

# The Supreme Court of South Carolina

Raymond Bernard Murray,                      Petitioner,

v.

State of South Carolina,                      Respondent.

The Honorable Lee S. Alford  
York County  
Trial Court Case No. 2010-CP-46-04234

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## ORDER

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For good cause shown, the request for an extension until April 30, 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 29, 2012

cc: Appellate Defender Dayne C. Phillips  
Assistant Attorney General Harrison Brant

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

 ORIGINAL

\_\_\_\_\_  
Certiorari to York County  
Lee S. Alford, Circuit Court Judge

RAYMOND BERNARD MURRAY,

RECEIVED

PETITIONER, MAR 28 2012

v.

S.C. Supreme Court

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_  
MOTION FOR AN EXTENSION OF TIME  
IN WHICH TO FILE THE PETITION FOR WRIT OF  
CERTIORARI AND APPENDIX  
\_\_\_\_\_

(3)

Counsel for Raymond Murray respectfully requests an extension of a **final** thirty (30) days in which to file the petition for writ of certiorari and appendix in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a third request for an extension. In support of this request, counsel shows:


1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today, March 30, 2012.
2. Counsel for Mr. Murray respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.
3. On March 21, 2012 counsel filed the petition for writ of certiorari and appendix in Tina Sumter v. State. On March 19, 2012 counsel filed the petition for writ of certiorari and appendix in Cedric Perkins v. State. On March 13, 2012 counsel filed the petition for writ of certiorari and appendix in Billy S.

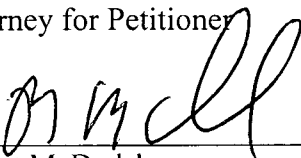
Tucker v. State. On March 6, 2012, counsel filed the petition for writ of certiorari and appendix in Victor Brown v. State. On February 16, 2012 counsel filed the petition for writ of certiorari and appendix in William Head v. State. On February 13, 2012 counsel had an oral argument in State v. Adrian Eaglin. On February 8, 2012 counsel filed the initial brief of appellant and designation of matter in Robert Lee Banks v. State. On February 2, 2012 counsel filed the initial brief of appellant and designation of matter in Dan Williams v. State.

4. Counsel makes this request in good faith and not for purpose of delay.
5. As indicated by signature below, Harrison Brant, of the South Carolina Attorney General's Office, does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final** thirty day extension, in which to file the petition for writ of certiorari and appendix in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the petition be held in abeyance pending a ruling on this motion.


Respectfully submitted,

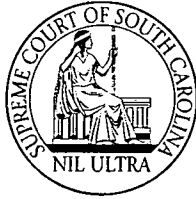
  
Dayne C. Phillips  
Appellate Defender  
Attorney for Petitioner

  
Robert M. Dudek  
Chief Appellate Defender

March 30, 2012

I do not oppose:

  
Harrison Brant



# 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

March 19, 2012

Appellate Defender Dayne C. Phillips  
South Carolina Commission on Indigent Defense  
P O Box 11589  
Columbia, SC 29211

Re: Murray, Raymond Bernard v. The State

Dear Counsel:

Enclosed is correspondence received from your client. Since you represent him in this matter, no action will be taken on this *pro se* filing. 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).

Very truly yours,



CLERK

Enclosure

cc: Assistant Attorney General Harrison Brant  
Mr. Raymond B. Murray, #217477

David E. Shrobusch  
Post Office Box 11930  
Columbia, South Carolina  
29211

March 12, 12

Dear Mr. Shrobusch:

I am writing your office in reference to the

challenge of the accurate and fairness the trails-

and I have file with the Administrative Court

and the court review asking both to hold the book

up rate for that procedure in rule 3-2011. I

also asked the appellate attorney to challenge the

record because after receiving the record from his

office, I discovered that the June 3, 2011 record

had been after, and that it was not my testimony.

There was no exhibits, they were statement

added and without issues left out of the record.

Rules 007 (I) what there is a challenge to the acc

uracy of a transcript, the court review will respond

to the challenger in writing. However, his refusal

was the cure for both hearing, acknowledge

my request but also asked me not to contact her

again. I enclose a copy of that letter along with the

one. I also asked the appellate attorney not to

file an brief in my behalf with the challenge the record,

however the claim that since the court review states

that the record is true that a challenge court be

made. Once again Mr Shrobusch, I am being

devoid of due process rights to the courts. I

make full challenges to all parties, I follow

all rules of the court only to have the record or

attorney continue to assist the lower court.

Challenging Record  
or why Appellate court  
about filed any motion  
concerning exhibits.

Mr Shearouse.

I am REQUESTING A NEW P.C.R HEARING  
DUE TO THE ALTERATION OF THE RECORD. I HAVE COM-  
PLAINT TO D.O.C AND EACH INDIVIDUAL WHO HAS  
VIOLATE MY DUE PROCESS RIGHTS. THEREFORE I AM  
SENDING YOU ANOTHER LETTER ASKING WHO DO  
I WRITE IN REFERENCE TO A CORRECT CHALLENGE OR AN  
NEW HEARING.

Thank You.

Raymond Murrell.

On the 12th day of March, 2012  
Susan H. Frye

My Commission Expires  
March 5, 2018

**RECEIVED**

Wanda Nelson, CVR  
Official Court Reporter  
Post Office Box 749  
York, SC 29745

MAR 14 2012

**S.C. SUPREME COURT**

DATE: November 28, 2011  
**ACKNOWLEDGMENT OF RECEIPT OF LETTER REGARDING CHALLENGE OF  
TRANSCRIPT OF RECORD**

TO: Raymond Bernard Murray  
Broad River Correctional Institute  
4460 Broad River Road  
Columbia, South Carolina 29210

DATE OF HEARING: June 3, 2011

CAPTION: Raymond Bernard Murray v. State of South Carolina / 2010-CP-46-04234

This is to acknowledge that on October 20, 2011, I received your letter dated October 19, 2011, requesting the backup recording from your Post Conviction hearing held on June 3, 2011, before the Honorable Lee S. Alford.

