

The Supreme Court of South Carolina

Johnny Lee Paden,

Petitioner,

v.

State of South Carolina,

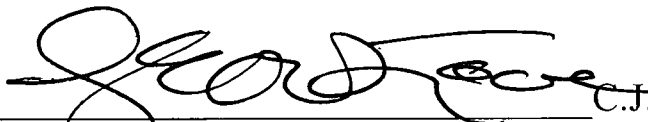
Respondent.

The Honorable G. Edward Welmaker
Greenville County
Trial Court Case No. 2010-CP-23-01663

ORDER

Petitioner seeks an extension until April 30, 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 20, 2012

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

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

 ORIGINAL

RECEIVED

APR 18 2012

S.C. Supreme Court

JOHNNY LEE PADEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

(4)

Counsel for Tyrone Ransom respectfully petitions this Court for a **final 12 days, until April 30, 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.

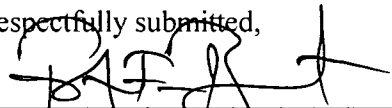
3. Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. *See* Evitts v. Lucey, 469 U.S. 387 (1985) (to be effective appellate counsel must 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 has 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. 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.

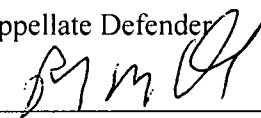
5. In the month of April, counsel is assigned to file 24 briefs and writ of certioraris.
6. As indicated by the signature below, the Attorney General's Office does not oppose the request.
7. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a **final 12 day extension, until April 30, 2012** in which to file her client's petition for writ of certiorari and appendix.

Respectfully submitted,



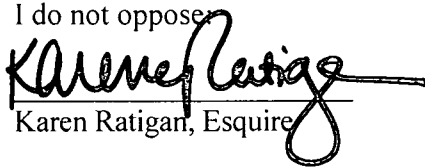
Elizabeth A. Franklin-Best
Appellate Defender



Robert M. Dudek
Chief Appellate Defender

April 18, 2012

I do not oppose



Karen Ratigan, Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Greenville County

RECEIVED

G. Edward Welmaker, Circuit Court Judge

MAR 19 2012

S.C. Supreme Court

JOHNNY LEE PADEN,

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 Johnny Lee Paden respectfully petitions this Court for a **final 30 days, until April 18, 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 today. 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 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.

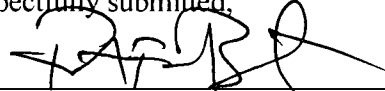
5. In the month of March, counsel is assigned to file 22 briefs and writ of certioraris.

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

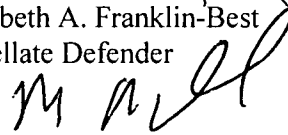
7. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a **final 30 day extension, until April 18, 2012**, in which to file her client's petition for writ of certiorari and appendix.

Respectfully submitted,



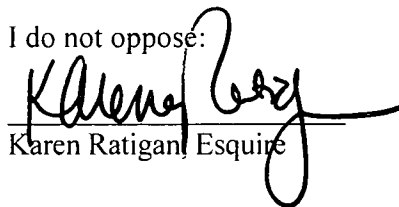
Elizabeth A. Franklin-Best
Appellate Defender



Robert M. Dudek
Chief Appellate Defender

March 19, 2012

I do not oppose:


Karen Ratigan, Esquire

The Supreme Court of South Carolina

Johnny Lee Paden,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable G. Edward Welmaker
Greenville County
Trial Court Case No. 2010-CP-23-01663

ORDER

For good cause shown, the request for an extension until March 19, 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 *Suenda J. Shealy*
Clerk

Columbia, South Carolina *Chief Deputy*

February 15, 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

FEB 15 2012

S.C. Supreme Court

JOHNNY LEE PADEN,

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 Johnny Lee Paden 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 tomorrow, February 16, 2012. 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 15, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

JOHNNY LEE PADEN,

PETITIONER,

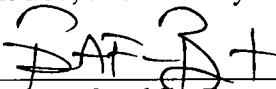
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

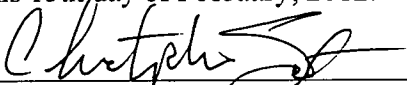
The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of February, 2012.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 15th day of February, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 16, 2021



ORIGINAL

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 17, 2012

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

RECEIVED

JAN 17 2012

S.C. Supreme Court

Re: Johnny Lee Paden 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 17 2011

November 17, 2011

S.C. Supreme Court

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

Dear Mr. Shearouse:

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

Johnny Lee Paden v. State of South Carolina

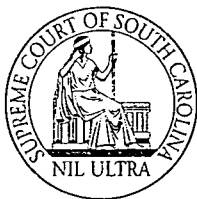
11/17/2011

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

Thank you for your assistance in this matter.

Sincerely,

Sharon A. Graham
Administrative Coordinator



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 27, 2011

Johnny Lee Paden #154700
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Paden, Johnny Lee v. The State

Dear Mr. Paden:

This responds to your letter and motion dated September 20, 2011. Since you are represented by counsel in this matter, no action will be taken on your pro se letter. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

Any concerns you have about this matter should be raised to the Division of Appellate Defense. The address for that Office is P.O. Box 11589, Columbia, SC 29211, and their phone number is 803-734-1343. It is our understanding that Appellate Defense has requested the transcript in this matter and will assign an attorney once the transcript is received.

