STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO CLARENDON COUNTY
Court of Common Pleas

RECEIVED
MAR 14 2014
S.C. Supreme Court

The Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2012-213670

RAPHAEL BRIGGS, ... PETITIONER,

v.

STATE OF SOUTH CAROLINA, ...RESPONDENT.

SUPPLEMENTAL APPENDIX

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ATTORNEYS FOR RESPONDENT

INDEX

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS

2009-CP-14-0023

Ralphael Lamont Briggs, #314499,
Applicant,
v.
State of South Carolina,
Respondent.

AMENDED ORDER OF DISMISSAL

This matter is before this Court by way of an application for post-conviction relief (PCR) filed January 13, 2009. The State made its Return on June 17, 2009. A hearing on the matter was convened at the Sumter County Courthouse on October 27, 2010. Applicant was present and represented by Charles T. Brooks, III, Esquire. The State was represented by Mary Williams, Esquire, of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf at the hearing. His trial counsel, Harry Devoe, Esquire, also testified. In addition, this Court had before it the transcript of Applicant's trial, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the Department of Corrections, the post-conviction relief application and the State's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted at the March 2006 term of the Sumter County Grand Jury for (1) Murder and (2) Possession of a Firearm During Commission of a Violent Crime (2006-GS-14-0076). Applicant was represented

by Harry Devoe, Esquire. Applicant proceeded to a jury trial before the Honorable John M. Milling, where he was found guilty as indicted. Judge Milling sentenced Applicant to thirty-seven years imprisonment for Murder and to a concurrent term of five years for Possession of a Firearm During Commission of a Violent Crime.

A Notice of Appeal was filed and an appeal perfected. Following the submission of briefs, the conviction and sentence were affirmed. State v. Briggs, Op. No. 2008-UP-515 (S.C. Ct. App. filed Sept. 8, 2008). The remittitur was sent on September 24, 2008.

ALLEGATIONS

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

1. "Ineffective assistance of trial counsel."
   a. Failure to adequately investigate/prepare.
   b. "Trail counsel opens doors for the introduction of 'bad act' and character defaming evidence."
      i. Opening argument opened door to State presenting evidence of defendant's drug-related activities.
      ii. During cross examination of Dominique Lawson a "scuffle" was mentioned which had been testified to by a police officer, and this "re-rung a bell in the jurors minds which easily resulted to emphasize the possibility of 'malice' to have existed based on that 'scuffle' and subsequent taking of a small amount of crack cocaine."
      iii. Court decided that prior drug conviction is admissible. "...From here, being as no objections and arguments have been made by Defense counsel to keep such prejudicial matters from coming in, it can be said that Defense counsel 'crossed over into the camp of the prosecution'... ."
         1. Defense counsel elicited testimony from defendant that he never had a legal job and asked about selling drugs at the trailer. The prosecution followed up with similar questions.
      iv. Counsel should have argued for exclusion of bad acts evidence.
   c. "Trial counsel chose not to oppose impeachment based on a conviction for marijuana possession."
      i. Door had not been opened and even if it had, counsel should have objected.

d. "Trial counsel failed to object to the State's use of a golden rule argument and language designed to challenge and inflame the prejudices and passions of the jurors."
e. "Trial counsel failed to request a jury charge on the offense of involuntary manslaughter."
f. "Trial counsel failed to properly preserve the trial court's prejudicial error of law, whereas the court submitted to the jury whether Briggs was a lawful guest and thus had a duty to retreat before he acted in self-defense."

2. "Prosecutorial Misconduct."
   a. "...the State prosecutor (solicitor) exercised no restraint to keep unfair prejudice out of the trial at bar. The Solicitor completely ignored the fact that he was acting in the capacity of a 'minister of justice' rather than a mere advocate attempting to prevail at trial."
      i. Opening statements were improper.
      ii. "Then the Solicitor enjoyed unhindered cross-examination of Briggs concerning illegal drug distribution, etc."
      iii. Closing arguments were improper.

