feb. 10, 2010 and your response dated Feb. 18, 2010.

In your response you claim that the matter was remitted to the lower court on Feb. 12, 2010. The court neglects to notice that my appeal, being a direct appeal on my conviction, was remitted to the lower court. My appeal for a New Trial, as records show, was filed by Paul B. Wickensimer, Clerk of Court for Greenville County, on July 03, 2007, has been over looked by the court and abandoned by all parties of record, including appointed appellate Counsel.

I see that the court is mislead and is confusing the two (2) separate appeals that were filed. My pending appeal for a New Trial is being over looked. The appeal, direct appeal was remitted to the lower court, on Feb. 12, 2010.

I ask that you look into these affairs as soon as possible and provide me an adequate response.

Sincerely,

written copy
Feb. 22, 2010
Bishopville, S.C.

Michael A. Sarratt # 299026
Lee C.I.
990 Wisacky Hwy
Bishopville, S.C. 29010



The South Carolina Court of Appeals

TANYA A. GEE
CLERK
V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMNER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1590
FAX: (803) 734-1839
www.sccourts.org

February 26, 2010

Michael A. Sarratt, #299026
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: The State v. Sarratt, Michael A.
2005-GS-23-04106; 2005-GS-23-04108

Dear Mr. Sarratt:

The Court has received your letter dated February 22, 2010. A total of two cases have been filed at the Court of Appeals and one case has been filed at the Supreme Court with your name.

The first case, State v. Sarratt, Michael A., was filed on June 15, 2007. An unpublished opinion was filed on January 27, 2010. This case was remitted to Greenville County on February 12, 2010. The lower court case numbers for this case are 2005-GS-23-04106 and 2005-GS-23-04108.

A second case, Sarratt, Michael v. SCDC, was filed on January 11, 2009. This case was dismissed on March 12, 2009 and remitted to the South Carolina Administrative Law Court on March 31, 2009. The lower court case number for this case is 2008-AL-04-00866.

The case filed at the Supreme Court was State v. Sarratt, Michael A.. It was filed on November 3, 2008. An order and dismissal were filed on November 5, 2008. The lower court case numbers for this case are 2005-GS-23-04106 and 2005-GS-23-04108.

Sincerely,
V. Claire Allen

V. Claire Allen
Deputy Clerk of Court

VCA/lm

cc: Chief Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka
Robert Mills Ariail, Esquire

S.C. Court of Appeals
V. Claire Allen / clerk
P.O. Box 11629
Columbia, S.C. 29211

Re: State v. Michael A. Sarratt, Case No. 2005-GS-23-4106, 4108

Dear, clerk

I have sent two (2) prior letters to the court related to my pending appeal for a New Trial, that was filed with, Greenville County Clerk of Court, on July 03, 2007. I received your letter, dated February 26, 2010, showing this appeal not to be on record.

I am forwarding a copy of the pending appeal for a New Trial, that shows it was filed, at 9:47 am, on July 03, 2007, Greenville County Clerk of Court, Paul B. Wickensimer, I move to bring it to this courts attention, that Appellate Counsel, Joseph L. Savitz, was aware of this appeal as well as the appeal that was filed on June 15, 2007.

Records show that the court, Appellate Counsel and State abandoned this appeal, leaving me with no assistance or response by any parties of record.

I move to ask the court to look into this matter as soon as possible, all parties of record are at default and the appeal should be granted.

Sincerely,

Michael A. Sarratt # 299026
Lee C.I.,
990 Wisacky Hwy
Bishopville, S.C. 29010

* Written Copy,
march 29, 2010
Bishopville, S.C.
Michael A. Sarratt



The South Carolina Court of Appeals

TANYA A. GEE
CLERK
V. CLAIRE ALLEN
DEPUTY CLERK

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

April 8, 2010

Michael A. Sarratt, #299026
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: The State v. Sarratt, Michael A.
2005-GS-23-04106; 2005-GS-23-04108

Dear Mr. Sarratt:

The Court has received your most recent letter regarding your pending appeal for a new trial.

On June 18, 2007, your court appointed attorney, Elizabeth Wiygul, filed a Notice of Appeal in your case. This notice of appeal was filed for indictment numbers 2005-GS-23-4106 and 2005-GS-23-4108. On July 3, 2007, the Court received your Pro Se affidavit in support of the Notice of Appeal for indictment numbers 2005-GS-23-4106 and 2005-GS-23-4108. Because you were already represented by counsel in this matter, no action was taken on your pro se affidavit.

On January 27, 2010 a copy of opinion 2010-UP-046 was mailed to you. This opinion was for indictment numbers 2005-GS-23-4106 and 2005-GS-23-4108. Because no Petition for Rehearing was filed within the time limits, a remittitur was mailed to the Greenville County Clerk of Court on February 12, 2010.

