

STATE OF SOUTH CAROLINA  
In The Supreme Court

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**S.C. Supreme Court**

CERTIORARI TO RICHLAND COUNTY  
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

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Appellate Case No. 2013-000653

LEHENRY S. RILEY,.....RESPONDENT,

v.

STATE OF SOUTH CAROLINA,..... PETITIONER.

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

- I. Did the post-conviction relief court err in granting Respondent relief under the Interstate Agreement on Detainers?
  - A. Did the post-conviction relief court err in determining that Article IV of the Interstate Agreement on Detainers applied in the present case?
  - B. Did the post-conviction relief court err in determining that the State's continuance motion was improperly granted?
- II. Did the post-conviction relief court erred in its determination that Counsel was ineffective for advising Respondent to plead guilty, where there is no evidence of probative value to support a determination that Counsel's performance fell below an objective standard of reasonableness?

## STATEMENT OF THE CASE

Respondent was indicted during the May 2002 term of the Richland County Grand Jury for Armed Robbery (2002-GS-40-731) and Kidnapping (2002-GS-40-732). (App. pp. 123 - 130). Following his release on bond, Respondent traveled to Florida, where he subsequently was arrested for and convicted of additional charges. After serving approximately a year-and-a-half on his Florida sentence, Respondent sent a request to the Fifth Circuit Solicitor's Office for the disposal of his pending South Carolina charges pursuant to Article III of the Interstate Agreement on Detainers.<sup>1</sup> (App. pp. 64-65). Respondent's request was served upon Fifth Circuit Solicitor's Office on June 18, 2008. (App. p. 13). Respondent was subsequently transported to and arrived in South Carolina on August 5, 2008. (App. p. 3).

On December 3, 2008, a hearing on the State's motion for continuance was held before the Honorable J. Michelle Childs. (App. pp. 1-22). The State, represented by Assistant Solicitor Dolly Justice Garfield, moved for a continuance due to the unavailability of the victim, a necessary witness for trial who was visiting family in Hawaii, as well as scheduling concerns with the docket. Respondent was present for this hearing with his counsel, James D. Cooper, III, of the Richland County Public Defender's Office (hereafter "Counsel"). Over opposition from Respondent, Judge Childs granted the State's motion for continuance, finding that good cause existed, and granted an extension of one week. (App. p. 21)

On December 12, 2008, Respondent, alongside Counsel<sup>2</sup>, appeared before the Honorable Clifton Newman, where he pled guilty as indicted to kidnapping and to the lesser-included offense of strong arm robbery. Pursuant to negotiations with the State, Judge Newman sentenced Respondent to ten years imprisonment for common law robbery and seven years imprisonment for kidnapping, with the sentences to be served concurrently. Additionally, an unrelated Burglary in the Second Degree charge was dismissed pursuant to plea negotiations with the State. Respondent did not appeal his convictions or sentences. (App. pp. 28-44).

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<sup>1</sup> The Interstate Agreement on Detainers is codified at S.C. Code Ann. § 17-11-10 (1976).

<sup>2</sup> Respondent was also represented by J. Rhodes Bailey, also of the Richland County Public Defender's Office, at this guilty plea proceeding.

Thereafter, Respondent filed an application for post-conviction relief on October 19, 2009 (C.A. No. 2009-CP-40-7428). (App. pp. 45-51). Petitioner filed its Return on March 19, 2010, requesting an evidentiary hearing be held. (App. pp. 52-55). A hearing was convened March 2, 2011, at the Richland County Courthouse before the Honorable L. Casey Manning. (App. pp. 57-90). Respondent was present and represented by Jeremy Thompson, Esquire. Petitioner was represented by Assistant Attorney General Brian Petrano. At the conclusion of the hearing, the court took the matter under advisement and requested proposed Orders from each party. By written Order dated March 1, 2013, and filed March 4, 2013, Judge Manning granted relief and dismissed Respondent's charges with prejudice. (App. pp. 93-107.)

Petitioner filed a Motion to Alter or Amend a Judgment Pursuant to Rule 59(e), SCRPC, asking the court to enter an Order denying Respondent relief, or in the alternative, incorporate its attached proposed Order of Dismissal into the record to preserve all arguments for appellate review. (App. pp. 108-119). By written Order filed March 20, 2013, the court denied Petitioner's motion to reconsider but made its proposed Order part of the record.

This Petition follows.

## STANDARD OF REVIEW

In a post-conviction relief proceeding, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The reviewing court may reverse the post-conviction relief court's factual findings where the record lacks "any evidence of probative value" to sustain such findings. See Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (citing Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996) ("[A] PCR judge's findings should not be upheld if there is no probative evidence to support them")). Further, where the post-conviction relief court's decision is premised on an error of law, the reviewing court must reverse. Ard, 372 S.C. at 331, 642 S.E.2d at 596 ("this Court will reverse the PCR court's decision when it is controlled by an error of law.").