I received a request dated October 11, 2011, from Attorney Chad Smith of the York County Bar requesting the transcript and inquiring about payment of the transcript. I responded to Mr. Smith and in the interim you submitted your challenge to the transcript. You then forwarded to me correspondence dated November 9, 2011, again challenging the accuracy of the record from your Post Conviction relief hearing. Your challenges were received before my reply to Mr. Smith regarding the transcript was formally received or the transcript being prepared.

I have received a request for the transcript from the South Carolina Commission on Indigent Defense dated November 3, 2011, and I have completed the transcript and have submitted it to that office.

I cannot respond to any of the correspondence you copied me regarding any attorney matters other than the transcript request itself. I cannot and will not send you the copy of the back up recording from your Post Conviction Relief hearing.

**Rule 607 (I) SCACR:**

**C- Requests to Listen to Tapes/Read Steno Notes**

When there is a challenge to the accuracy of a transcript, the court reporter will respond to the challenger in writing. The court reporter will then review the record and report the findings in writing to the challenger, with a copy to all parties and Court Administration. Any inaccuracies will be corrected and the pages forwarded to the challenger at no cost. Further review of the record may be permitted by the presiding judge upon written request with good cause shown.

If you have any questions regarding this matter please forward those to the South Carolina Court Administration in Columbia, South Carolina.

I know of nothing that I can assist you with further in this matter, so please do not contact me again.

A handwritten signature in cursive script that reads "Wanda Nelson".

Wanda Nelson, Official Court Reporter.

Sixteenth Judicial Circuit

CC: South Carolina Court Administration

South Carolina Commission on Indigent Defense

**RECEIVED**

MAR 14 2012

**Wanda S. Nelson, CVR, Master  
Official Court Reporter  
Post Office Box 749  
York, SC 29745**

**S.G. SUPREME COURT**

**Date: January 31, 2012**

**ACKNOWLEDGEMENT OF RECEIPT OF  
LETTER REGARDING TRANSCRIPT OF RECORD**

TO: Mr. Dayne C. Phillips  
SC Office of Indigent Defense  
Appellate Defender  
P.O. Box 11589  
Columbia, SC 29211-1589

DATE OF HEARING: June 3, 2011

CAPTION: Raymond Murray v. State

Case No.: 2010-CP-46-04234

This is to acknowledge that on January 20, 2012, I received your letter dated January 19, 2012 requesting that I review the tapes of Mr. Murray's PCR hearing heard June 3, 2011.

I have correspondence from Mr. Murray dated November 9, 2011 asking that I not destroy the backup recording from his PCR hearing from June 3, 2011, in that he is going to challenge the accuracy of the transcript from that hearing. I responded to Mr. Murray letting him know his challenge came before the transcript was requested therefore I did not know what transcript, if any part, he was challenging.

I did receive a request dated November 3, 2011 from Appellate Defense for the transcript from the June 3, 2011 PCR hearing and that transcript was delivered November 28, 2011. Again I received a request dated December 11, 2011 from Mr. Murray not to destroy the backup tapes from the PCR hearing as he was challenging the accuracy of the transcript. At no time in any of Mr. Murray's correspondence does he indicate with specificity what part, if any, of the transcript he is challenging.

Your correspondence concerning the accuracy of the transcript comes almost two months after the transcript was delivered to Appellate Defense. Again, you cite with no specificity what you are challenging on Mr. Murray's behalf. The transcript delivered to Appellate Defense on November 28, 2011, was a true and accurate transcript of the post conviction relief hearing heard June 3, 2011 before the Honorable Lee S. Alford, Sixteenth Circuit Court Judge.

Sincerely,

Wanda Nelson, CVR, Master  
Official Court Reporter  
Sixteenth Judicial Circuit

CC: South Carolina Court Administration  
1015 Sumter Street  
Columbia, South Carolina 29201



# 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

February 3, 2012

Mr. Raymond Bernard Murray, #217477  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

Re: Your case

Dear Mr. Murray:

Thank you for your letter dated January 23, 2012 (received on January 27, 2012). In my response letter dated December 29, 2011, I indicated to you that I needed you to provide me with specific challenges to the transcript because a "blanket" challenge would be insufficient.

Until your letter on January 23, 2012, you had not sent me any specific challenges to the record. Despite not having any specific challenges, I sent the court reporter, Wanda Nelson, a request to review her tapes of the PCR hearing pursuant to Rule 607(i), SCACR.

In response, Ms. Nelson acknowledged that she received correspondence from you on November 9, 2011, requesting that she not destroy the backup recording of the PCR hearing because you intended to challenge the accuracy of the transcript. Ms. Nelson indicated that she sent you a letter informing you that the challenge came before the transcript was requested, so she did not know what transcript he was challenging.


Furthermore, Ms. Nelson indicated that she received a request for the transcript on November 3, 2011, from Office of Appellate Defense. Again, Ms. Nelson acknowledged that she received a request from you on December 11, 2011, not to destroy the back up tapes because of your intent to challenge the transcript.

However, Ms. Nelson stated that at no time has she received a request indicating with specificity what part of the transcript you intended to challenge. She also

stated that "[t]he transcript delivered to Appellate Defense on November 28, 2011, was a true and accurate transcript of the post conviction relief hearing heard on June 3, 2011 before the Honorable Lee S. Alford, Sixteenth Circuit Court Judge."

Should you have any further questions or concerns regarding your case, please do not hesitate to contact me.