Very truly yours,

Daniel E. Shearouse
DS

CLERK

DES/jj

cc: Appellate Defense
Assistant Attorney General Karen Ratigan

SCC # 154700

SEPT. 20, 2011

Johnny L. Paden
P.C.E.

430 OAKLAWN RD.

Greer, SC 29649

RECEIVED

SEP 26 2011

S.C. SUPREME COURT

South Carolina Supreme
Court Clerk Office

P.O. Box 1330

Columbia, SC 29211

Dear Honorable Clerk

Please find enclosed my Motion of STAY under Rule 241. Also please find Documents as evidence that a good Faith Effort was made in a timely manner to get a 59E Motion in the Courts to preserve these issues. I made Produced Created documents handwritten / will not be copied so I was unable to serve concerned Parties. This matter is further complicated by the fact that I am indigent and no Notary available at this juncture must wait to be called. Words cannot express the measure of gratitude in Advance. I would extend to you for providing clock stamped copies to the interested parties and lastly myself at the above captioned address. Please be advised I have not been assigned an Appellant Attorney yet. and my previous attorney say he want nothing to do with my regents, claim he has NO Jurisdiction.

With Kind Regards

Johnny L. Paden Jr.
SCC # 154700

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Johnny L. Paden, SCOC #154700
Appellant

against
STATE OF SOUTH Carolina,
Respondent

2010-CP-231663

MOTION ~~TO~~ ^(ORDER) TO

STAY Under Rule
241 Superseded in
Civil Action

Pursuant to Rule 241 the Appellant here
by moves to stay the order Filed on July 27
2011 with the Greenville County Clerk of Court
and received by the Appellant on AUG. 1, 2011.

Appellant Request that the Supreme Court
Review the order on page 8 of All Other
Allegations that were raised in the PCR Application
which Judge wellmaker Claims Appellant Failed
to present any evidence regarding such allegations and
that Appellant Filed A SRE Motion with his Attorney
of Records, and attorney would not file the
motion Appellant went on to Filed with the Clerk
of Court of Greenville who referred him back
to Richey & Richey Law Firm, and when Appellant
Informed the Supreme Court of this behavior
and still has gotten No Response. For the
Fore going Reasons, the Appellant Request

This Court to Preserve the Amended Grounds

1. Ineffective Assistant of Counsel A-K
2. Violation of Due process and state Amendment
3. After Discovered Evidence
4. Prosecutorial Misconduct

① In Ground ① Appellant accuser was not present at the trial (SEE Transcript and Discovery accuser's fled state for Trial Material witnesses, but statements brought up during trial prejudice defendant failure to challenge the probable cause determination and indictment which was faulty. SEE witness statements failure to object to mental physical abuse testimony by co-defendant SEE Gina Parker Transcript. Burden shifting, All witnesses was illegal immigrants who lied to authorities and fled state prior to trial even Burn down crime scene building.

② WAS NOT allowed to confront accuser and have compulsory process to obtain witnesses in his defense. SEE Transcript of Record.

③ TOIN Cloth in palm of decedent hand torn from the Assistant clothes No kind of Evaluation to compare to Appellant clothes that was confiscated No Mitochondrial Testing of the hair found in decedent Grasp. To determine ethnicity only STR PCR Test No Microscopic testing.

④ TO intentionally wrongfully convicted and allow perjured testimony by all other 2 years after the crime.

IN Conclusion Appellant Feels only if you review his Discovery along with transcript and video of crime scene review DNA of Crime Scene and Unknown hair Fibers Blood From crime scene is the only way he can be excluded my innocence are in Black and white Documents but everything has to be reviewed Including the DNA Evidence in order to prove his innocence and STOP the STATE from Depriving him of Due Process of Law he does not have the money to pay for the Experts, But he knows he have never Killed Anyone, For the Foregoing Reasons Appellant Request the COURT TO STAY the Allegations and allow his 59E Motion he Filed with Richey and Richey Law Firm who could have Destroyed the legal documents that was requested Immediately after The PCR Hearing on May 12, 2011

This Day of Sept 20, 2011

I no Notary

My Commission

expires no Notary

S. John Paul

Sincerely
John S. Paul

#154700 SCDC

P.O. Box 430 Oakland Road

PULZER, SC 29649

August 5, 2011

Mr. Johnny L. Paden #154200

Perry Correctional Institution

~~430~~ 430 Oaklawn Rd.

Pelzer, SC 29669

Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 East North Street
Greenville, SC 29601

Dear Honorable Clerk - Mr. Wickensimer

Please find enclosed my 59E Motion to Alter or Amend which Richy Richy Law Firm would not file for me as my attorney of record for me to address and send issued to appellant defense after such request the order was issued July 20 2011 Filed July 27 2011 Applicant received order August 1. Due to SCBC Policies Inmate Produced / Created documentation Typed or handwritten will not be copied so I was unable to serve all concerned parties. This matter is further complicated by the fact that I am indigent. No Money available at the time.

Words cannot express the measure of gratitude in advance - I would extend to you for providing clock stamped copies to the court, the solicitor and lastly myself at **RECEIVED** the above captioned address.