Sincerely,

Handwritten signature of V. Claire Allen in cursive script.

V. Claire Allen
Deputy Clerk of Court

VCA/lm

cc: Chief Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka
Robert Mills Ariail, Esquire

The South Carolina Court of Appeals

Tanya A. Gee, Clerk
Post Office Box 11629
Columbia, South Carolina 29211

1/5

RECEIVED

APR 9 2010

LEE CI MAIL ROOM

Michael A. Sarratt, #299026
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

29010#1775 0002





The South Carolina Court of Appeals

TANYA A. GEE
CLERK
V. CLAIRE ALLEN
DEPUTY CLERK

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

October 20, 2010

Michael A. Sarratt, #299026
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: The State v. Sarratt, Michael A.
2005-GS-23-04106 2005-GS-23-04108

Dear Mr. Sarratt:

I have received your "Petition" in which you complain about the way your appellate counsel handled your case. Your appeal was remitted on February 12, 2010, and once that remittitur was sent, we no longer have jurisdiction over your case. Therefore, no action will be taken on your "petition".

Sincerely,

A handwritten signature in cursive script that reads "V. Claire Allen".

V. Claire Allen
Deputy Clerk of Court

VCA/lf

cc: Chief Appellate Defender Joseph L. Savitz, III
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Donald J. Zelenka
Robert Mills Ariail, Esquire

RECEIVED

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

SEP 01 2010

SC Court of Appeals

RECEIVED

Appeal From Greenville County
Edward W. Miller, Circuit Court Judge

SEP 30 2010

Case No. 2005-GS-23-4106, 4108

S.C. SUPREME COURT

The State,

Respondent,

v.

Michael A. Sarratt,

Appellant.

"Petition"

AS a result of numerous trial errors, judicial errors, prosecutor misconduct and ineffective assistance of trial counsel, Appellant insisted that trial counsel move for a motion for a New Trial, before trial Judge Edward W. Miller, on June 14, 2007. See, Tr. p. 607-608, line 25-1. Trial Judge denied Appellant's motion for a New Trial without ever hearing it.

As a result of ineffective assistance of trial counsel, trial counsel failed to file a Notice of Appeal for a New Trial after the motion was denied by trial judge without ever being heard. Upon trial counsel being released as counsel for Appellant, Appellant noticed the negligence of trial counsel to file a notice of appeal for a New Trial. While not represented by any counsel of record, Appellant filed a pro se Notice of Appeal for a New Trial within the permitted time made available.

As a result of Trial Counsel filing a direct appeal on the conviction and sentence of Appellant, filed by the clerk of court for Greenville County, on June 15, 2007 and Appellant filing a pro se notice of appeal for a new trial, while not represented by counsel, filed by the clerk of court for Greenville County, on June 21, 2007, placed two (2) separate appeals before the court to be heard.

Appellant was appointed, Joseph L. Savitz III, chief Appellate Defender, by the Division of Appellate Defense to represent him with his appeals. Mr. Savitz was aware of Appellant having two (2) separate appeals pending before the court. According

to an oral agreement made between Appellant and Mr. Scovitz by way of Institutional Phone service, between August 20, 2007 and September 10, 2007, Appellant accepted the advice of Appellate Counsel to move to have both pending appeals consolidated to be heard at one time. After the agreement made between Appellant and Appellate Counsel, there was never again any oral conversations held between Appellant and Appellate Counsel, as the result of a block being placed on the Institutional Phone preventing Appellant from calling Appellate Counsel. Neither could Appellant get Mr. Scovitz or his office to respond to any correspondence sent by way of U.S. mail.

Records show that Appellate Counsel neglected to have both appeals consolidated by the Court, neither did he take action on Appellant's appeal for a New Trial in any type of way. Also records show that Respondent failed to respond to Appellant's pending appeal for a New Trial in any type of way. Further, the Court also failed to take action on Appellant's appeal for a New Trial, in error, claiming that no action was taken because he was represented by counsel in the matter. Records plainly show that Appellant was not represented by counsel of record at the time period his pro se notice of Appeal for a New Trial was filed, on June 21, 2007.

Whereas, Appellant petitions the South Carolina Court of Appeals to correct their error, by either appointing counsel and hearing his properly filed appeal for a New Trial or by granting a New Trial, as a result of the courts error, the Respondent failing to respond and the ineffective assistance of appellate counsel.

I SO MOVE.