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 post-conviction relief 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 finds that Counsel's testimony is credible while Applicant's testimony is not credible. 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 (1985).

Ineffective Assistance of Counsel

The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP.

For an applicant to be granted post-conviction relief 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. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address each allegation of ineffective assistance of counsel:

Applicant's request for more time

Applicant alleges he requested additional time to hire a private attorney but was tried before he could retain private counsel. Applicant wanted additional time to hire attorney Ray Chandler, and requested his counsel "get me a postponement." Tr. P. 9, L. 16. Counsel testified that before the case went to trial in March 2006, he represented Applicant for roughly five months and met with him several times, and in the week before trial maybe four or five times. Tr. P. 13, L. 21. Counsel testified that he discussed trial strategy with Applicant. Id., 24-25.

This Court finds Applicant's claim is without merit, and that Applicant failed to meet his burden of proving his trial counsel was unprepared, that he needed more time, or that the lack of an extension of time could have caused prejudice to his case. Applicant was represented by competent counsel who is very experienced in defending criminal matter such as the one at bar.

Further, this Court finds that Applicant failed to show what benefits would have accrued from further investigation or more time, and has failed to meet his burden proof. This Court finds Counsel's testimony was credible and he adequately investigated and prepared the case for

trial. Additionally, this Court finds Applicant failed to meet his burden of proving prejudice, therefore this allegation is denied.

Errors in the indictment

Applicant alleges there were errors in his indictment, to wit, "they didn't indict me right." And "[t]hey didn't have general sessions." Tr. P. 5, L. 15-18. The well-settled test for judging the sufficiency of criminal indictments is whether "the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he has called upon to answer, and acquittal or conviction may be pleaded in bar in bar to any subsequent prosecution." State v. Wade, 306 S.C. 79, 409 S.E.2d 780 (1991). Quoting, State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981). The State is not required to plead its evidence in the indictment. State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (S.C. App. 1991).

When reviewing the sufficiency of indictments, the above cited test "must be viewed with a practical eye; all the surrounding circumstances must be weighed before an accurate determination of whether a defendant was or was not prejudiced can be reached. [citations omitted]." State v. Adams, 283 S.E.2d at 588.

In this matter, Applicant's claim sounds in the nature of a defective indictment, but as posited before this Court, the allegation is general and vague in its form, and fails to state a claim cognizable under the Uniform Post Conviction Relief Act. This Court finds Applicant's claim is without merit, and that Applicant failed to meet his burden of proving material errors in the indictment or that such errors could have caused prejudice to his case in any way. Accordingly, this allegation is denied.

WPB

Failure to call witnesses

Applicant alleges he asked counsel to subpoena witnesses, and that counsel did not do so. Tr. P. 6, L. 12-13. This claim must fail since Applicant himself did not call these very witnesses at the post-conviction relief hearing, nor did he explain how they would have affected the outcome of his trial. In fact counsel did call the witness he felt were in accord with his trial strategy, such as Mrs. Katie Green. Tr. P. 19, L. 11-13. Accordingly this Court is not persuaded by Applicant's claim, and therefore this allegation is denied.

Counsel was unprepared

Applicant alleges he did not get enough time with counsel to prepare his defense. "I ain't seen him. I told him, I ain't seen you - - you know, you came to see me one or two times. And you were like, I figured it was straight, you know, because a lawyer came to see me." Tr. P. 6, L. 15-17. In response to the question of how lone he had Mr. Devoe as his counsel, Applicant averred, "about 5 months; that's all I know. And I seen him maybe one or two time maybe."

On cross-examination, Applicant admitted that he provided law enforcement with a statement in the case. Tr. P. 12, L. 12-14. Counsel testified that Applicant revealed to him that he was "mirandized and made a statement to Detective Dan Culler, whereupon he admitted that it was a drug deal, he was selling drugs in the location of the crime, that he shot the victim." Tr. P. 14, L. 4-8. Counsel further testified, "he laid the whole thing out at the preliminary hearing." Id. L. 12.