Sincerely

Johnny Paden

SEP 26 2011

S.C. SUPREME COURT

RICHEY AND RICHEY
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

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

September 6, 2011

Johnny Paden SCDC# 154700
Perry Correctional Institute
430 Oaklawn Road
Pelzer, SC 29669

Re: Johnny Paden SCDC# 154700 vs. State of South Carolina
Case No: 2010-CP-23-1663

Dear Mr. Paden:

This letter is in response to your letter asking about a 59E Motion. As you know, I filed a Notice of Appeal in your case and the jurisdiction of your case is with the South Carolina Supreme Court. Please contact your attorney with Appellate Defense, PO Box 11433 Columbia, SC 29211-1433, if you have further questions.

RICHEY AND RICHEY, P.A.

Yours very truly,


Rodney W. Richey

RWR/tlg

RICHEY AND RICHEY
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

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

April 21, 2011

Johnny Paden SCDC# 154700
Perry Correctional Institute
430 Oaklawn Road
Pelzer, SC 29669

Re: Johnny Paden SCDC# 154700 vs. State of South Carolina
Case No: 2010-CP-23-1663

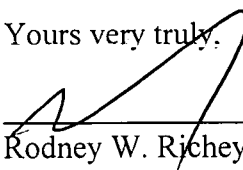
Dear Mr. Paden:

Your last letter provided me with proposed witnesses for your hearing. Please be advised that some of these witnesses you provided do not have addresses. Please forward the addresses and telephone numbers of these witnesses.

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

RICHEY AND RICHEY, P.A.

Yours very truly,



Rodney W. Richey

RWR/tlg

STATE of South Carolina
County of Greenville

Johnny L. Paden #154700
Applicant

V.

STATE OF SOUTH Carolina
Respondent

~~7/27/11~~ IN The Court of
Common Pleas
2010-CP-231663

Motion to Alter or Amend
Judgement

Pursuant to Rule 59(e) SCRPC,
the Applicant hereby moves
to Alter or Amend the judgement
of this Court Filed on ~~July 27~~ ^{JULY} 27, 2011
and received by the Applicant on AUG

1, 2011 Applicant has previously requested that Rodney W.
Richey file a motion of 59E IF he did not Preva.
{ We will not file one for Applicant }

Applicant Request that in the order of
Dismissal { All other Allegations } that was not
addressed in the ~~order~~ ^{order} be reviewed by the
the Supreme Court, AND For the Foregoing reasons,
the Applicant requests this Court to Alter or Amend
the Dismissal and preserve 1, 2, 3, 4 of the Motion
to Amend the PCR application grounds.

MR. Paden PCR hearing was held MAY 12 2011
At the Greenville County Courthouse Order issued July 20
2011 and Filed July 27 2011 Applicant Request that
in the order where Judge Welmaker states The Applicant
said He did ~~not~~ Cut the Victim with a Razor

This statement is wrong and Applicant has never said anything about cutting anyone. Judge Welmaker order has prejudice the Applicant, Unless the order can be rewrite as well as all grounds that were argued be reviewed By the Supreme Court. (Page) 4 misinterpreted statement (order)

Conclusion

For the foregoing reasons the Applicant Requests this court to Alter or Amend the dismissal and preserve issues (1) Ineffective assistance of counsel (2) Violation of Due process and Sixth Amendment striking the only Black male in jury pool and accuser not being present, Expert Request (See Transcript 2nd day of trial (3) After Discovered evidence descendant (grab cloth and hair which could be exculpatory in nature (4) Prosecutorial misconduct state intentionally, allowed jury to wrongful convict when they know DNA evidence points to third party Guilt.

This Day of August 5, 2011

With Kind

Regards

Johnny L. Paden

Perry Correctional Inst.

430 Oak Lawn Rd

Pekzer, St. 29469



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

Greenville County Clerk of Court
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

RE: Johnny Paden SCDC# 154700 vs. State of South Carolina
Case No: 2010-CP-23-1663

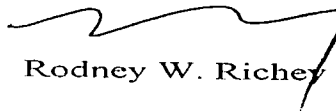
Dear Sir/Madam:

Enclosed please find Notice of Appeal and Affidavit of Service and one copy with regard to the above-captioned case. By copy of this letter I am serving the attorney for Respondent with a copy of same. Please file a copy with your office returning the remaining filed copy to me in the self-addressed, stamped envelope provided.

Thank you for your assistance. Should you have any further questions, please do not hesitate to contact our office.

Very truly yours,

RICHEY AND RICHEY, P.A.



Rodney W. Richey

RWR/tlg
Enclosures

cc: Karen Ratigan, Esquire
SC Commission on Appellant Defense

**Greenville County Forensic Division
CRIME SCENE INVESTIGATION REPORT**

AGENCY: Greenville Police Department
AREA: Charlie

CASE NUMBER: 2-06-011922

INCIDENT TYPE:	Death Investigation (Autopsy)	INCIDENT LOCATION:	701 Grove Rd. Greenville SC
VICTIM:	Hernandez, Jorge H/M Unk. DOB	ADDRESS:	1500 E. Washington Ave. #15B Greenville SC
COMPLAINANT:		ADDRESS	
INV. OFFICER	Carias	UNIT NUMBER	53

INCIDENT SUMMARY/ACTION(S) TAKEN:

PAGE 1 Of 2

On 1/30/06, the R/O responded to the GMH morgue regarding an autopsy that was going to be conducted on the above listed victim, who had died as an apparent result of a stab wound to the chest.