Sincerely,

  
Dayne C. Phillips  
Appellate Defender

DCP/fkb

Enclosure



**South Carolina Court Administration  
South Carolina Supreme Court  
Columbia, South Carolina**

ROSALYN FRIERSON  
DIRECTOR

1015 SUMTER STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1800  
FAX: (803) 734-0269

March 6, 2012

Mr. Raymond Murray, #217477  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

Dear Mr. Murray:

Your letter to Rosalyn Frierson was forwarded to this section for response. In your letter you are requesting assistance from this office. I am unclear as to what type of assistance you are requesting, however. I see from this correspondence that the court reporter has written to advise you of the procedure to challenge a transcript.

I would note also that you are represented by an attorney. It may be best that you advise your attorney of your concerns so that they may be communicated to this office on your behalf.

Sincerely,

**South Carolina Court Administration  
Court Reporter Services**

# The Supreme Court of South Carolina

Raymond Bernard Murray,                      Petitioner,

v.

State of South Carolina,                      Respondent.

The Honorable Lee S. Alford  
York County  
Trial Court Case No. 2010-CP-46-04234

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## ORDER

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For good cause shown, the request for an extension until March 30, 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 *J. Shealy*

*Chief Deputy* Clerk

Columbia, South Carolina

March 1, 2012

cc: Appellate Defender Dayne C. Phillips  
Assistant Attorney General Harrison Brant

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to York County  
Lee S. Alford, Circuit Court Judge

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RAYMOND BERNARD MURRAY,

ORIGINAL  
RECEIVED  
FEB 29 2012  
S.C. Supreme Court  
PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

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

---

Counsel for Raymond Bernard Murray respectfully requests an extension of thirty (30) days in which to file the petition for writ of certiorari and appendix in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a second request for an extension. In support of this request, counsel shows:

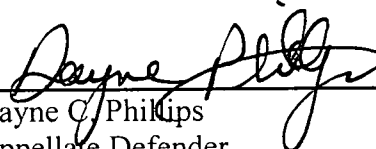
1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today, February 29, 2012.
2. Counsel for Mr. Murray respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.
3. On February 16, 2012 counsel filed the petition for writ of certiorari and appendix in William Head v. State. On February 13, 2012 counsel had an oral argument in State v. Adrian

Eaglin. On February 8, 2012 counsel filed the initial brief of appellant and designation of matter in Robert Lee Banks v. State. On February 2, 2012 counsel filed the initial brief of appellant and designation of matter in Dan Williams v. State. On January 26, 2012 counsel filed the petition for writ of certiorari and appendix in Joshua Manning v. State. On January 18, 2012 counsel filed the petition for writ of certiorari and appendix in Jeffrey Higgins v. State. On January 17, 2012 counsel filed the petitions for writ of certiorari and appendices in Billy James Lupo v. State and Stanley O. Williams v. State. On January 9, 2012 counsel filed the petitions for writ of certiorari and appendices in Joseph Samuel Whitt v. State and Edward Thompson v. State. On January 5, 2012 counsel filed the petition for rehearing in State v. Bradley Scott Senter. On January 3, 2012 counsel filed the petition for writ of certiorari and appendix in Willie James v. State.

4. Counsel makes this request in good faith and not for purpose of delay.
5. Counsel for the Attorney General's office has been informed of this request.

WHEREFORE, the undersigned counsel would respectfully request a thirty day extension, in which to file the petition for writ of certiorari and appendix in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the petition be held in abeyance pending a ruling on this motion.

Respectfully submitted,

  
Dayne C. Phillips  
Appellate Defender

Attorney for Petitioner

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to York County  
Lee S. Alford, Circuit Court Judge  
\_\_\_\_\_

RECEIVED  
FEB 29 2012  
S.C. Supreme Court

RAYMOND BERNARD MURRAY,

PETITIONER,

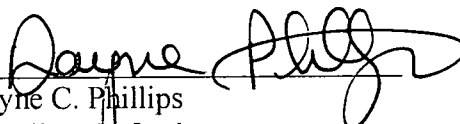
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

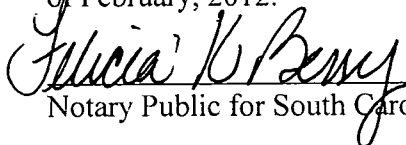
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a true copy of the motion for an extension of time in which to file the petition for writ of certiorari and appendix in the above case has been served upon J. Rutledge Johnson, Esquire, this 29th day of February, 2012.

  
\_\_\_\_\_  
Dayne C. Phillips  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day  
of February, 2012.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: June 21, 2020.

# The Supreme Court of South Carolina

Raymond Bernard Murray,                      Petitioner,

v.

State of South Carolina,                      Respondent.

The Honorable Lee S. Alford  
York County  
Trial Court Case No. 2010-CP-46-04234

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## ORDER

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The request for an extension until February 29, 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 *Suzanne J. Shealy*  
Clerk

Columbia, South Carolina *Chief Deputy*

January 31, 2012

cc: Appellate Defender Dayne C. Phillips  
Assistant Attorney General Harrison Brant



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

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

January 30, 2012

RECEIVED

JAN 30 2012

S.C. Supreme Court

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

Re: Raymond Bernard Murray v. State of South Carolina

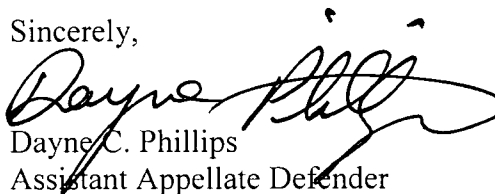
Dear Mr. Shearouse:

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

By copy of this letter to Assistant Attorney General Harrison Brant, I am informing him of this request.

Thank you for your assistance in this matter.

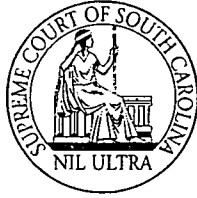
Sincerely,



Dayne C. Phillips  
Assistant Appellate Defender

DCP/fkb

cc: Harrison Brant, Esquire



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 14, 2011

Appellate Defense  
South Carolina Commission on Indigent Defense  
P O Box 11589  
Columbia, SC 29211

Re: Murray, Raymond Bernard v. The State

Dear Counsel:

Enclosed is correspondence received from your client. Since your office represents him in this matter, not action will be taken on this *pro se* correspondence. 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).