Given the full admission by his client, which appeared to have been obtained freely and voluntarily from Applicant, counsel had the difficult task of putting up a defense for a case where there had been a full admission that Applicant shot the victim and that drugs were involved. Counsel testified the difficulty in establishing a defense was the issue of the duty to

retreat or whether Applicant had the right to stand his ground. Additionally, "there's conflicting testimony as to whether or not the victim had a stick at the time of the killing." Tr. P. 16, L. 22-22.

Counsel testified, "I tried to establish self-defense and voluntary manslaughter." Tr. P. 17, L. 13-14. Counsel further argued that Applicant had no duty to retreat because he was either in invitee or business guest. Id. L. 19-10. Counsel's trial strategy to seek to establish self defense was well within the professional norms of competent representation. That the jury simply did not believe the case was one of self defense does not automatically indicate counsel's performance was deficient. On the contrary, counsel's conduct did not fall below reasonable standards of representation and I find counsel rendered effective representation in a case with overwhelming evidence of guilt against the Applicant. Therefore, this allegation is denied.

Counsel "opened the door"

Applicant complained that counsel opened the door for the solicitor to go into Applicant's prior bad acts. P. 6, L. 23-24. Counsel testified that Applicant wanted to testify. Tr. P. 19, L. 5-7. The general strategy was that Applicant would be able to counter what the State was saying, to establish a self-defense and to establish he was a social guest with no duty to retreat. Id.

Applicant failed to show what testimony from trial opened the door, and how that prejudiced his case. Accordingly this allegation is denied.

Failure to Request Charge on Involuntary Manslaughter

Applicant alleges that Counsel was ineffective in failing to request a jury charge on involuntary manslaughter. It was undisputed that on September 5, 2005, victim Wesley House ("House") died from a shotgun wound to his abdomen at close range, and Applicant held the

shotgun which fired the fatal shot. Early in the afternoon, Applicant and House had a physical confrontation when someone came to Katie Green's trailer wishing to speak with Applicant, not House, about purchasing crack cocaine. Applicant claimed House pinned Applicant against a wall and took a vial of crack cocaine from him.

Later that day, after taking Green's grandson to the mall, Applicant returned to the trailer. Applicant was near his car alongside the road when House approached him, saying "what's up?" House's cousin, Dominique Lawson, who was grilling meat, denied that House had a weapon when he approached Applicant. Applicant claimed that House approached Applicant with a stick. Applicant described House's stick as gray and emblazoned with the words "big shot." As House walked over, Applicant popped the trunk from the driver's side door and retrieved a loaded shotgun. (App. p. 135, lines 10-17; p. 153, line 15 – p. 155, line 1.) At trial, Applicant variously described the fatal moment:

(1) App. p. 136, line 16 – p. 137, line 9:

> Q. Well when the gun – Did you mean to pull the trigger?
> A. No, sir.
> Solicitor: Object to leading.
> Q: If you hadn't pulled the trigger what would you have done?
> A: I don't know what I would have done.
> Q: Was he still coming towards you?
> A: Yes, sir.
> Q: Did you think you were using the gun as a club rather than as a gun?
> A: Say again?
> Mr. Cothran [solicitor]: Your honor, I request he not lead him.
> The court: Sustained.
> Q. Well if you hadn't used the gun what would you have done?
> A. I don't know what I would have done. I can't answer that.

(2) App. p. p. 157, lines 1-15:

> Q: ...And you go back and pull the gun out and you stick it in his chest. And he's defying you to shoot him, right?
> A: Nah, I didn't stick it into his chest. He walked into the gun.

Q: He just walked into it, and you pulled the trigger.
A: He walked into the gun and the gun went off.
Q: So when he's walking to the gun you're just standing there with it.
A: I just pulled it out. As soon as I pulled it out, he was close to me. He was walking up on it. As soon as I whip it out, that's when he – he was still close enough, close enough for him to walk on –
Q: Okay. Where was –
A: And, you know, and told him to back up. I didn't know it was going to go off.