Upon arrival, the R/O observed the victim lying on a gurney in the autopsy room.

The R/O secured digital photographs of the victim who was observed to be wearing a pair of blue jeans with a black cloth belt and a pair of gray in color "Hanes" underwear. He also had paper bags on each of his hands. The victim's clothing items were removed and additional photographs were taken.

The R/O removed the paper bag from the victim's left hand and observed what appeared to be hair like fibers as well as cloth type fibers in the left palm as well as attached to the fingers. The R/O used tweezers and removed the unknown fibers and placed them into a paper towel.

The paper bag was removed from the right hand and an examination was conducted, with hair like fibers being located in the palm area. These hair like fibers were also removed and placed into a paper towel.

The following items were collected by Dr. Ward and released to the R/O via a P&E sheet.

- A. Pair of black in color "Skato" jeans with a black cloth belt
- B. Gray in color "Hanes" underwear
- C. Envelope containing known pulled pubic hair
- D. Envelope containing known pulled head hair

The R/O collected the following items of evidence.

- DS-1 Paper bags from the victim's hand
- DS-2 Piece of paper towel with unknown hair like and cloth like fibers from the left hand
- DS-3 Piece of paper towel with unknown hair like fibers from the right hand

After the victim was cleaned up, additional photographs were taken of tattoos on various areas of the victim's arms and legs as well as a puncture wound in the left upper chest area.

The R/O also obtained rolled fingerprint and palm impressions for identification purposes. No further action was taken.

Upon returning to the Crime Scene Office, the digital images were scanned into the photo database under call id #16012.

The collected evidence was placed into the drying room to dry at which time they were packaged for placement into the DPS Property and Evidence Section.

REPORTING OFFICER	Shaw- D.L. Sgt. →	STAR#	8561	UNIT #	921	DATE	1/30/06
REPORTING OFFICER		STAR#		UNIT #		DATE	
APPROVING SUPERVISOR	Sgt. D.L. Shaw	STAR#	881	UNIT #	921	DATE	1/30/06

FEB 01 12:25

Ad-23060

CITY OF GREENVILLE
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA

CASE # 06-11922
DATE 01/29/06 08:30

I, Margarito Lopez Solano do hereby give freely and voluntarily this statement to Detective Carias and _____ who have identified themselves as officers of the Greenville Police Department, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 39 years old and reside at 1500 E. Washington Street 15B

We started drinking last night at about 10 P.M. It was me and Chewy and Morro the victim. I don't know either of their real names. We had been drinking till about 3:30 or 4 A.M. Gina came over to the apartment. Gina is a white female. She is a local prostitute. She comes around and works in our neighborhood. I have known her for about a year now. I don't know where she lives but she is always in the neighborhood. Last night when she came over to the apartment she was by herself. Morro told us that he was going to leave with Gina. I told him to stay because it was too late and that there was only trouble out there. He told us that he would be right back and then left with Gina. Chewy and I stayed there drinking. I started getting sleepy about so we went to bed. We couldn't sleep because we were waiting on Morro to come back.

It was about 6:30 a.m. when Morro came back. The sun was already coming out and it had started to sprinkle. Morro came in wearing Gina's jacket. It was a tan spongy jacket. Morro said he was going to bed and that Gina would come soon for her jacket. Our front door never locks. Gina came in within ten minutes after Morro came in. She came in mad. She was soaking wet yelling in Spanish. She was wearing gray working gloves. Morro got up while Gina was putting on her jacket. She was walking out and Morro followed her outside. I got up and asked where he was going telling him to stay. He didn't listen and walked outside. I watched from inside the screen door. I kept calling him to come in as he walked to the corner of the street and the entrance of the driveway. I could hear that she was upset about him leaving with her jacket and making her get wet. I then noticed a black male wearing a dark gray or black hooded jacket. He had the hood over his head. This black male came from behind our apartment and walked up the hill to where Morro and Gina were at. I saw the black male walk towards Morro with his arm up and what appeared to be a large kitchen knife. Morro put his hands up to try to block as the black male stabbed him. Morro started running back towards the apartment yelling, "he stabbed me, call the police!" I noticed the black male running after him but stopped when he noticed me at the door yelling. The black male and Gina got in a gray car that was parked on the corner and left up on Washington away from Laurens Rd. I had the screen door open for Morro. Morro came in and collapsed on the floor. I noticed as he walked in that he was squirting blood out. I then ran next door to have Sammy call the police.

Detective Carias translated and typed this up for me. These is what happened. 14-6-5

I have read or had read to me, the above statement of _____ pages and it is true and correct as best I recall, and I have received a copy of this statement.