Very truly yours,



CLERK

Enclosure

cc: Assistant Attorney General Harrison Brant  
Mr. Raymond Murray, #217477

Nov 9. 11

South Carolina  
Supreme Court Clerk.  
Daniel E. Sheavouse

Clerk's Office -  
Supreme Court  
Supreme Court Bldg.  
P.O. Box 11330  
Columbia SC. 29211.

RE: to Request Challenge  
of Transcript for 2010-CP-46-4234

Dear Clerk Office:

I Raymond Murray am REQUESTING that your office file or accept this letter as proof that the Appellant is REQUESTING to challenge his transcript once it has been transcribe. 2010-CP-46-4234

The Appellant has also forward letters to Ms. Wanda S. Nelson, the Administrative Clerk as well as Administrative Coordinator. The Appellant feel as his transcript will be after due to evidence that was presented at the June 3. 2011 however the Appellant's Prepose order and final order are different and the fact that my Refuse to filed on Rule 59(e). This is the same Attorney that Refuse to sent Materials after your office contact him.

I would like to appreciate your assistance in this matter.

Thank you  
Raymond Murray

9 Nov 2011

Eugene Keitt

My Commission Expires April 4, 2016

RECEIVED

NOV 14 2011

S.C. SUPREME COURT

Appellant has mailed letters on all parties.

Wanda Nelson  
Official Court Reporter  
P.O. Box 749  
York, SC 29745

RE: Transcripts Challenge.

Dear Ms Wanda Nelson  
I Raymond Murray am REQUESTING that you hold  
the back up tape. or 1st call proceeding which  
has been transcribed, the Court Reporter shall re-  
tain the primary and backup tapes which have  
been transcribed for a period of at least thirty  
(30) days after the original transcript is sent  
to the requesting party, to allow any party to challenge  
the accuracy of the transcription. IF NO CHALLENGE  
IS RECEIVED BY THE COURT REPORTER WITHIN THE THIRTY  
(30) day period, the tapes may be reused or destroyed.

Ms Nelson, this is the second letter I've mailed  
to your office in regards to this matter. I feel since  
my PCR attorney Mr Chad Smith fail to file an eq<sup>(e)</sup>  
Rule Motion to attend the Judge final order as well amend  
my PCR application what requested by appellant, then  
the appellant respectfully request to challenge the accuracy  
of the June 3, 2011 transcription FOR CASE No: 2010-CP-  
46-0134.

Thank you  
Raymond Murray

cc. Administrated Court  
SC. Supreme Court Clerk  
Administrated coordinator Appellant Defense.

9 Nov 2011

Eugene Betty

My Commission Expires April 4, 2018

NOV 8 11

Sharon Graham  
S.C. Division of Appellate Defense  
P.O. Box 11589  
Columbia SC, 29211-1589

RE TO Transcript (challenge)  
OR VOIDING BACK UP TAPE

Dear Ms. Gramm:

I am writing in reference to the matters concerning my transcript. I also have forward a copy of the letter Ms Wanda Nelson provided to you and Mr. Chad Smith. This letter contains a comment that was forward to you from Ms. Wanda Nelson that she was the Court Reporter.

After talking to you last Thursday which was the 3rd of 11. In that conversation you stated that according to your records that Nichol Watts was the Court Reporter therefore I sending you a copy of the letters of Ms Nelson comments and letters I forward to other parties

Thank you  
Raimond Murrell

cc. Administrative Court  
Suprem Court Clerk Office  
Ms. Wanda S. Nelson: Court Reporter.

9 Nov 2016

Eugene Gutt

Zugarsky

9 Nov 2011

Thank you  
Raymond Murray

Dear Administrative Court:

I am writing your office again in reference to challenge the transcripts for 2010-CD-40-484. I have not heard from your office in regard to this matter. I have also informed Mrs. Wanda S. Helton to challenge the accuracy within the (so) think days after the requesting parties has received the transcript. I have not received on response from Mrs. Helton nor your office in regard to my request. I have enclosed copies of the court reporter response to the requesters as proof of a order code.

RE: Challenge transcripts

Administrative Court  
ROSA LYN H. BROWN

115 W. 2nd Street, Suite 200  
Columbia, SC 29201

Nov 8 11

Raymond Murray 217477  
B R C I  
2400 Broad River Rd.  
Columbia SC. 29210

RECEIVED

NOV 10 2011

BRCI  
MAILROOM

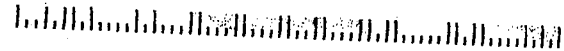
LEGAL MAIL

2921191330



UNITED STATES POSTAGE  
EAGLE  
FIRST CLASS  
NINETEEN DOWNS  
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0008003534 NOV 10 2011  
MAILED FROM ZIP CODE 29210

South Carolina  
Supreme Court Clerk Office  
Supreme Court Bldg.  
P.O. Box 11330  
Columbia SC. 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

November 3, 2011

RECEIVED

NOV 4 2011

S.C. Supreme Court

Ms. Wanda S. Nelson  
Circuit Court Reporter  
1428 Dove Landing Road  
York, SC 29745

Dear Ms. Nelson:

Please provide us with the following transcript:

Raymond Bernard Murray v. State of South  
Carolina

Case #:

10-CP-46-04234

County: York

Date of Trial: June 3, 2011

Presiding Judge: Lee S. Alford

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



# 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

November 3, 2011

RECEIVED

NOV 4 2011

S.C. Supreme Court

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

Re: Raymond Bernard Murray v. State of South Carolina

Dear Mr. Shearouse:

I have had to reorder the transcript in the above-captioned case. The first request was done in a timely manner, but was inadvertently requested from the wrong court reporter. I would respectfully request that you start our time schedule for ordering the transcript from today's date.