September 27, 2010
Bishopville, S.C.
Michael A. Sarrett

Michael A. Sarrett # 299026
Lee C. J.
940 Wisacky Hwy
Bishopville, S.C. 29010
(Appellant)

Proof of Service

The undersigned hereby certifies that a true copy of the attached matter has been served upon the parties listed below, by way of Institutional mail, postage prepaid, this 27th day of September 2010, such matter being a Petition

1) S.C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

2) S.C. Court of Appeals
P.O. Box 11624
Columbia, S.C. 29211

3) Attorney General's office
P.O. Box 11549
Columbia, S.C. 29211

Michael A. Sarrett # 249026
Lee C.I.,
990 Wisacky Hwy
Bishopville, S.C. 29010
(Appellant)

I declare under the penalty of perjury that the foregoing is true and correct.

September 27, 2010
Bishopville, S.C.

Michael A. Sarrett
(Appellant)

Exhibit (C)

RICHEY AND RICHEY A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

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

November 3, 2010

Michael Sarratt SCDC# 299026
Lee Correctional Institute
990 Wisacky Highway
Bishopville, SC 29010

Re: Michael Sarratt SCDC# 299026 SCDC# vs. State of South Carolina
Case No: 2010-CP-23-3720


Dear Mr. Sarratt:

This letter is in response to your letter dated October 25, 2010 about witnesses in Pennsylvania. Please be advised that my previous letter dated October 25, 2010 advised you that I do not have subpoena powers for the state of Pennsylvania. Nor can I get an Order to compel Pennsylvania to do anything. You asked for a copy of the State's Return to your appeal. Since an Anders brief was filed in your case, the State does not have to file a response unless the court requires it. In your case, the appeal was dismissed as without merit. Therefore, the State did not file a response to your appeal.

You asked about amending your PCR Application. You can amended the application up to five days before the hearing. You must forward the amendments to my office within that time frame. The Clerk of Court will not file amendments or any document that comes directly from you. Your paperwork must go through my office first. So forward your amendments or motion to my office. At this time, I do not know the hearing date. You have plenty of time to amend the PCR Application.

You also request information about a civil lawsuit concerning the money owed to you. I have no experience filing a 1983 action or any prisoner's lawsuit. Therefore, I cannot provide legal advise on that issue. Please seek the advise of an attorney who has performed those actions. Thank you and if you should have any questions, please feel free to write.

RICHEY AND RICHEY, P.A.
Yours very truly,



Rodney W. Richey

RWR/tlg

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

OCT 05 2011

S.C. SUPREME COURT

Michael A. Sarratt,

Petitioner,

v.

The State,

Respondent.

"Petition"

Petitioner argues that he has a right to obtain and review the states petition materials and judge's order impaneling the grand jury, related to him being properly impaneled for Indictments 2005-GS-23-4106, 4107, and 4108, pursuant to S.C. Code Ann. § 14-7-1630 (supp. 2003).

Impanelment documents, including the states petition, supporting materials, the impaneling judge's order, grand jury transcript and grand jury minutes may be released to a defendant. The state may, of course, redact information concerning other persons or matters under consideration by the grand jury. The release of the documents may be appropriate because (A) Section 14-7-1770 is not a complete ban on the release of the information, (B) release of the documents usually is not prohibited by Secrecy provisions or other concerns allowing the issuance of a True Bill of Indictment and (C) a defendant has the right to review the documents to determine whether to challenge the

legality of the grand jury which indicted him. See, State v. Evans, 322 S.C. 78, 470 S.E. 2d,

Whereas, Petitioner filed attached Exhibit (A), pg. 4-7, a petition for the above documents, on all parties of Record, being filed by the Greenville County Clerk of Court. Records show that all parties of Record failed to respond to such Petition that was filed, on May 22, 2009, denying Petitioner Due Process and Equal Protection of Law.

Petitioner further filed attached Exhibit (B), pg. 8-11, on all parties of Record, being filed by the Clerk of Court for Greenville County, on July 27, 2009, as he moved to compel the release of such grand jury records. Records show that all parties of record failed to respond to such motion, denying Petitioner Due Process and Equal Protection of Law.

Petitioner further filed attached Exhibit (C), pg. 12-13, a motion for Production of Documents, related to obtaining the grand jury records during his (PCR) Post Conviction Relief procedure. Such motion being served upon all parties of record and filed by the Clerk of Court for Greenville County, on May 25, 2010. Records show that all parties of record failed to respond to such motion, the (PCR) court failed to hear the motion before or after Petitioner's evidentiary hearing held on May 11, 2011, neither did his PCR counsel assist him with such issue. Petitioner was denied the opportunity and right to view the grand jury records for indictment No.(s) 2005-GS-23-4106, 4107, and 4108, to

determine whether to challenge the legality of the grand jury which indicted him for the accusations he has been convicted of. As a result of such denial and neglect of all parties of record, Petitioner was denied the opportunity to view such documents, to determine if there was an actual issue that needed to be addressed at the evidentiary hearing for petitioner's PCR. Petitioner was plainly denied Equal Protection and Due Process of law.