Witnesses:
[Signature] * 528
[Signature] (52)

X [Signature]

CITY OF GREENVILLE
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA

CASE # 06-11922
DATE 01/29/06 09:30

I, Margarito Lopez Solano do hereby give freely and voluntarily this statement to _____ and _____ who have identified themselves as officers of the Greenville Police Department, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 1436-5 years old and reside at 1500 E Washington Street 15B

I forgot to mention that when Gina came into the apartment and left with Morro, Morro had asked Chewy for twenty dollars. Chewy gave him the twenty dollars. I don't know what Morro wanted it for when they left. We smoked crack yesterday and some last night. When Morro came back in the morning with Gina's jacket Morro did say something to the effect that he got into an argument with a black man. Gina later came in for her jacket they argued some and walked out to the living room. I heard a bottle break in the living room. I assume it was Gina that brought the bottle in because we all had been drinking out of cans that night. M-6-5-

I have read or had read to me, the above statement of _____ pages and it is true and correct as best I recall, and I have received a copy of this statement.

Witnesses:

[Signature]

X [Signature]

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

06-11972

I, JESUS TORRES
Z M DIAZ

do hereby give freely and voluntarily this statement to
and W.M. MIZE

who have identified themselves to me to be Officers of the Greenville City Police Department, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am, _____ years old and I reside at 1500 E. WASHINGTON ST APT. 15 C
I have a ³⁶ _____ grade education, and I can read and write.

I HAD BEEN OVER MY NEIGHBORS HOUSE AT APT. 15 B ON 1/28/06 WHERE "MAGO" AND "ALEX" THE VICTIM LIVE. "ALEX" HAD BEEN WORKING AND CAME HOME ABOUT 0100 HRS. I WAS IN THE ROOM WITH "ALEX" AND HE HAD A ROCK AND "ALEX" SAID THAT IT WAS NO GOOD (GOMA) WHICH MEANS NO GOOD. GINA THEN WALKED INTO THE ROOM A LOCAL PROSTITUTE AND "ALEX" AND GINA BEGAN TO ARGUE SO I LEFT THE ROOM AND WENT TO THE LIVING ROOM. "ALEX" AND GINA THEN CAME INTO THE LIVING ROOM AND STARTED CURSING AT EACH OTHER IN ENGLISH. "ALEX" DID SPEAK SOME SPANISH AND WAS TELLING GINA THAT WHAT HE GAVE HIM WAS (MIERDA) WHICH MEANS SHIT. GINA THEN LEFT THE APT. AND "ALEX" FOLLOWED HER OUTSIDE. I DID HAVE AN ARGUMENT WITH "ALEX" A COUPLE OF HOURS EARLIER ABOUT NOT HAVING ANYTHING TO DRINK SO I GAVE HIM 20 DOLLARS. I STAYED SITTING IN THE LIVING ROOM AND "MAGO" DID GET UP AND GO TO THE DOOR. "MAGO" KEPT SAYING THAT SOMEONE HAD STABBED "ALEX". I THEN SAW "ALEX" ENTER THE APT. AND SAW BLOOD SQUIRTING FROM HIS CHEST. I ASKED HIM WHAT HAPPENED AND THEN HE COLLAPSED TO THE FLOOR. I DID TRY TO MOVE HIS FACE BUT HE DID NOT RESPOND HE WAS BREATHING HEAVY. I BELIEVE THAT "MAGO" WENT TO SAMMY'S HOUSE TO CALL THE POLICE. I DID NOT SEE ANYONE WITH GINA.
OFFICER DIAZ TRANSLATED AND TYPED THIS UP FOR ME. THIS IS WHAT HAPPENED.

OUT

END OF STATEMENT

W.T. P

I have read the above statement of _____ pages and it is true and correct as best I recall.

WITNESS:

[Signature] *572
[Signature] 58

[Signature]
I HAVE RECEIVED A COPY OF THIS STATEMENT

CITY OF GREENVILLE
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA

CASE # 06-11922
DATE 01/29/06 10:11 a.m.

I, Inez Morales Pena do hereby give freely and voluntarily this statement to _____ and _____ who have identified themselves as officers of the Greenville Police Department, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

M

I am 34 years old and reside at 1500 E Washington Street 15B

I was at a friends house last night watching a movie. We were drinking too. I got home at about 7p.m. Margarito, his friend a neighbor and Morro were there. They were smoking crack cocaine. I went into my bedroom. Later on that night I heard I heard voices. Sounded like black men. I also heard Gina's voice. I closed the door because I was trying to get some sleep. I went to sleep. Later on this morning I heard an argument over a jacket and twenty dollars. It was Gina's voice. I went back to sleep. I then heard hard knocking on my door. It was the police. It was then I found out about the stabbing. I don't really socialize with the victim. I do know Gina. She is a prostitute that comes around the apartments and asks for money.

I AM

I have read or had read to me, the above statement of _____ pages and it is true and correct as best I recall, and I have received a copy of this statement.

Witnesses:

[Signature]

X INEZ Morales

Johnny L. Paden Jr. 154700
Q-2 210 A-side

Perry Correctional Institution

430 OAKLAWN Rd.

Pelzer, SC 29549

RECEIVED

SEP 21 2011

P.C.I. MAILROOM

SOUTH Carolina SUPreme
Court Clerk of Court office

P.O. Box 11330

Columbia, South Carolina 29211

LEGAL MAIL



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:

Johnny Lee Paden v. State of South Carolina Case #: 10-CP-23-01663

County: Greenville Date of Trial: May 12, 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.