If you have any questions concerning this matter, please do not hesitate to contact me. Thank you for your assistance in this matter.

Sincerely,

Sharon A. Graham  
Administrative Coordinator

cc: Attorney General's Office



# 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

November 2, 2011

Mr. Michael Watts  
Circuit Court Reporter  
489 Edgewater Drive  
Gaffney, SC 29340

RECEIVED  
NOV 2 2011  
S.C. Supreme Court

Dear Mr. Watts:

Please provide us with the following transcript:

Raymond Bernard Murray v. State of South  
Carolina

Case #:

10-CP-46-04234

County: York

Date of Trial: June 3, 2011

Presiding Judge: Lee S. Alford

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



*State of South Carolina*  
*The Sixteenth Judicial Circuit*

Wanda Nelson  
Official Court Reporter  
Sixteenth Judicial Circuit  
At Large

Transcript Request:  
P.O. Box 749  
York, SC 29745

October 11, 2011

Mr. R. Chadwick Smith  
Attorney at Law, LLC  
200 Oakland Avenue  
P.O. Box 904  
Rock Hill, SC 29731  
803-324-2800  
803-324-5030

RE: Raymond Bernard Murray v. State  
Case No.: 2010-CP-46-04234  
Date of Hearing: June 3, 2011  
Before: Honorable Lee S. Alford

Mr. Smith:

I am in receipt of your letter dated October 11, 2011, requesting the transcript in the above-referenced hearing as the Applicant wishes to appeal his Post Conviction hearing from the date referenced. You also stated that the State of South Carolina pays my fees for this transcript.

Please be advised that as the requestor you are responsible for the payment of the transcript. If the South Carolina Commission on Indigent Defense is handling the appeal you may want to clarify with that office as to any procedure for requesting transcripts and the payments related to any transcripts to be ordered.

Please forward any communications about this matter to Ms. Sharon Graham with the Commission on Indigent Defense at:

S.C. Division of Appellate Defense  
P.O. Box 11589  
Columbia, SC 29211-1589  
803-734-1330  
803-734-1397

Sincerely  
*Wanda Nelson*  
Wanda Nelson  
Official Court Reporter  
Sixteenth Judicial Circuit

CC: Ms. Sharon Graham

*10-14-2011  
Called Sharon  
Graham. Left  
message for her to  
call regarding who is  
to pay for transcript.*

# R. CHADWICK SMITH

Attorney at Law, L.L.C.  
The Oakland Building  
200 Oakland Avenue • P.O. Box 904  
Rock Hill, SC 29731  
Phone: 803-324-2800 • Fax: 803-324-5030

RECEIVED

OCT 19 2011

October 11, 2011

S.C. Supreme Court

Wanda S. Nelson  
Post Office Box 749  
York, South Carolina 29745-1662

RE: Raymond Bernard Murray, Appellant, v. The State of South Carolina,  
Respondent, Case No. 2010-CP-46-4234

Dear Ms. Nelson:

On June 3, 2011, the above case was tried before the Honorable Lee S. Alford, Circuit Court Judge, in York County. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire record.

I was appointed to represent the Appellant in a Post Conviction Relief proceeding and he now desires to file an appeal. It is my understanding that the State of South Carolina pays your fees for this transcript.

If I can provide you with any additional information regarding this matter, please contact me.

Sincerely,

*R. Chadwick Smith*

R. Chadwick Smith  
Attorney for Appellant

cc: Harrison D. Brant, Esquire  
Office of the Attorney General of South Carolina  
S.C. Court Administration  
Clerk, Court of Appeals  
Raymond Bernard Murray



COPY

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

OCT 19 2011

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S.C. Supreme Court

Lee S. Alford, Circuit Court Judge

Case No. 2010-CP-46-4234

RECEIVED  
OCT 12 2011  
SC Court of Appeals

Raymond Bernard Murray,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Raymond Bernard Murray appeals the order of the Honorable Lee S. Alford dated September 6, 2011. The York County Clerk of Court's Office mailed a copy of the order dated September 6, 2011 to Appellant's attorney to Post Office Box 11808, Rock Hill, South Carolina 29731-1808. Appellant's attorney's office has not been located at this address since December 1, 2010. Appellant's attorney's address is listed as Post Office Box 904, Rock Hill, South Carolina 29731 with the South Carolina bar Association, as evidence by the attached document printed from the South Carolina Bar Association website. Appellant's attorney received written notice of entry of this order on October 4, 2011.

October 11, 2011

*R. Chadwick Smith*

R. Chadwick Smith  
Post Office Box 904  
Rock Hill, South Carolina 29731  
Telephone (803) 324-2800  
Attorney for Appellant

Other Counsel of Record:  
Harrison D. Brant  
Office of the Attorney General



COPY

Post Office Box 11549  
Columbia, South Carolina 29211-1549  
Attorney for Respondent  
(803) 734-3970

# The South Carolina Court of Appeals

Raymond Bernard Murray, 217497, Appellant,

217477  
v.

State of South Carolina, Respondent.