Whereas, Petitioner moves before this Honorable Court for an order compelling the Respondent to release all afore mentioned grand jury records, consisting of the states petition, supporting materials, the impaneling judge's order, grand jury transcript, grand jury minutes and any other records or materials related to such issue. Furthermore, Petitioner moves without prepayment, as he seeks Due Process and Equal Protection of laws as an indigent U.S. citizen, resident of S.C. and who is presently considered a ward of the state.

Respectfully Submitted,

September 30, 2011
 Pelzer, S.C.
 Michael A. Sarratt

Michael A. Sarratt # 249026
 Perry Corr. Inst.
 430 Oaklawn Rd.
 Pelzer, S.C. 29669



EXHIBIT (A)

4

Office of the Clerk of Court

Paul B. Wickensimer

Clerk of Court

Circuit Court Division

Greenville County Courthouse
305 East North Street
Greenville, SC 29601
(864) 467-8551 FAX 467-8540

Family Court Division

301 University Ridge
Post Office Box 757
Greenville, SC 29602
(864) 467-5800 FAX 467-5856

May 22, 2009

Michael A. Sarratt #299026
Che. N. 2111
Lee C.I.
990 Wisacky Hwy.
Bishopville, SC 29010

Dear Mr. Sarratt:

Enclosed please find a clocked copy of your petition. The cost for mailing your copy is \$2.00. Please send your payment via money order or cashiers check made payable to: Greenville County Clerk of Court. Please reference I467591 on your payment.

When filing motions/paperwork in the future, please provide the copy you wish to have returned to you in addition to the original motion to be filed. **Please include a self-addressed, stamped envelope as well.**

As a courtesy to you, a copy of the petition has been forwarded to the Solicitor's Office. Please be advised, however, that transcripts/minutes of Greenville County Grand Jury proceedings are not available.

Sincerely,

Paul B. Wickensimer

Proof of Service

The undersigned hereby certifies that a true copy of the attached matter has been served upon the parties listed below, by depositing a properly addressed stamped-envelope in the Institutional mail this day of May 2009, such matter being: Petition

1.) Greenville County, Clerk of Court
305 E. North St.
Greenville, S.C. 29601

2.) Thirteenth Circuit Solicitor's office
305 E. North St.
Greenville, S.C. 29601

3.) Attorney General office
P.O. Box 11549
Columbia, S.C. 29211

Michael A. Sarratt # 299026
Lee Corri. Inst.
990 Wisacky Hwy
Bishopville, S.C. 29010

Petitioner Pro se

I declare under the penalty of perjury that the afore going is true and correct.

Michael A. Sarratt

Bishopville, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE GENERAL
SESSIONS COURT

THIRTEENTH JUDICIAL
CIRCUIT

Michael A. Sarratt,
Petitioner,

vs.
State,

Respondent.

Case No.

2005-GS-23-4106, 4107, 4108

"Petition"

Now comes Petitioner, Michael A. Sarratt, the defendant in above listed criminal cases, who moves to petition the state of South Carolina, County of Greenville, to release the grand jury transcript and grand jury minutes related to the above listed criminal case.

Petitioner asserts that he has a right to obtain and review the states petition, supporting materials and the judge's order impaneling the grand jury, related to him being properly impaneled pursuant to S.C. code Ann. § 14-7-1630 (Supp. 2003)

Impanelment documents, including the states petition, supporting materials, the impaneling judge's order, grand jury transcript and grand jury minutes may be released to a defendant prior to trial or to an applicant for a PCR proceeding.

The state may, of course, redact information not related to a particular defendant's case or information concerning other persons or matters under consideration by the grand jury. Release of the documents may be appropriate because (A) section 14-7-1770 is not a complete prohibition on the release of the information, (B) release of the documents usually is not prohibited by secrecy provisions or other concerns allowing the issuance of a true bill of indictment and (C) a defendant has the right to review the documents to determine whether to challenge the legality of the grand jury which indicted him. see, State v. Evans, 322 S.C. 78, 470 S.E. 2d _____ (1996). (emphasis added).

Furthermore, under 30-4-30(C), a failure to respond within 15 days means that the disclosure of non-exempt material at

The time and place of access which the party requested is deemed approved.