(3) App. p. 158, lines 3-5:

Q: And so you pulled the trigger?
A: It went off. Yeah, I didn't, you know, I don't know how it happened. It happened so quick.

(4) App. p. 162, line 23 – p. 163, line 8:

Q: So you stick the gun in his chest and pull the trigger?
A: No, he walked to the gun. I did not move. I didn't move at all. He walked to the gun.
Q: So you're saying you're sitting there holding the gun on him –
A: He walked towards it.
Q: –And he walks right into the gun –
A: He walked right into it.
Q: – And you pulled the trigger?
A: Yes, sir.

After firing, Applicant stated he returned the shotgun to the trunk and drove away. House's stick was also found in Applicant's trunk, but Applicant claimed not to know how the stick got there. (App. p. 138, line, line 7 – p. 139, line 4.) Another individual disposed of the shotgun and stick. Applicant maintained that he was afraid and defending himself when he retrieved the weapon. (App. p. 135, lines 5-9; p. 136, lines 2-3; p. 141, lines 3-7.)

In State v. Burriss, 334 S.C. 256, 264-265, 513 S.E.2d 104, 109 (1999):

> Involuntary manslaughter is defined as either (1) the killing of another without malice and unintentionally, but while one is engaged in the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) the killing of another without malice and unintentionally, but while one is acting lawfully with reckless disregard of the safety of others.

In this case, the second part of the definition is relevant.[1] For Applicant's conduct to be lawful, he would have to be armed in self-defense. Applicant's claim of being armed in self-defense fails, however. As set forth in State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994):

> To establish self-defense the defendant must establish the following elements: 1) the defendant must be without fault in bringing on the difficulty; 2) the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; 3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief; if the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness, and courage to strike the fatal blow to save himself from serious bodily harm or losing his own life, and; 4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

(citing State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984).) Applicant acknowledged that as House approached with the stick he could just as easily have gotten into his car and driven away rather than popping the trunk and going for the shotgun. (App. p. 153, line 25 – p. 155, line 1.)

Even assuming that Applicant was lawfully armed in self-defense, he has failed to show evidence of recklessness in his handling of the weapon. By Applicant's own testimony, he turned with the loaded weapon as House approached with the stick, making no forward movement and not mishandling the gun in any way. Applicant contends that once the gun was drawn, House continued toward Applicant, walking into the weapon and causing it to go off. According to Applicant, it was House's reckless actions which caused the discharge, not his own. This case is

[1] Part 1 of the definition would be inapplicable here. If Applicant were unlawfully presenting a firearm, such activity would naturally tend to produce death or harm. State v. Reese, 370 S.C. 31, 633 S.E.2d 898 (2006) (charge of involuntary manslaughter not warranted where defendant was pointing or presenting a firearm, a felony).

distinguished from cases like Light v. State, 378 S.C. 641, 664 S.E.2d 465 (2008) (defendant entitled to involuntary manslaughter where he was lawfully armed in self-defense because he took the gun from the victim who was allegedly threatening him with it and there was evidence defendant recklessly handled the gun since the gun fired almost immediately after defendant took possession) and State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999) (defendant entitled to charge on involuntary manslaughter where lawfully armed in self-defense and snatched gun up with shaking hands, resulting in an accidental discharge) in that here, according to Applicant, it was not any act by him which caused the fatal discharge. Whereas the negligent handling of a weapon will support a finding of involuntary manslaughter, Applicant's case offers no evidence from which the jury can deduce that Applicant's own handling of the weapon was negligent, and there was no evidence of a struggle over the weapon. According to Applicant's testimony, either (1) Applicant stood stoically and safely holding his gun while House recklessly bumped up against the gun or (2) Applicant pulled the trigger purposefully as House approached.

As Applicant was not acting in self-defense and not acting recklessly, Counsel's failure to request a jury charge on involuntary manslaughter was not unreasonable. Even if Counsel had requested such a charge, it would not have been given. Therefore, Applicant has failed to demonstrate that Counsel was ineffective in failing to request such a charge.