RECEIVED

OCT 17 2011

The Honorable Lee S. Alford  
York County  
Trial Court Case No. 2010-CP-46-04234

S.C. Supreme Court

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## ORDER

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The appeal in the above captioned matter is transferred to the South Carolina Supreme Court under the filing provisions of Rule 243 of the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE  
For The Court

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc: R. Chadwick Smith, Esq.  
Chief Appellate Defender Robert M. Dudek  
Assistant Attorney General Harrison Brandt  
~~The Honorable Daniel Shearouse~~

FILED  
10/13/11

# R. CHADWICK SMITH

Attorney at Law, L.L.C.  
The Oakland Building  
200 Oakland Avenue • P.O. Box 904  
Rock Hill, SC 29731  
Phone: 803-324-2800 • Fax: 803-324-5030

RECEIVED

OCT 17 2011

S.C. Supreme Court

October 11, 2011

RECEIVED

OCT 12 2011

SC Court of Appeals

The Honorable Tanya A. Gee  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Raymond Bernard Murray, Appellant, v. The State of South Carolina,  
Case No. 2010-CP-46-4234

Dear Ms. Gee:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent.
- (2) A copy of the order which is to be challenged on appeal.
- (3) Copy of letter to court reporter Wanda S. Nelson ordering transcript of proceedings.
- (4) Copy of letter to the Honorable David Hamilton, Clerk of Court for York County. Proof of Service of Notice of Appeal to David Hamilton

Sincerely,



R. Chadwick Smith  
Attorney for Appellant

cc: Harrison D. Brant  
Office of the Attorney General of South Carolina  
Post Office Box 11549  
Columbia, South Carolina 29211-1549  
(803) 734-3970  
Attorney for Respondent

Raymond Bernard Murray

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

OCT 17 2011

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S.C. Supreme Court

Lee S. Alford, Circuit Court Judge

Case No. 2010-CP-46-4234

Raymond Bernard Murray,

Appellant,

RECEIVED

OCT 12 2011

v.

SC Court of Appeals

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Raymond Bernard Murray appeals the order of the Honorable Lee S. Alford dated September 6, 2011. The York County Clerk of Court's Office mailed a copy of the order dated September 6, 2011 to Appellant's attorney to Post Office Box 11808, Rock Hill, South Carolina 29731-1808. Appellant's attorney's office has not been located at this address since December 1, 2010. Appellant's attorney's address is listed as Post Office Box 904, Rock Hill, South Carolina 29731 with the South Carolina bar Association, as evidence by the attached document printed from the South Carolina Bar Association website. Appellant's attorney received written notice of entry of this order on October 4, 2011.

October 11, 2011

*R. Chadwick Smith*

R. Chadwick Smith  
Post Office Box 904  
Rock Hill, South Carolina 29731  
Telephone (803) 324-2800  
Attorney for Appellant

Other Counsel of Record:  
Harrison D. Brant  
Office of the Attorney General

Post Office Box 11549  
Columbia, South Carolina 29211-1549  
Attorney for Respondent  
(803) 734-3970

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

---

Case No. 2011-CP-46-4234

---

Raymond Bernard Murray,

Appellant,

v.

The State of South Carolina,

Respondent.

---

PROOF OF SERVICE

---

I certify that I have served the Notice of Appeal on the Respondent's attorney, Harrison D. Brant, by depositing a copy of it in the United States Mail, postage prepaid, on October 11, 2011, addressed to Harrison D. Brant, Office of the Attorney General of South Carolina, Post Office Box 11549, Columbia, South Carolina 29211-1549.

October 11, 2011



R. Chadwick Smith  
Post Office Box 904  
Rock Hill, South Carolina 29731  
Telephone (803) 324-2800  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

---

Case No. 2011-CP-46-4234

---

RECEIVED

OCT 17 2011

S.C. Supreme Court

Raymond Bernard Murray,

Appellant,

v.

The State of South Carolina,

Respondent.

---

PROOF OF SERVICE

---

I certify that I have served the Notice of Appeal on David Hamilton, Clerk of Court for York County, by depositing a copy of it in the United States Mail, postage prepaid, on October 11, 2011, addressed to David Hamilton, Clerk of Court for York County, Post Office Box 649, York, South Carolina 29745-0649.

October 11, 2011



R. Chadwick Smith  
Post Office Box 904  
Rock Hill, South Carolina 29731  
Telephone (803) 324-2800  
Attorney for Appellant

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2010CP4604234

**Raymond Bernard Murray vs. South Carolina State of**

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), SCRCPP;  Rule 41(a),  
SCRCPP (Vol. Nonsuit);  Rule 43(k), SCRCPP (Settled);  Other:
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRCPP;  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:

**ORDER OF DISMISSAL**

Dated at York, South Carolina, this 6th day of September, 2011.

Court Reporter:

s/ LEE S. ALFORD

**PRESIDING JUDGE - LEE S. ALFORD**

This judgment was entered on the 11th day of August, 2011, and a copy mailed first class this 11th day of August, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

**R Chadwick Smith Attorney at Law P.O. Box**  
11808 Rock Hill, SC 29731-1808

**Harrison D. Brant Office Of Attorney General**  
PO Box 11549 Columbia, SC 292111549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

**David Hamilton**

SCRCPP APP-24/FORM 4

David Hamilton - Clerk of Court

**RECEIVED**

OCT 12 2011

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

FILED-RECEIVED  
IN THE COURT OF COMMON PLEAS  
2011 SEP -6 PM 1:54  
SIXTH JUDICIAL CIRCUIT

217477

DAVID HAMILTON  
C.C.C.P. & GS  
YORK COUNTY, SC 2010-CP-46-4234

Raymond Bernard Murray, #217497,  
Applicant,

v.

State of South Carolina,  
Respondent.

**ORDER OF DISMISSAL**

This matter comes before the Court by way of Application for Post-Conviction Relief filed September 30, 2010, and amended on October 19, 2010. The Respondent filed its Return on April 26, 2011. An evidentiary hearing into the matter was convened at the Moss Justice Center in York County on June 3, 2011. The Applicant was present at the hearing and was represented by R. Chadwick Smith, Esquire. The Respondent was represented by Harrison D. Brant, Esquire, of the South Carolina Attorney General's Office.

The Applicant testified on his own behalf at the hearing. The Applicant's trial counsel, Melissa Inzerillo, Esquire, also testified at the hearing. This Court had before it the records of the York County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, and the Applicant's plea transcript.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. On February 28, 2008, the Applicant pled guilty to Assault and Battery of a High and Aggravated Nature (2007-GS-46-4285), and Failure to Register as a Sex Offender, first offense (2007-GS-46-4287). The

*Handwritten initials/signature*

Honorable Roger L. Couch sentenced the Applicant to a negotiated sentence of seven (7) years, suspended upon time served with probation for two years for the ABHAN charge, and ninety (90) days for Failure to Register. The Applicant did not appeal these convictions or sentences.