"Conclusion"

Petitioner's petition should be granted, as the state of South Carolina, county of Greenville, should be ordered to release the impanelment documents, to include the states petition, supporting materials, impaneling judge's order, grand jury transcript and grand jury minutes related to above listed Criminal case within 15 days of the filing of this Petition.

Petitioner moves without prepayment as he seeks due process of law and equal protection as an indigent U.S. citizen, resident of South Carolina.

Respectfully Submitted,

Michael A. Sarratt # 299026
Petitioner Pro se

Lee Corr. Inst.
990 Wisacky Hwy
Bishopville, S.C. 29010

Bishopville, S.C.

Michael A. Sarratt



Exhibit (B)

②

Office of the Clerk of Court

Paul B. Wickensimer

Clerk of Court

Circuit Court Division

Greenville County Courthouse
305 East North Street
Greenville, SC 29601
(864) 467-8551 FAX 467-8540

Family Court Division

301 University Ridge
Post Office Box 757
Greenville, SC 29602
(864) 467-5800 FAX 467-5856

July 27, 2009

Michael Sarratt #299026
Che. N-2111
Lee C.I.
990 Wisacky Hwy
Bishopville, SC 29010

Dear Mr. Sarratt:

Enclosed please find the clocked copy of your motion. The cost for mailing your copies is \$2.00. Please send your payment via money order or cashiers check made payable to: Greenville County Clerk of Court. Please reference I467591 on your payment.

When filing motions/paperwork in the future, please provide the copy you wish to have returned to you in addition to the original motion to be filed. **Please include a self-addressed, stamped envelope as well.**

As a courtesy to you, a copy of your motion has been forwarded to the Solicitor's Office.

Sincerely,

Paul B. Wickensimer

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE GENERAL
SESSIONS COURT
THIRTEENTH JUDICIAL
CIRCUIT

Michael A. Sarratt,
Petitioner,
v.
State,
Respondent

Case No.
2005-GS-23-4106, 4107, 4108

"Motion to Compel Grand Jury Records"

Now comes Petitioner, Michael A. Sarratt, the Defendant in above listed Criminal case, who moves before this court for an Order compelling Respondent to release the Grand Jury Records related to a foregoing criminal case.

Petitioner served a petition on all opposing parties, by way of Institutional mail, postage prepaid, on May 15, 2009, seeking to obtain the impanelment documents, to include the states petition, supporting materials, impaneling judges order, grand jury transcript and grand jury minutes related to above listed Criminal case. The Petition was filed by the Clerk of Court, Paul B. Wickensimer, on May 22, 2009, and a copy forwarded to the solicitor's office. The Respondent has failed to respond to the Petition or provide the requested documents.

Petitioner argues that he has a right to obtain and review the states petition, supporting materials and judges order impaneling the grand jury, related to him being properly impaneled pursuant to S.C. Code Ann. § 14-7-1630 (Supp. 2003).

Impanelment documents, including the states petition, supporting materials, the impaneling judge's order, grand jury transcript and grand jury minutes may be released to a defendant. The state may, of course, redact information not related to a particular defendant's case or information concerning other persons or matters under consideration by the grand jury. The release of the documents may be appropriate because (A) section 14-7-1770 is not a complete prohibition on the release of the information, (B) release of the documents usually is not prohibited by secrecy provisions or other concerns allowing the issuance of a true

bill of indictment and (c) a defendant has the right to review the documents to determine whether to challenge the legality of the grand jury which indicted him. See, State v. Evans, 322 S.C. 78, 470 S.E. 2d _____ (1996). (emphasis added).

Conclusion

Under 30-4-30 (c), a failure to respond within 15 days means that the disclosure of non-exempt material at the time and place of access which the party requested is deemed approved. The Respondent has failed to respond to Petitioner's petition or provide the requested documents. The Petitioner should be granted an order compelling the Respondent to provide him a copy of the impanelment documents, to include the State's petition, supporting materials, impaneling judges orders, grand jury transcript and grand jury minutes, to determine whether to challenge the legality of the grand jury which indicted him and the issuance of a true bill, related to above listed Criminal case.

Furthermore, Petitioner moves without prepayment as he seeks Due Process and Equal Protection of law as an indigent U.S. citizen, resident of South Carolina.

Respectfully Submitted,

Michael A. Sarratt # 299026
Michael A. Sarratt # 299026
Lee Corr, Inst.
990 Wisacky Hwy
Bishopville, S.C. 29010

July 12, 2009
Bishopville, S.C.