Failure to exclude harmful witness

Applicant also testified his trial counsel felt he could have excluded Dominick Lawson, who he felt was a key witness against Applicant because of the witness' prior criminal record. Tr. P. 12, L. 11. Aside from speculation about what might have been a possibility, Applicant failed to show the witness would have likely been excluded, or how even lack of impeachment of this witness with his past record prejudiced Applicant's case, or how the outcome of his trial

might have been different if this witness had been excluded. This Court is not persuaded by this Allegation.

Under these circumstances, Applicant has failed to show Counsel rendered ineffective assistance under prevailing professional norms, and therefore this Court denies this allegation.

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8th day of Feb, 2017.

The Honorable W. Jeffrey Young
Presiding Judge
3rd Judicial Circuit

Sumter, South Carolina

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)
)
RALPHAEL LAMONT BRIGGS, #314499)
Plaintiff,)
vs.)
)
STATE OF SOUTH CAROLINA)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CASE NO.: 2009-CP-14-0023

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
Charles T. Brooks, III, Bar No. ____ Address: 309 Broad Street Sumter, SC 29150 Phone: ____ Fax ____ E-mail: ____ Other: ____	Mary S. Williams, Bar No. ____ Address: PO Box 11549 Columbia, SC 29211 Phone: ____ Fax ____ E-mail: ____ Other: ____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ____
Estimated Time Needed: ____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant — February 3, 2014 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ ____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: ____
- ☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON Ralphael Lamont Briggs, #314499, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS 2009-CP-14-0023 **MOTION PURSUANT TO RULE 60, SCRCP**

Respondent, by and through undersigned counsel, making a Motion for Relief from Judgment or Order, pursuant to Rule 60(b)(1), SCRCP, would respectfully show unto this Court:

1. The matter is before the Court by way of post-conviction relief (PCR) action filed January 13, 2009.
2. A hearing on the matter was convened at the Sumter County Courthouse on October 27, 2010. The matter was taken under advisement. Undersigned counsel was later called to active military service with the National Guard. In my absence, the Attorney General's Office ordered the transcript of the PCR hearing and prepared a proposed order of dismissal based upon that transcript. That order was signed by the Honorable W. Jeffrey Young on December 11, 2012, and filed December 18, 2012. The order addressed the following claims of ineffective assistance of counsel:
    a. Request for additional time to prepare for trial;
    b. Failure to address errors in the indictment;
    c. Failure to call witnesses;

d. Counsel unprepared for trial;

e. Counsel "opened the door" to prior bad act evidence;

f. Failure to request a jury charge on voluntary manslaughter; and

g. Failed to exclude harmful witnesses.

3. Applicant filed a Petition for Writ of Certiorari arguing that counsel was ineffective in failing to request a jury charge on involuntary manslaughter. This issue was not addressed in the trial court's current order of dismissal and therefore would not be preserved for appeal.

4. Undersigned counsel was present at the PCR hearing on October 27, 2010. The transcript of the PCR hearing reflects that Petitioner complained of Counsel's failure to reflect a jury charge on *voluntary* manslaughter. (App. p. 301, line 22 – p. 302, line 7.) According to memory of the case and handwritten notes taken by the undersigned at the hearing, Petitioner actually complained of Counsel's failure to request a charge on *involuntary* manslaughter. (Attachment A – p. 2, line 3 of handwritten notes.) Undersigned counsel specifically recalls researching the issue of involuntary manslaughter and also tasked another attorney or clerk with research on this issue.

5. In preparing to respond to the Petition for Certiorari, the undersigned attempted to procure tapes from the hearing to resolve this issue, but tapes have been destroyed. (Attachment B.)

6. The PCR application contains an allegation that Counsel failed to request a charge on involuntary manslaughter. (App. pp. 277-279.) Further, a charge on voluntary manslaughter was in fact given during the trial, so an allegation raising failure in to request the charge seems illogical. (App. p. 218, line 23 – p. 220, line 22.)