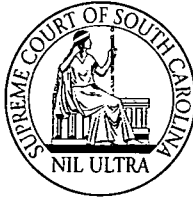
Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

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



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

August 12, 2011

Rodney Wade Richey, Esquire
Richey & Richey, PA
P.O. Box 10916
Greenville, SC 29603-0916

Re: Paden, Johnny Lee v. The State, 2010-CP-23-01663

Dear Mr. Richey:

Enclosed is correspondence received from your client, Mr. Johnny Paden. Since you represent him in this matter, no action will be taken on this letter. 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).

I note that he alleges that he has made a *pro se* Rule 59, SCRCP, motion in the circuit court. Since this *pro se* motion is essentially a nullity, and should not be accepted for filing or acted on by the circuit court, Miller v. State, *supra*, it should have no effect on the appeal that you have filed in this matter.

Very truly yours,

CLERK

Enclosure

cc: Appellate Defense
Assistant Attorney General Karen Ratigan
Mr. Johnny Lee Paden, #154700

8/5/11

Dear Supreme Court

I am writing you and Requesting that, the letter I previously wrote you about My Lawyer Rodney W. Richey P.O. Box 10916 Greenville South Carolina ^(WHO) would not File a 59E Motion for all my allegations in my Post Conviction Relief application to be reviewed, By your court. I wrote you a copy of the letter when I requested him to file ~~the~~ A motion since he is my appointed Representative During my P.C.R. and If I did not prevail could he file a 59E to insure that all my allegations get reviewed, he did not do it so I'm asking the court to tell me what I need to do because my innocence are in all my records Including the Discovery Trial transcript Photographs and no one wants to see it and I alleged these grounds on my P.C.R. It is a significant amount of DNA in my case and I want it looked at My letter to you previously should be on file If I can file my own Motion without the Attorney, Here is one Requesting that, It is hard to get copies or Notarization,

8/5/11

Please just Review my whole Record particularly in the Anders Final Brief about the illegal immigrants who were my accuser, Material witnesses who Fled the State prior to trial their initial statements, in addition these witnesses burned down the crime scene.

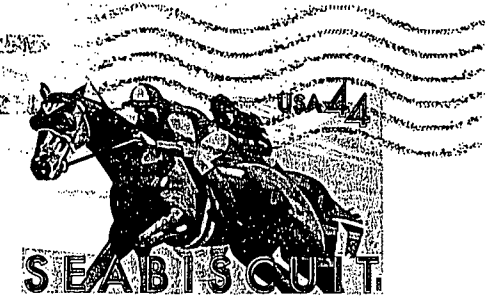
Conclusion:

I am also requesting that you review my order of dismissal from judge Welmaker and see if he prejudice me by saying stating (page 4 of order parenthesis) Applicant stated he cut the victim with a Razor Applicant never said anything of the such and through out his Statement trial transcript it was said that applicant only pushed the decedant and drew a Razor on him so any Future or current Review would deprive applicant of a fair opinion, ~~to~~ refer to (Page 6) ~~and~~ paragraph) to prove what applicant stated that he pushed the victim. The judge opinion in the order is misinterpreted and miswrote which prejudice applicant unless ~~re~~ stated or the Court deems it harmless. Applicant motion 59E will be sent through Green. The Clerk of Court and Hopes it is forward to the Honorable Court.

Sincerely
Johnny J. Pad

Johnny L. Paden #154700
Perry C. Inst. Q-2A210
430 OAKLawn Rd.
Pelzer, SC 29669

GREENVILLE SC 29601
09 AUG 2011 PM 02



RECEIVED
AUG 08 2011
P.C.I. MAILROOM

The South Carolina
Supreme Court
Daniel E. SHEAROUSE Clerk of Court
P.O. Box 11330
Columbia, South Carolina 29211

May, 28, 2011

RECEIVED

JUN 03 2011

S.C. SUPREME COURT

Dear Supreme Court,

This is to inform you of the
 Request I have requested from my
 PCR attorney Rodney Richey in case
 it comes up that I wanted to appeal
 if the judge who's reviewing my PCR
 application on May 12 hearing at
 Greenville County Courthouse doesn't
 not rule in my favor I also had
 to write the copy of the same
 letter because I could not get
 home copies at this time at this prison
 Thank you in
 Advance Johnny Paden

Paden Johnny

(MAY)

5/28/11

Richoy & Richey PA

Attorneys At Law

P.O. Box 10916

Greenville, SC 29603

RE: Request For Relief order to Judge
Who's reviewing PCR and Request to File
S9E in case if need for writ of certiorari

Dear Mr. Richey could you please file a order
of Relief like you and I know the Attorney General
office is going to file an order of Dismissal AND
IF the Judge does not Rule in my Favor the
Applicant, I request you appeal and file a S9E on
Writ of Certiorari. Please write me if you have
Any concerns about my requests. Hey Did you speak
to my Family about that DNA Testing?

yours very truly

Johnny S. Padgett

Johnny L. Paden Jr.