"Proof of Service"

11

The undersigned hereby certifies that a true copy of the attached matter has been served upon the parties listed below, by depositing a properly addressed stamped-envelope in the Institutional mail this 12 day of July 2009, such matter being: Motion to compel Grand Jury Records

- 1.) Greenville County, Clerk of Court
305 E. North St.
Greenville, S.C. 29601
- 2.) Thirteenth Circuit solicitor's office
305 E. North St.
Greenville, S.C. 29601
- 3.) Attorney General office
P.O. Box 11549
Columbia, S.C. 29211

2009 JUL 12 11 51 AM
1300

Michael A. Sarratt # 299026
Lee Corr. Inst.
990 Wilsack Hwy
Bishopville, S.C. 29010

I declare under the penalty of perjury that the foregoing is true and correct,

July 12, 2009
Bishopville, S.C.

Michael A. Sarratt

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF
COMMON PLEAS

MAY 25 PM 12:12

michael A. Sarratt,

FILED CLERK OF COURT
BISHOPVILLE
GREENVILLE CO SC

Case No.

v.

2010-CP-23-3720

State

"Motion for Production of Documents"

michael A. Sarratt, Applicant in above case and caption, moves before this Honorable Court for an Order to produce documents related to Criminal Case No. 2005-GS-4106-4108.

Applicant asserts that he has a right to obtain and review the states petition, supporting materials, judges order impaneling the grand jury, grand jury transcript and grand jury minutes, related to him being properly impaneled pursuant to S.C. Code Ann. § 14-7-1630 (Supp. 2003).

Impanelment documents, including the states petition, supporting materials, the impaneling judges order, grand jury transcript, and grand jury minutes may be released to an Applicant for a PCR proceeding. The state may, of course, redact information not related to a particular defendants case or information concerning other persons or matters under consideration by the grand jury. Release of the documents may be appropriate because (A) section 14-7-1770 is not a complete prohibition on the release of the information, (B) release of the documents usually is not prohibited by secrecy provisions or other concerns allowing the issuance of a true bill of indictment and (C) a defendant has the right to review the documents to determine whether to challenge the legality of the grand jury which indicted him, State v. Evans, 322 S.C. 78, 470 S.E. 2d. (1996).

may 14, 2010
Bishopville, S.C.

Respectfully Submitted,

michael A. Sarratt
Michael A. Sarratt

f of Service

(13)

The undersigned hereby certifies that a true copy of the attached matter has been served upon the parties listed below, by depositing a properly addressed-stamped envelope in the Institutional mail this 14th day of May 2010, such matter being: Motion for production of documents

1.) Greenville County Court House
Clerk of Court
305 E. North Street
Greenville, S.C. 29601

2.) Attorney General office
P.O. Box 11549
Columbia, S.C. 29211

I declare under the penalty of perjury that the foregoing is true and correct.

May 14, 2010
Bishopville, S.C.

Michael A. Sarratt

Michael A. Sarratt # 299026
Lee Corr. Inst.
990 Wisacky Hwy
Bishopville, S.C. 29010

2010 MAY 25 PM 12:12
U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

Michael A. Sarratt # 299026

P.C.I. / C-Y-2

430 Oaklawn Rd.

Pelzer, S.C. 29669

RECEIVED

SEP 30 2011

REG. MAILROOM

Legal Mail

S.C. Supreme Court Clerk

P.O. Box 11330

Columbia, S.C. 29211



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

August 18, 2011

RECEIVED

AUG 18 2011

S.C. Supreme Court

Ms. April P. Herron
Circuit Court Reporter
P O Box 17675
Greenville, SC 29606

Dear Ms. Herron:

Please provide us with the following transcript:

Michael Anthony Sarrat v. State of South
Carolina

Case #: 10-CP-23-03720

County: Greenville

Date of Trial: May 11, 2011

Presiding Judge: G. Edward Welmaker

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

RICHEY AND RICHEY

ATTORNEYS AT LAW

A Professional Association

PCR

Rodney W. Richey
Lola S. Richey

24 Vardry Street, Suite 301
Greenville, South Carolina 29601

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

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

Offices:
Greenville/Spartanburg

Website:
www.richeyandrichey.com

August 1, 2011

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

Re: Michael Sarratt SCDC# 299026 SCDC# vs. State of South Carolina
Case No: 2010-CP-23-3720

Dear Mr. Shearouse:

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

RICHEY AND RICHEY, P.A.

Yours truly,


Rodney Richey

RWR/tlg
enclosures

cc: Karen Ratigan, Esquire

RECEIVED

AUG 04 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE G. EDWARD WELMAKER

2010-CP-23-3720

Michael Anthony Sarratt,
aka Leroy Frey, Jr., SCDC#: 299026,

APPELLANT,


against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Michael Sarratt appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable G. Edward Welmaker, Circuit Judge on May 11, 2011 and Order issued on July 20, 2011 and filed on July 27, 2011. The Appellant received notice of the judgment on August 1, 2011.