7. Based on the foregoing, it is the undersigned's belief that the PCR court transcript is in error in p. 301, line 22 – p. 302, line 7 and should reflect that Petitioner stated "involuntary manslaughter" and not "voluntary manslaughter."
8. The State filed a Motion to Remand for Motion Pursuant to Rule 60, SCRCP, and Request to Hold in Abeyance in the South Carolina Supreme Court. In an order dated January 6, 2014, the Supreme Court granted this motion. (Attachment C.)

Based on the foregoing, Respondent now moves this Court, pursuant to Rule 60(b)(1), SCRCP, to vacate the final order of dismissal in this case and amend its order to address Applicant's allegation of ineffective assistance of counsel for failure to request a jury charge on involuntary manslaughter.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: Mary S. Williams
Attorneys for Respondent

January 30, 2014.

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON RALPHAEL LAMONT BRIGGS, 314490, Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS 2009-CP-14-0023 AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Motion Pursuant to Rule 60, SCRCP** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad St.
Sumter, SC 29150

DATED this 3rd day of February, 2014.

Caroline Kaiser, Legal Assistant
For Respondent

The Supreme Court of South Carolina

Raphael Lamont Briggs, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-213670

ORDER

This matter is pending before this Court by way of a notice of appeal from the denial of petitioner's application for relief. The State has filed a "Motion to Remand for Motion Pursuant to Rule 60, SCRCP and Request to Hold in Abeyance." Petitioner does not object to the motion. We hereby grant leave for a motion to be made before the lower court pursuant to Rule 60(b), SCRCP. The motion shall be made within thirty days of the date of this order. This matter shall be held in abeyance pending a decision by the lower court on the motion.

C.J.

FOR THE COURT

Columbia, South Carolina

January 6, 2014

cc:
Wanda H. Carter, Esquire
Mary Shannon Williams, Esquire
The Honorable Bertha S. Roberts
The Honorable W. Jeffrey Young

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County
Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2012-213670

RAPHAEL BRIGGS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

MOTION TO REMAND FOR MOTION PURSUANT TO RULE 60, SCRCP AND REQUEST TO HOLD IN ABEYANCE

Respondent herein moves for remand of the matter for a Motion Pursuant to Rule 60, SCRCP. This motion is based on an error in the PCR court's order.

I.

Undersigned counsel was present at the PCR hearing on October 27, 2010. The transcript of the PCR hearing reflects that Petitioner complained of Counsel's failure to reflect a jury charge on voluntary manslaughter. (App. p. 301, line 22 – p. 302, line 7.) According to memory of the case and handwritten notes taken by the undersigned at the hearing, Petitioner actually complained of Counsel's failure to request a charge on involuntary manslaughter. (Attachment A – p. 2, line 3 of handwritten notes) Following the hearing, the case remained under advisement,

and undersigned recalls researching the issue of involuntary manslaughter and tasking another attorney or clerk to assist in this as well. However, undersigned was deployed with the military when the proposed order in this matter was ultimately prepared. It appears that the hearing transcript was ordered by the Attorney General's Office and relied upon in preparing the proposed order which contains a subheading regarding voluntary manslaughter. (App. pp. 322-323.) Prior to preparing this Return to Petition for Writ of Certiorari, the undersigned attempted to procure tapes from the hearing to resolve this issue, but tapes have been destroyed. (Attachment B.) The PCR application contains an allegation that Counsel failed to request a charge on involuntary manslaughter. (App. pp. 277-279.) Further, a charge on voluntary manslaughter was in fact given during the trial, so an allegation raising failure in to request the charge seems illogical. (App. p. 218, line 23 – p. 220, line 22.) Based on the foregoing, it is the undersigned's belief that the PCR court transcript is in error in p. 301, line 22 – p. 302, line 7 and should reflect that Petitioner stated "involuntary manslaughter" and not "voluntary manslaughter."

II.