#A 154700

Room
Q-4A 105

AMS

Perry Correctional Institution

430 OAKLAWN Rd.

Pelzer, SC. 29469

Legal

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MAY 31 2011

P.C.I. MAILROOM

SOUTH CAROLINA
SUPREME COURT

SCDC

JUN 2 '11

P.O. Box 11330

COLUMBIA South Carolina

COMMISSIONER v

29211

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: Johnny Paden SCDC# 154700 vs. State of South Carolina
Case No: 2010-CP-23-1663

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.G. 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-23-1663

JOHNNY LEE PADEN, SCDC#: 154700,

APPELLANT,

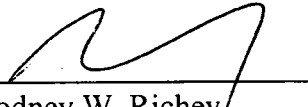
against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Johnny Paden 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 12, 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

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

RECEIVED
AUG 04 2011
S.G. 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-23-1663

JOHNNY LEE PADEN, SCDC#: 154700,

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 2, 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 2, 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.: 2010 CP2301663

Johnny Lee Paden 154700

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):**
 - SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Rule 12(b), SCRPC; Rule 41(a),
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - 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:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Katigan

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

Johnny Lee Paden,)
S.C.D.C. No. 154700,)
)
Applicant,)

v.)

State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2010-CP-23-1663

ORDER OF DISMISSAL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JUL 27 2011

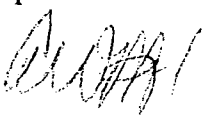
2011 JUL 27 P 2:53

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 2, 2010. The Respondent made its return on August 20, 2010. An evidentiary hearing into the matter was convened on May 12, 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 was the Applicant's trial counsel, Daniel J. Farnsworth, 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 was indicted at the May 2006 term of the Greenville County Grand Jury for murder (2006-GS-

1


23-4246). He was represented by Daniel J. Farnsworth, Esquire.

After the State called the case to trial, the Applicant was found guilty. On November 27, 2007, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to life imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, 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. Paden, Op. No. 2010-UP-087 (S.C. Ct. App. filed February 3, 2010).

ALLEGATIONS

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

1. Ineffective assistance of trial counsel:
 - a. Failure to properly investigate.
 - b. Failure to call witnesses.
 - c. Failure to move to suppress evidence.
 - d. Failed to preserve issues.
 - e. Failed to adequately challenge expert testimony.
 - f. Failure to challenge the forensic scientist's testimony regarding unknown hair fibers.
 - g. Failure to challenge admission of statement.
 - h. Failure to properly conduct discovery.
 - i. Failure to stop a criminal conspiracy.
2. Ineffective assistance of appellate counsel:
 - a. Failure to properly research case and present proper issues.
3. Failure of the State to comply with discovery.

In a "Motion to Amend Post-Conviction Application" – a document which appears to have been prepared by the Applicant and filed by his attorney – the Applicant makes the following additional allegations:

1. Ineffective assistance of trial counsel:

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

21
WPA

- a. Failure to request an instruction on manslaughter or another instruction relevant to the defense theory of the case.
- b. Failure to object to trial court error.
- c. Failure to object to the accuser-not being present.
- d. Failure to object to inadmissible evidence.
- e. Failure to object to hearsay testimony.
- f. Failure to object to "mental abuse testimony" by co-defendant.
- g. Failure to request an instruction on the defense of others.
- h. Failure to object to 911 tape.
- i. Failure to object to erroneous jury instructions.
- j. Failure to make a Batson objection.
- k. Failure to object to the improper malice charge.
2. Violation of Due Process and Sixth Amendment.
3. After-discovered evidence.
4. 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 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).

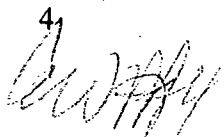
For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. 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 trial counsel should have had an independent DNA expert. The Applicant stated he asked counsel about obtaining such an expert and that counsel said he would speak to the State’s expert witness. The Applicant stated trial counsel failed to make a Batson² motion when the State struck the only black male in the jury pool. The Applicant stated trial counsel did not investigate or move to suppress his statement. The Applicant stated trial counsel should have objected to the testimony of the witness who called 911 because that witness did not give a statement at the time of the crime. The Applicant stated trial counsel did not properly challenge the State’s DNA expert or argue the victim’s blood should have been outside the house if that is where he was stabbed. The Applicant stated trial counsel should have moved to suppress the 911 tape because there was an excited utterance of the victim stating “morro.” The Applicant stated trial counsel should have requested both a voluntary manslaughter charge and a defense of others charge and should have objected to the malice charge.

Trial counsel testified he filed discovery motions and reviewed those materials with the Applicant. Trial counsel testified they reviewed the Applicant’s statement, which was beneficial to their case (because the Applicant stated he cut the victim with a razor blade and the autopsy showed the weapon was a knife). Trial counsel testified no forensic evidence linked the

² Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712 (1986).

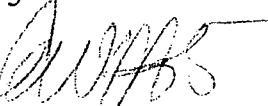
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Applicant to the crime scene. Trial counsel testified he did not recall whether to retain an independent DNA expert, but that one was not necessary because of the lack of forensic reticence. Trial counsel testified he did not recall there was a Batson issue, as he usually pays close attention to jury selection when his client is a minority. Trial counsel testified he went through the motions of a Jackson v. Denno³ hearing but was glad to have the Applicant's statement. Trial counsel testified he challenged the credibility of the witness who called 911. Trial counsel testified he sufficiently challenged the expert testimony about the victim's wound and that the expert testified it could not have been inflicted by a razor blade. Trial counsel stated he did not believe defense of others would have been a proper jury charge. Trial counsel stated he did not request a charge of voluntary manslaughter because it did not conform to the defense strategy. Trial counsel stated the defense was that the Applicant pushed the victim with a razor blade but did not kill him. Trial counsel stated the defense strategy was all-or-nothing.