Rodney W. Richey
Attorney for the Appellant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503

RECEIVED

AUG 04 2011

SOUTH CAROLINA SUPREME COURT

Other Counsel of Record:
Karen Ratigan, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE G. EDWARD WELMAKER

2010-CP-23-3720

Michael Anthony Sarratt,
aka Leroy Frey, Jr., SCDC#: 299026,

against

STATE OF SOUTH CAROLINA,

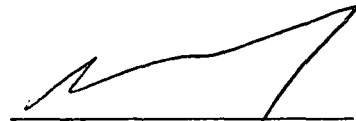
RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on August 1, 2011, addressed to their attorney of record, Karen Ratigan, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: August 1, 2011

RICHEY & RICHEY, P.A.



Rodney W. Richey
Attorney for the Appellant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503

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

JUDGMENT IN A CIVIL CASE

CASE NO.: 2010CP2303720

Michael Anthony Sarraff / aka
Leroy Eugene Frey Jr. 299076

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

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

IT IS ORDERED AND ADJUDGED:

See attached order;

Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this _____ day of _____, 2011.

Court Reporter:

PRESIDING JUDGE -

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

Rodney Richey

Karen Ratigan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Michael Anthony Sarratt,)
 a/k/a Leroy Eugene Frey, Jr.,)
 S.C.D.C. No. 299026,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-3720

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 COURT & CONFERENCE ROOM

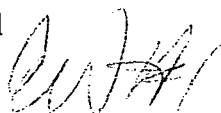
2011 JUL 27 P 3:00

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 10, 2010. The Respondent made its return on September 16, 2010. An evidentiary hearing into the matter was convened on May 11, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Evelyn Dawkins and the Applicant's trial counsel, Elizabeth P. Wiygul, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant

1


was indicted at the May 2005 term of the Greenville County Grand Jury for carjacking (2005-GS-23-4106, count 1), possession of a weapon during commission of a violent crime (2005-GS-23-4106, count 2), and murder (2005-GS-23-4108). He was represented by Elizabeth P. Wiygul, Esquire.

After the State called the case to trial, the Applicant was found guilty. On June 14, 2007, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of thirty (30) years for carjacking, five (5) years for possession of a weapon during commission of a violent crime, and fifty (50) years for murder.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Sarratt, Op. No. 2010-UP-046 (S.C. Ct. App. filed January 27, 2010).

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Judicial error.
3. Subject matter jurisdiction.
4. Constitutional violations.
5. Prosecutorial misconduct.

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 their

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).



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 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he had four (4) or five (5) meetings with trial counsel and that they discussed his version of events and reviewed some of the discovery materials. The Applicant stated the only evidence linking him to these crimes were the statements and testimony of his co-defendant (Peggy Gladfelter). The Applicant stated he always wanted to go to trial on these charges. The Applicant stated he and trial counsel also discussed possible defense strategies such as obtaining medical records regarding his fractured hand and obtaining Peggy’s psychiatric

records. The Applicant stated he could not have committed the crime because of his injured hand and that, while trial counsel did make this argument, she failed to introduce his most recent medical records. The Applicant stated trial counsel should have challenged the autopsy report because it did not state whether the crime was committed by a left- or right-handed individual. The Applicant stated trial counsel should have introduced the surveillance videos at trial, as they would have proven his innocence. The Applicant stated trial counsel failed to investigate the facts and evidence surrounding the victim's vehicle (which was found in Alabama). The Applicant stated trial counsel should not have withdrawn her objection to the admission of the knives that were seized when he was arrested.

Evelyn Dawkins, the Applicant's mother, stated she told trial counsel that she knew someone who had been at the jail with Peggy (the Applicant's co-defendant) and they could testify that Peggy confessed to the crime. Dawkins stated that, during the jury's deliberations, the trial judge said he had gone back and "had a talk" with the jury.

Trial counsel testified she filed discovery motions in this case and reviewed those materials with the Applicant several times. Trial counsel testified she and the Applicant watched several surveillance videos and discussed his version of events. Trial counsel confirmed the Applicant always wanted a jury trial. Trial counsel testified she knew Peggy would be the State's key witness and that her defense strategy was to attack her credibility. Trial counsel stated she was never able to speak to the jail employee who allegedly heard Peggy confess. Trial counsel stated she presented evidence and testimony about the Applicant's fractured hand at trial. Trial counsel stated she could not have obtained Peggy's medical records, but did ask questions on cross-examination about her disability. Trial counsel stated she reviewed the autopsy report and spoke to the coroner. Trial counsel testified the Applicant was not seen on the videos. Trial