The issue now raised on petition – ineffectiveness of counsel in failing to request a jury charge on involuntary manslaughter - was not ruled upon by the PCR court in the current order. Plyler v. State, 309 S.C. 408, 409, 424 S.E.2d 477, 478 (1992) (issue procedurally barred where not raised to and ruled upon by trial court). See also Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992); Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). No motion pursuant to Rule 59(e), SCRCP, was filed on Petitioner's behalf. Without the trial court's ruling on this matter, Petitioner's issue is not preserved for appellate review. However, Petitioner did raise the matter

below.

III.

WHEREFORE, having made Motion to Remand for a Motion Pursuant to Rule 60, SCRCP, Respondent would respectfully request this Court to grant the Motion, hold all deadlines in abeyance pending a ruling on this motion, and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
Mary S. Williams
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 22, 2013

A

10/27/10

(1) [redacted] - Scott Robinson, relieve John

(2) [redacted] - consent to bilateral appeal v. Jamt

(3) [redacted] - W/D thorough inquiry

(4) [redacted] W/D thorough inquiry - will be released in 90 days

(5) [redacted] MTD

(6) [redacted] wants to W/D. his max out is 2013, he went thru 3 trials, if successful he'd face this again

(7) Raphael Lamont Briggs
- motion to cont. based on when someone from
dt admin to talk c indict dunno!
- Trial applicant
- tried to hire private atty
- grand jury process - they f indict me right - there wasn't 65 then
- He opened door. ? ?
I asked him to subpoena people & he f.
I only saw him 1-2x

- Bad acts opened doors for drug deal evidence.
- Fail object to golden Rule arg. by solicitor.
- Fail request invol. manslaughter
- Tried to hire Chandler, told Mr. Devoe.
- Failed to properly submit e quest/duty to retreat
- Impeachment of witness - I told him the guy had charges, he said he could've gotten - ~~Lawson~~
- S ... drugs - recall
- Reduced in chg. ???

- Mr. Harry Devoe
  appt Sept 05. Trial Mar. 06
  prelim hearing - he made statement to cattle e drug deal
  No plea negotiations - he told me Chimelle slowed down my seeing him - memo in file e fee $ paid to Chandler

Self-defense - The V was approaching, they had a fight e drugs. State made it critical - I ≠ see it that way - he left
No ? e gun - V had stick, conflicting testim. ... Den had stick ...

State v Gibson
~~Act ... ...~~

...mity

House walked into gun & went off [illegible]
was it violating a [illegible] defense
Charge - v.m., during of [illegible]

SC - 18 years, 15 years w/ PD [illegible]

Met him Nov. 5 Sept 30 prelim 10/11, go to jail a lot.

Would expect [illegible] to give the case

He wanted to, gave him [illegible]

primary - self defense, social [illegible]

(8) [redacted]
- Motion to relieve counsel. [illegible] to [illegible] of witnesses. He talked to Scott Robinson [illegible] investigator & Robinson [illegible] witness is of no use. Investigator Bonny [illegible] came to see me - all did was type up our conversation. He & do investigation.

- Brooks is relieved - you can bring your [illegible] or go pro se

B

Mary Williams

From: Allen, Desiree <[redacted]org>
Sent: Tuesday, October 22, 2013 9:34 AM
To: Mary Williams
Subject: RE: Raphael Briggs

Yes, the tapes are no longer available 30 days after the transcript is delivered. We adhere strictly to Rule 607 when dealing with CR records. To do otherwise, would create a huge storage issue.

From: Mary Williams [mailto:[redacted]gov]
Sent: Tuesday, October 22, 2013 9:24 AM
To: Allen, Desiree
Subject: Raphael Briggs

Ms. Allen,

I don't believe we've spoken since I was a law clerk a few years ago, but I am following up on a question I had in the PCR case of Raphael Briggs taken by Dianne Rutledge on October 27, 2010 (case number 2009-CP-14-0023) . It is my understanding that the tapes of these hearings may be destroyed after they are transcribed. The reason I am following this up is that I believe there may be an error (see attached) and I think it would be dishonest for me to not bring that to the court's attention in my Return to Petition for Certiorari. Can you tell me if the tapes in this case were destroyed? If not, I would like to try to replay just this portion to see whether I mistook what the Applicant said.