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 his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have retained an independent DNA expert. Trial counsel testified, however, that neither blood nor hair evidence linked the Applicant to the crime. As, such this Court finds the Applicant has failed to clearly articulate how a DNA expert would have strengthened his case. Regardless, as the Applicant did not present a DNA expert as a witness at the PCR hearing, this Court cannot speculate as to what the expert's testimony would have been. See Dempsey v. State, 363 S.C.

³ 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964).

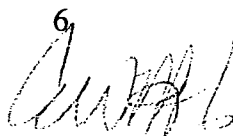
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365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative").

This Court finds the Applicant failed to meet his burden of proving trial counsel should have made a Batson motion. This Court notes the juror in question (Juror 13) was excused by the State during the process of selecting an alternate. (Trial transcript, pp.14-15). Assuming arguendo that trial counsel should have objected, the Applicant cannot prove prejudice because the alternate juror was dismissed prior to jury deliberations. (Trial transcript, p.322).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have more aggressively argued for the suppression of his statement. Trial counsel testified the Applicant's statement was beneficial to their case because it stated the Applicant pushed the victim with a razor but did not kill him. As such, trial counsel indicated the Jackson v. Denno hearing was a mere formality. This Court notes the Applicant's testimony at trial was consistent with his statement. Therefore, the Applicant cannot have suffered any prejudice by the admission of his statement. Further, the Applicant has failed to present any testimony that further investigation by trial counsel would have uncovered evidence that his statement was not freely and voluntarily entered. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have better challenged several witnesses' testimony. Trial counsel testified he challenged the credibility of the witness who called 911 by questioning him about his prior convictions. This Court finds trial counsel effectively cross-examined this witness and that the Applicant has failed to articulate what more counsel should have done to question this witness. Trial counsel testified

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there was no forensic evidence that implicated the Applicant in the crime. This Court finds this lack of DNA evidence was beneficial to the defense and that the Applicant has failed to specify what further lines of inquiry should have been pursued. This Court finds trial counsel articulated valid strategic reasons for how he conducted cross-examination of both the 911 caller and the State's expert. 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).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the 911 tape. Specifically, the Applicant argued trial counsel should have objected because the assailant was described as "morro." The Applicant claimed the word "morro" does not mean "black male" as the witness testified but means "my home boy" – thus referring to another Hispanic male and not him. This Court notes trial counsel cross-examined another witness fluent in Spanish on the meaning of "morro" and that it elicited a response consistent with the Applicant's interpretation of the word. (Trial transcript, p.251). Trial counsel then emphasized this point during closing argument. (Trial transcript, p.300). As such, this Court finds the Applicant has failed to prove he was prejudiced by the admission of the 911 tape mentioning the word "morro."

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested jury charges of voluntary manslaughter and defense of others and objected to the malice charge. Trial counsel testified a defense of others charge would not have been warranted in this case. This Court agrees and notes the trial judge can only issue charges supported by the evidence presented at trial. See State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Trial counsel testified he did not request a voluntary manslaughter charge because that would

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have been contrary to the defense theory that the Applicant did not kill the victim. Trial counsel testified this was an all-or-nothing decision and this Court finds this was a valid strategic decision. See Roseboro v. State, 317 S.C. at 294, 454 S.E.2d at 313. This Court further finds the Applicant has failed to articulate why trial counsel should have objected to the malice charge in this case.

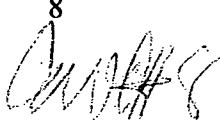
Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. In fact, this Court notes both the Applicant and the trial judge expressed their satisfaction with trial counsel's performance. (Trial transcript, p.182; p.248). 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

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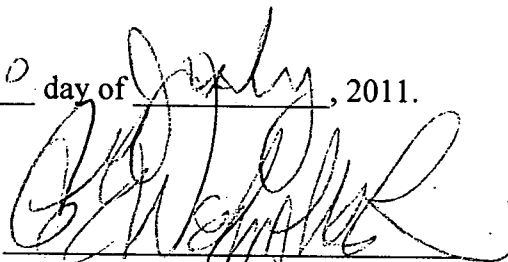
established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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.

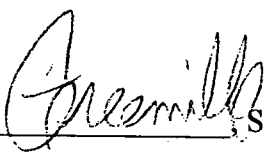
IT IS THEREFORE ORDERED:

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

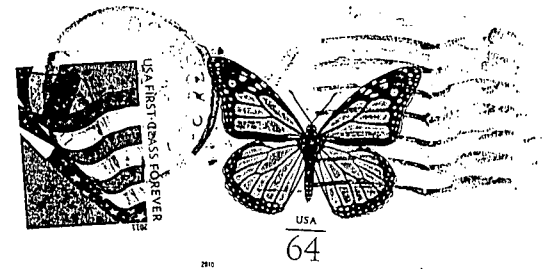


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