counsel testified she received the subpoena and paperwork from the State regarding the evidence located in Alabama (the victim's car) and that there was no reason to object to that evidence. Trial counsel testified she could not recall why she withdrew her objection to the admission of the Applicant's knives into evidence. Trial counsel testified she did not recall the judge entering the jury room in order to motivate them to reach a verdict.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have contacted the jail employee who – according to Ms. Davis – heard Peggy confess to the crime. Trial counsel testified she was aware of this individual but was not able to speak with her. Regardless, as this alleged witness did not testify at the evidentiary hearing, any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.”) (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have obtained: his most recent medical records, Peggy's records of prior psychiatric treatment, and complete documentation from Alabama about the victim's car. This Court notes that trial counsel developed the issue at trial that, as the Applicant's hand was fractured, he could not have committed the crime. (Trial transcript, p.255; p.287). This Court also notes trial counsel's

testimony that she was not able to obtain Peggy's psychiatric records and that she could not think of a reason to challenge the evidence from the recovery of the victim's car in Alabama. Regardless, this Court finds it cannot speculate upon the impact all of these records could have had upon the trial because they were not produced at the hearing. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have challenged the autopsy report and hired an independent expert. This Court notes trial counsel testified that she spoke to the coroner in this case and determined it would not have benefited the case to determine whether the wound were inflicted by the assailant's left or right hand. This Court finds trial counsel made a strategic decision not to retain an expert on this issue. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). Regardless, this Court notes the Applicant failed to produce any evidence or testimony or expert opinion that an independent evaluation of the victim's autopsy was warranted. As such, this Court cannot speculate upon whether an expert opinion on the matter would have affected the defense case. See Bannister v. State, 333 S.C. at 303, 509 S.E.2d at 809; see also Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative").

This Court finds the Applicant failed to meet his burden of proving trial counsel should have introduced the gas station surveillance video at trial. Trial counsel testified the admission

of the video would not have added to the trial strategy she pursued – to impeach Peggy’s credibility as the State’s key witness. Trial counsel further noted there was testimony at trial that the Applicant was not visible on the video. Regardless, as the Applicant failed to produce this video at the PCR hearing, this Court cannot speculate as to either its contents or its potential impact upon the Applicant’s case. Cf. Palacio v. State, 333 S.C. at 513, 511 S.E.2d at 66.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have moved to suppress the State’s introduction of various knives. The Applicant claims trial counsel was ineffective in initially objecting to the admission of this evidence and then later withdrawing that objection before the trial judge ruled upon their admissibility. (Trial transcript, pp.397-402). While trial counsel could not recall why she withdrew her objection, this Court finds it would be a strategic call that – under the circumstances of this case – would be objectively reasonable. This Court finds that, regardless, the Applicant has failed to prove he suffered any prejudice as a result of trial counsel’s action in light of the overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel’s deficient performance could have reasonably affected the result of defendant’s trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected when the trial judge allegedly entered the jury room during deliberations. Trial counsel testified she did not recall this occurring during the trial but that, regardless, she likely would not have objected. This Court finds the Applicant has failed to prove either that the trial judge entered the jury room or that he influenced the jury during their deliberations. As such,

this issue is without merit.

Accordingly, this Court finds the Applicant failed to prove the first prong of Strickland – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed errors or omissions in her representation of the Applicant. In fact, this Court notes the trial judge consistently praised trial counsel’s performance in this case and went so far as to comment “it’s been incredible” that her co-counsel had not needed to offer assistance during the trial. (Trial transcript, p.400; p.580). This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

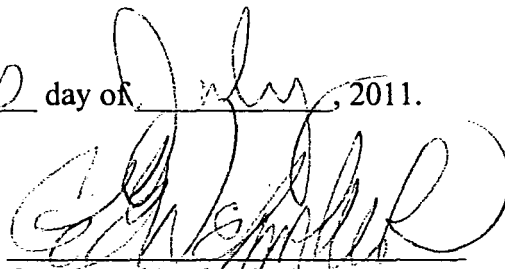
This Court advises the Applicant that he must file a notice of intent to appeal within thirty

(30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 20 day of July, 2011.

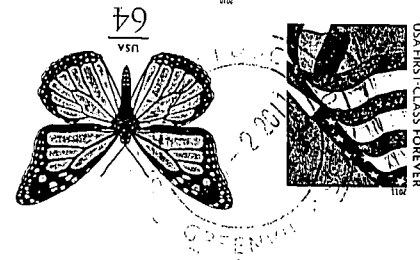


G. Edward Welmaker
Resident Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

Richey & Richey, PA
Attorneys at Law
Post Office Box 10916
Greenville, South Carolina 29603

*Michael
Jarrett*



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