## ARGUMENT

### **I. The post-conviction relief court erred in granting Respondent relief under the Interstate Agreement on Detainers.**

#### **A. The post-conviction relief court erred in determining that Article IV of the Interstate Agreement on Detainers applied in the present case.**

The Interstate Agreement on Detainers (hereafter “IAD”), codified as S.C. Code Ann. § 17-11-10 (1976), encourages “the expeditious and orderly disposition” of charges that an out-of-state inmate faces within another jurisdiction. Under Article III of the IAD, which is applicable when a prisoner initiates the IAD request for disposition, the State<sup>3</sup> has 180 days to dispose of any related charges. S.C. Code Ann. § 17-11-10 Art. III (a). However, under Article IV of the IAD, applicable when the State is the invoking entity, the State has 120 days to bring the prisoner to trial. S.C. Code Ann. § 17-11-10 Art. IV. In the present matter, the post-conviction relief court erred in its determination that “Article IV was applicable in this case” and therefore, the State had 120 days to dispose of Respondent’s charges. (App. p. 101).

Respondent, who was incarcerated within the Florida Department of Corrections, made an inmate request for disposition of his South Carolina charges pursuant to the IAD. Respondent testified that he first learned that he had unresolved charges pending within the State of South Carolina of from his classifications officer at the Florida Department of Corrections. (App. p. 65). He testified that after learning of these charges, he “filed for request for final disposition” on June 11, 2008. (App. pp. 65-66). The Fifth Circuit Solicitor’s office, the appropriate “State” party, did not receive the documents until served on June 18, 2008. (App. p. 13). As Respondent was the initiating party who invoked the protections of IAD, the applicable time period by which the charges need to be disposed of is within 180 days “after [Respondent] cause to be delivered

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<sup>3</sup> “State” is being used to represent any jurisdiction such as a county, city, or state out of which a prisoner has pending charges.

the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for final disposition . . . ." The phrase "caused to be delivered" as used in the IAD has been interpreted to mean the date delivered to the recipient, not the date mailed. Fex v. Michigan, 507 U.S. 43 (1993). Accordingly, the applicable start date per the IAD in this case is June 18, 2008 and the applicable time period is 180 days. Using the 180 day period established by Article III of the IAD, final disposition of Respondent's case must be achieved on or before December 15, 2008. Respondent pled guilty pursuant to negotiations with the State on December 12, 2008; therefore, his plea was well within the time constraints imposed by the IAD.

Respondent argued that he was transported to and arrived in South Carolina on August 5, 2008, and that by requesting his transfer to South Carolina, the State invoked Article IV of the IAD. Respondent cited no case law to support the proposition that the mere transport of an inmate pursuant to his Article III request triggers the shorter 120 day provisions as set forth in Article IV. However, the post-conviction relief court found the State's request for Respondent, not made until *after* receiving his initial request for final disposition, coupled with the State's failure to object to Respondent's assertions that the continuance hearing that Article IV and its shorter time frame applied, demonstrated that the State requested custody pursuant to Article IV and "triggered the 120-day time limit of Article IV by requesting the Applicant's transfer to South Carolina." (App. p. 100). This argument is flawed on its face and must fail. To find that the State "triggered the 120-day time limit of Article IV by requesting [an inmate's] transfer to South Carolina" would result in inapplicability of Article III in all situations, as inmates incarcerated out-of-state cannot avail themselves to the State without State assistance of some kind. Inmates incarcerated out-of-state never have the authority to transfer themselves to South

Carolina for a final disposition of their pending charges. Rather, after submitting a request pursuant to the IAD, the out-of-state inmate must wait for the State of South Carolina to request delivery of the inmate for final disposition of pending charges.

Using the 180 day period established by Article III of the IAD the Respondent's case was set to expire on December 15, 2008. Respondent pled guilty on December 12, 2008; therefore, his plea was within the time limit established by the Article III. The post-conviction relief court erred as a matter of law in determining that Article IV of the IAD applied and therefore must be reversed. See Ard, 372 S.C. at 331, 642 S.E.2d at 596.

**B. The post-conviction relief court erred in determining that the State's continuance motion was improperly granted.**

Even if Article IV and its resulting 120-day time limits were applicable to the present case<sup>4</sup>, the post-conviction relief court erred in its determination that the State's motion for continuance was improperly granted. Both Article III and Article IV of the IAD provide that "for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance." S.C. Code Ann. §17-11-10, Article III(a); Article IV(c). In the present case, the State moved for a continuance of the matter to the December 15, 2008 term of court, beyond the current trial date of December 8, 2008. (App. pp. 3-4). At the motion's hearing heard by the Honorable J. Michelle Childs on December 3, 2008, the State argued that good cause supported such a continuance, as the victim—a necessary witness at trial—was in Hawaii visiting family and would not return until the evening of December 10, 2008. (App. p. 4). Counsel for Respondent vigorously opposed a continuance of this matter and asserted that Article IV of the IAD required that Respondent's charges be resolved by December 4, 2008, within 120 day of August 5, 2008 of when

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<sup>4</sup> Petitioner still asserts that the post-conviction relief improperly determined that Article IV, and its 120-day time limit, were applicable in the present case, as set forth above.