On July 7, 2008, and January 5, 2010, arrest warrants were issued for the Applicant for probation violations. The Applicant was then indicted at the April 2010 term of the York County Grand Jury for Possession of Crack Cocaine (2010-GS-46-1404). The Applicant was represented by Melissa Inzerillo. The Applicant subsequently filed a motion to reopen a 1987 case in which he pled guilty to Criminal Sexual Conduct with a Minor (1987-GS-46-1525). (Tr. p. 2). On June 8, 2010 – the day before he was scheduled to proceed to trial on the possession charge – the Applicant appeared before the Honorable John C. Hayes, III,<sup>1</sup> to discuss his motion to reopen. (Tr. p. 2). Judge Hayes held he lacked jurisdiction over a 1987 case, Tr. p. 4-5, and issued a written Order the next day to that effect. (See attached appellate records). On June 9, 2010, the Applicant opted to forego trial and pled guilty as indicted to the possession charge. Judge Hayes sentenced the Applicant to three (3) years for the possession charge. Judge Hayes also revoked in full the Applicant's probationary sentence from his ABHAN conviction and ordered him to serve the remaining seven (7) year sentence, concurrent to his other sentence.

The Applicant did not appeal his convictions or sentences. However, the Applicant did appeal the order denying his motion to reopen his 1987 case. Lanelle C. Durant, Esquire, filed an appellate brief on the Applicant's behalf pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). The matter is presently pending before the South Carolina Court of Appeals.

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<sup>1</sup> The transcript cover indicates the Honorable Lee S. Alford presided over the hearing. . Upon information and belief, the hearing was actually presided over by the Honorable John C. Hayes, III.

# 2  
JGD

## ALLEGATIONS

In his application for post-conviction relief, and in his amended application, the Applicant listed a plethora of allegations.<sup>2</sup> However, at the evidentiary hearing the Applicant only presented testimony and evidence relevant to the following allegations:

1. Ineffective assistance of counsel
  - a) Failure to adequately investigate
  - b) Failure to advise Applicant of evidence against him

## STATEMENT OF FACTS

On December 6, 2009, a Rock Hill patrol officer observed the Applicant walking down the street. (Tr. p. 15). The officer had a clear view of the Applicant, and knew there was an active warrant for his arrest for giving false information to the police. (Tr. p. 15-16). He was able to identify the Applicant based on prior experiences he had with him. (Tr. p. 15). The officer turned on his blue lights pulled up beside the Applicant. (Tr. p. 16). The Applicant stopped and began to argue, and asked, "What did I do this time?" The Applicant had his left hand in his coat pocket, and the officer twice ordered him to take his hand out of his pocket for safety reasons. At that point, the Applicant fled on foot. The officer pursued him on foot, and ordered him to stop. The Applicant then threw a white object to the ground behind a car in an apartment parking lot while the officer was about fifteen feet behind him. The Applicant then stopped running, and was arrested for the false information charge. The officer was able to go back to the location where he saw the Applicant drop the object and recovered a crack rock.

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<sup>2</sup> To the extent the Applicant raised other allegations in his applications, he failed to present any testimony or evidence in support of these claims. Therefore, he failed to meet his burden of proof as to these claims. See Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (holding averments in PCR application, without more, are insufficient to warrant granting of relief). Accordingly, these claims are denied and dismissed.

wrapped in a white plastic grocery bag. The evidence was tested and determined to be .12 grams of crack cocaine.

### SUMMARY OF TESTIMONY

The Applicant testified counsel failed to investigate his case. He stated he was falsely accused of this offense by his arresting officer who turned something in as evidence other than what he actually found that day. He testified he met with counsel three times, and at one of those meetings she was supposed to let him listen to some tapes, but she was unable to do so. He stated counsel did listen to the tapes, but all she told him was that she heard his voice. He stated he never saw any evidence from this case or another case involving a sex charge, and he told the judge this the day before he pled guilty. He testified he was preparing to go to trial; however, on the morning of his trial date, he decided to plead guilty when he realized he was not going to get the evidence. He stated he does not know whether counsel interviewed any witnesses. He stated he never threw down crack, and he was not truthful on the day of his plea when he admitted he did.

Counsel testified she met with the Applicant ten to twenty times. She stated she discussed with him the charge and the potential sentence he faced. She testified she received and reviewed the State's discovery for this charge which included an incident report, case summary, evidence log, and later a drug report, and she also went and personally viewed the drug evidence. She stated she discussed all of this evidence with the Applicant. She stated she also discussed with the Applicant the possibility of fingerprinting the plastic bag the officer said he found the drugs in; however, when she viewed the evidence there was no plastic bag. She stated she discussed with the Applicant the possibility of using this inconsistency at trial against the officer on cross-examination. She testified she did not make a pre-trial motion to suppress the drug

evidence because case law supports the admissibility of evidence thrown down by an individual while being pursued.

Counsel testified the Applicant did provide her with names of witnesses; however, they could only provide information as to the CSC charge or the false information warrant the Applicant was wanted for. She testified she did not interview them because the Applicant indicated none of these witnesses were at the scene nor had any information pertaining to the possession charge; therefore, she concluded they would not have been helpful in this case.

Counsel testified there were no audiotapes involved in this case. She explained she also represented the Applicant on a criminal sexual conduct (CSC) charge that arose after the possession charge. She stated the CSC charge involved the exchange of drugs for sex, but was unrelated to the possession charge. She testified the CSC charge involved audio recordings of jail phone calls, the contents of which she listened to and later discussed with the Applicant. She stated the Applicant never got to listen to the tapes because she tried one time to play them for him, but she could not get the device to work. Before she had another chance to play the tape for the Applicant, he pled guilty to the possession charge. She testified the CSC charge was ultimately dismissed subsequent to the Applicant's plea in this case.