Thank you so much for your time, and I am sorry to trouble you with this.

Best regards,

Mary S. Williams
Assistant Attorney General
Post-Conviction Relief and Criminal Appeals
PO Box 11549
Columbia, South Carolina 29211-1549
Telephone: (803) 734 -3737 or (803) 734-3752

ALAN WILSON
ATTORNEY GENERAL

August 19, 2013

Desiree Allen
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, SC 29201-3739

Re: Ralphael Lamont Briggs #314499 v. State of South Carolina
Circuit Court Case No. 2009-CP-14-0023 / Appellate Case No. 2012-213670

Dear Ms. Allen,

I am working on the State's Return to Petition for Writ of Certiorari in the above-referenced matter. I also represented the State at the PCR hearing on October 27, 2010. While I was deployed, this office ordered a copy of the hearing transcript which is now part of the appellate record. The transcript was taken by Dianne Rutledge. On p. 7, line 24 – p. 8, line 5 (copy attached), reference is made to defense counsel's failure to request a jury charge on voluntary manslaughter. I recalled the allegation at the hearing to be that counsel failed to request a charge on involuntary manslaughter, and Briggs' written application also alleges failure to request a charge on involuntary manslaughter, making no mention of voluntary manslaughter.

This issue is now central to the appeal. Are the tapes of this hearing still available? If so, would you be able to review them to ensure that the hearing testimony was indeed voluntary, not involuntary, manslaughter?

I thank you in advance for your time and assistance in this matter.

Best regards,

Mary S. Williams
Assistant Attorney General

Enclosure

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

Q What was that last part?
A Deflame evidence.
Q Okay. And can you elaborate on that?
A He -- he -- he opened the doors because he -- he like -- he's saying that I was drug -- you know, a drug dealer like this. He sell prior -- you know, he sell -- produce. So that opened the door for them.
Q So what you're saying is you felt that it prejudiced you by making a reference to drug dealing; is that correct?
A Yes, sir.
Q Okay. All right. Anything else?
A Yes. He -- he -- he -- the trial counsel failed to object to the state going -- going into argument and laying aside challenging the deflame, and prejudice and passion of the jury.
Q Okay. You're saying that the solicitor made certain comments that trial counsel did not object to?
A Yes, sir.
Q Okay. You felt that prejudiced you in the trial, and that was improper; is that correct?
A Yes, sir.
Q All right. Any other issues in regards to Mr. Devoe's representation?
A He failed to request a jury charge of voluntary manslaughter.

Q In this case you were found guilty of murder?
A Yes, sir.
Q Okay. And you felt that he should have asked for a lesser-included offense of voluntary manslaughter?
A Yes, sir.
Q All right. And he didn't do that; is that correct?
A No, sir.
Q Now, wasn't there certain things that came up during the trial in the course of certain conversations you had with Mr. Devoe that you wanted to tell the Judge about?
A Yeah. Like, he was like -- the same thing I was telling you about when he was like when he first came in here, I was like, he ain't come see me, and I asked him why. He was like -- the same thing I was saying a few minutes ago. He was like -- I said you ain't need me because you had somebody come see you, you know what I'm saying. So I was like, that ain't got nothing to do with me. I'm in jail, you know what I'm saying.
Q How long did you have Mr. Devoe as your attorney before going to trial?
A About 5 months; that's all I know. And I seen him maybe one or two time maybe.
Q Okay. All right. You had no bond; is that correct?
A I never went up for bond or nothing.
Q So from the time you were arrested, until the time you

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County
The Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2012-213670

RAPHAEL BRIGGS, PETITIONER,

vs.

THE STATE, RESPONDENT.

PROOF OF SERVICE

I, Caroline Kaiser, certify that I have served the **Motion to Remand for Motion Pursuant to Rule 60, SCRCP,** on Petitioner by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

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

This 22 day of November, 2013.

Caroline Kaiser
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737