Respondent was delivered to South Carolina. (App. pp. 5-6). After hearing arguments from both the State and Respondent, Judge Childs found that “good cause” existed to grant a continuance of one week. (App. p. 21).

Judge Childs acted well within her discretion in granting the State’s continuance motion for good cause. See State v. McMillian, 349 S.C. 17, 561 S.E. 2d 602 (2002) (holding that a trial judge’s denial of a motion for continuance will not be disturbed absent a clear abuse of discretion). The State presented a valid reason for the continuance: the victim, a necessary witness, was unavailable on pre-selected trial date of December 8, 2008. (App. p. 4). Unlike other cases where the defendant’s case has been dismissed pursuant to IAD for failure to prosecute within the proscribed time period, the State asked for a continuance for a valid reason. See State v. Holbrook, 274 S.C. 4, 260 S.E.2d 181 (1979) (Incarceration for 124 days before trial, where State did not move for continuance and offered no excuse for failure to do so, required dismissal of the charges for denial of speedy trial within the time limits of this Act.). The post-conviction relief court erred in its determination that the State’s continuance motion was improperly granted.

Therefore, even if Article IV of the IAD imposed a 120 day time limit from August 5, 2008 for disposing of Respondent’s charges, Judge Childs properly granted the State an extension of one week and Respondent’s plea was not made in violation of the IAD.

**II. The post-conviction relief court erred in its determination that Counsel was ineffective for advising Respondent to plead guilty, where there is no evidence of probative value to support a determination that Counsel’s performance fell below an objective standard of reasonableness.**

In its Order granting relief, the post-conviction relief court determined that Counsel’s “failure to advise [Respondent] that the IAD motion could be successful on appeal, even if unsuccessful at trial, constituted deficient performance.” (App. p. 103). In support of its ruling,

the post-conviction relief court cited that Counsel testified that “it was his opinion that any IAD motion would be unsuccessful at trial” and it was “clear [from Counsel’s testimony] that Counsel did not advise [Respondent] that an unsuccessful motion at trial *could* be successful if raised on appeal.” (Emphasis in original) (App. p. 103). However, this is an incorrect summary of Counsel’s testimony at the post-conviction relief hearing.

At the hearing, Counsel testified that as follows:

[Q]: If the case had gone to trial, would you have been prepared to argue that your client’s rights under the [IAD] had been violated and that the case should be dismissed?

[A]: Yes, I mean, we discussed that I was going to keep bringing it up. I mean, just because I had lost that first time, I mean, it was something that I was going to renew probably not to the judge’s liking but, I mean, I was just going to keep renewing it until he made me be quite basically.

[Q]: And you had those discussions with [Respondent]?

[A]: As I recall I did, yes, sir.

(App. p. 70 line 24 – p. 80 line 10.)

[Q]: Did you advise your client if he had – if you had made the motion knowing that you’re probably going to lose that he could have appealed the denial of that motion to a higher court?

[A]: I don’t specifically recall saying those words but I do remember telling him, you know, Henry, were going to keep bringing this up as often as we can. To be perfectly honest which I am trying to be, I do not recall saying that we can specifically appeal but I remember telling him were going to keep bringing this up as long as we can.

(App. p. 80 line 21 – p. 81 line 6).

Counsel also testified that after these discussions, Applicant elected to take advantage of the State’s favorable plea offer for ten years and the dismissal of unrelated charges. (App. p. 82).

Additionally, Respondent testified: “I’m not questioning what [Counsel] was doing as far as his

tactic toward how he handled the case. I'm only saying that I – that my rights were violated under the interstate agreement on detainers.” (App. p. 71 lines 8-12). Based on the record, there is no evidence of probative value to support the post-conviction relief court’s ruling that counsel’s performance was deficient. Respondent failed to present any evidence which would show Counsel’s actions constituted deficient performance with the circumstances presented to Counsel at the time of the guilty plea. Therefore, the post-conviction relief court erred in its determination that Counsel was ineffective.


**CONCLUSION**

For the reasons stated above, this Court should grant the Petition for Writ of Certiorari and reverse the post-conviction relief court's ruling. Should this Court grant Certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

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December 3, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County  
The Honorable L. Casey Manning, Circuit Court Judge  
Appellate Case No. 2013-000653

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LEHENRY RILEY,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

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**PROOF OF SERVICE**


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I, Megan E. Harrigan, certify that I have served the within **Petition for Writ of Certiorari and Appendix** on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 3<sup>rd</sup> day of December, 2013.

  
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