Counsel testified that on the day of trial the Applicant said he wanted to plead guilty. She stated she then had extensive discussions with the Applicant about his plea, after which the Applicant indicated he still wanted to plead guilty and did not want to go to trial. She testified the Applicant pled guilty knowing and understanding the evidence the State would present against him at trial. She stated she explained to the Applicant that his plea would be a probation violation, and that it was a straight-up plea although the State was allowing him to plead to a first

offense instead of a second. She stated she also explained to him the difference in concurrent and consecutive sentences.

### **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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

#### **Ineffective Assistance of Counsel/ Involuntary Guilty Plea**

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this

prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the post-conviction relief hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court finds the Applicant's allegations of ineffective assistance of counsel to be without merit. As a threshold matter, the Court had the opportunity to observe the witnesses when testifying. This Court finds the testimony of counsel very credible, and finds the Applicant not credible. The Applicant has a lengthy criminal history dating back to 1987. He asks this Court to accept and believe that he lied to the trial court when he agreed to the facts as stated by the Solicitor, that he is innocent of this crime and was set up by a police officer, and that he only

pled guilty because he never saw any evidence against him. However, “[a] guilty plea is a solemn, judicial admission of the truth of the charges against an individual.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct.App.2007). “Therefore, statements made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. at 137-38, 654 S.E.2d at 874. This Court finds the Applicant’s story is clearly not credible; therefore, he failed to present valid reasons why he should be allowed to depart from statements he made at his guilty plea.

Furthermore, he took this opportunity to try and interject allegations about other charges that were pending against him at the time of this case, but they are totally irrelevant to this case. Counsel represented him on a number of separate charges which occurred on other dates and are not connected to the possession of crack cocaine charge to which he pled guilty in this case. She represented him on a burglary charges and several other charges she was able to get dismissed. She also represented him on a CSC 3rd charge. She was later relieved as his attorney on that charge, and it was thereafter dismissed. When the Applicant alleges he did not get to listen to tape recordings of conversations, he is referring to taped telephone calls he made from the York County Detention Center provided by the Solicitor in connection with the CSC 3rd case. Counsel testified she tried to play the tapes for him, but the equipment did not work properly. She told him about the substance of the tapes, but again, they were not relevant to the case at hand, only to the CSC 3rd charge which was later dismissed.

The Applicant also alleges to some extent that counsel did not interview witnesses. These witnesses were only relevant to the CSC 3rd charge or the false information charge for which the police sought to arrest him. There were no witnesses to the incident relevant to the instant case when he ran from a police officer, and the officer saw him throw down a baggy with

HS  
2/2/10

a rock of crack cocaine inside. Therefore, to the extent the Applicant alleges counsel failed to interview witnesses, this allegation is without merit.

This PCR Application concerns only the possession of crack cocaine charge. To the extent the Applicant alleges counsel otherwise failed to investigate his case, this Court finds the Applicant failed to meet his burden of proof. An allegation asserting counsel failed to adequately investigate must be supported by evidence that through further investigation counsel would have discovered evidence or a witness favorable to applicant. Stalk v. State, 383 S.C. 559, 562-63; 681 S.E.2d 592, 594-95 (2009). The Applicant failed to present any such evidence. Therefore, the Applicant failed to meet his burden of proof, and this claim is denied and dismissed.

Further, counsel's testimony establishes the Applicant was advised and understood all of the evidence the State intended to use against him. Pre-trial was conducted and a trial was about to begin when the Applicant, on his own, decided to plead guilty. Since the case was about to go to trial, there was no plea offer and he pled straight up. However, he was allowed to plead to a first offense instead of a second offense. He was advised and understood the possible consequences of his plea, and that his guilty plea constitutes a violation of his probation. This Court finds he freely and voluntarily entered his plea after being advised of all the evidence against him, his rights, and the consequences of his plea. This Court also finds the Applicant knowingly and intelligently pled guilty based upon the effective assistance of counsel.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence trial counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel’s performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, the allegation of ineffective assistance of counsel is denied.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

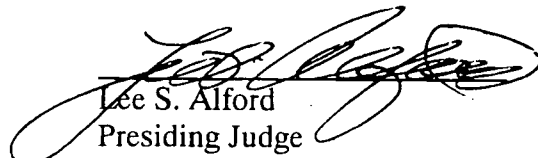
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel’s assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant’s behalf.

### IT IS THEREFORE ORDERED:

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

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AND IT IS SO ORDERED this 11<sup>th</sup> day of August, 2011.

  
Lee S. Alford  
Presiding Judge  
Sixteenth Judicial Circuit

York, South Carolina.

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R Chadwick Smith  
Attorney at Law  
PO Box 11808  
Rock Hill SC 29731-1808

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## Member Directory

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### Member Profile

**Name:** Mr. R. Chadwick Smith  
**Company:** R. Chadwick Smith, Attorney at Law, LLC  
**Address:** P.O. Box 904  
**City, State Zip:** Rock Hill, SC 29731  
**Phone:** (803) 324-2800  
**Fax:** (803) 324-5030  
**County:** York  
**SC Bar Admission:** 5/8/2000  
**Law School:** USC School of Law  
**Graduating Year:** 1999  
**Website:**  
**Membership Status:** Greater Than 3 Years

Discipline/Administrative Actions if Any

**This person has no disciplinary actions.**

**CHADWICK SMITH**

Attorney at Law, L.L.C.  
P.O. Box 904  
Rock Hill, SC 29731



*Raymond  
Bernard  
Murray*

**R. CHADWICK SMITH**

Attorney at Law, L.L.C.  
P.O. Box 904  
Rock Hill, SC 29731

*The Honorable Tanya A. Gee  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211*