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THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*
*Also admitted in Florida

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Columbia, SC 29201

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Website: www.boozerlawfirm.com

April 21, 2014

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

RECEIVED

APR 22 2014

The Honorable Liz Godard
Clerk, Aiken County
P.O. Box 583
Aiken, SC 29802-0583

S.C. SUPREME COURT

RE: Thaddeus Curry, #301924 v. State of South Carolina
2011-CP-02-2719

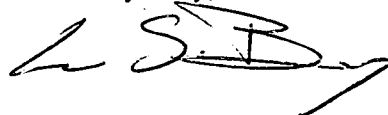
Dear Mr. Shearouse and Ms. Godard:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Curry in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Curry in this appeal.

Yours very truly,



Lance S. Boozer

Enclosure

cc: Daniel Gourley, AAG
Loriene French, OAD

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson, Circuit Court Judge

Case No. 11-CP-02-2719

Thaddeus Curry, #301924,.....Petitioner,

v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Now comes the Petitioner, by and through his undersigned and appointed Attorney, stating Petitioner's Notice of Appeal should be heard pursuant to the Final Order of the Honorable Edgar W. Dickson which granted an *Austin* review of the Honorable W. Jeffrey Young's Final Order dated October 1, 2010, in Case No. 2008-CP-02-1271. The Petitioner received written notice of the Final Order granting an *Austin* review on April 14, 2014. A copy of the Final Order is attached herewith.

RECEIVED

APR 22 2014

S.C. SUPREME COURT

Respectfully submitted,



Lance S. Boozer
The Boozer Law Firm, LLC
1331 Park Street
Columbia, SC 29201
Tele: 803-608-5543

Columbia, South Carolina
April 21, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson, Circuit Court Judge

Case No. 11-CP-02-2719

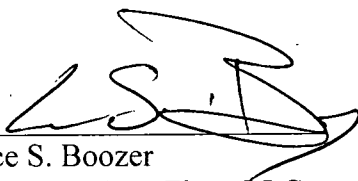
Thaddeus Curry, #301924,.....Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Daniel Gourley, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 21st day of April, 2014.


Lance S. Boozer
The Boozer Law Firm, LLC
1331 Park Street
Columbia, SC 29201
Tele: 803-608-5543

H 249436, H 249435,

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Thaddeus Curry, #301924,)
Applicant,)

2011-CP-02-2719

vs.)

**ORDER GRANTING AN APPEAL
PURSUANT TO AUSTIN V. STATE**

State of South Carolina,)
Respondent.)

4.14.14
Lance Boozer
JCCP & G.S.
Austin Sussman
Deputy Clerk

Presiding Judge: The Honorable Edgar W. Dickson
Applicant's Attorney: William Sussman, Esquire
Respondent's Attorney: Daniel Gourley, Esquire
PCR Counsel: Lance Boozer, Esquire
Date of Hearing: January 22, 2014

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 5, 2011. The Respondent made its Return and Motion to Dismiss all claims except Austin review on July 30, 2012. An evidentiary hearing on the matter was convened on January 22, 2014, at the Aiken County Courthouse. The Applicant was present at the hearing and represented by Lance Boozer, Esquire. Daniel Gourley, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

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 Aiken County. Applicant was indicted at the May 2004 term of the Aiken County Grand Jury for murder (2004-GS-02-0839) and possession of firearm or knife during commission of or attempt to commit a violent crime (2004-GS-02-0838). Applicant was represented by Michael Chesser, Esquire. On May 10-13, 2004, Applicant proceeded to a jury trial before the Honorable Reginald I. Lloyd. Applicant was

1/4 *etc*

found guilty and sentenced to life imprisonment for murder and a consecutive term of five years incarceration for possession of firearm or knife during commission of or attempt to commit a violent crime.

A Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Curry, 370 S.C. 674, 636 S.E.2d 649 (Ct. App. 2006). The South Carolina Supreme Court denied Applicant's petition for writ of certiorari, and the remittitur was sent on April 4, 2008.

Applicant subsequently filed an application for post-conviction relief (PCR) on July 24, 2008 (C.A> No. 2008-CP-02-1271), alleging ineffective assistance of counsel and after discovered evidence. The State made its Return on or about February 17, 2009. An evidentiary hearing was convened into the matter on January 29, 2010, and reconvened on July 14, 2010, at which Applicant was presented and represented by William J. Sussman, Esquire. The Application was denied and dismissed with prejudice by the Honorable W. Jeffrey Young by order dated October 1, 2010, and entered October 8, 2010. A timely Notice of Appeal was filed by the Applicant. By Order dated December 22, 2010, the South Carolina Supreme Court dismissed Applicant's appeal for failure to request the transcript within the prescribed time. The remittitur was issue on January 7, 2011.

ALLEGATIONS

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

1. "This PCR application is a request for a "Belated appeal" pursuant to Austin v. State, 409 S.E>2d 395, 396 (1991)";
2. "Denial of right to an Appellate Counsel's assistance in seeking review of the dismissal of his application for Post-Conviction (A PCR) No., 2008-CP-02-01271, Resulting in the denial of the right to appellate review of the Judge's dismissal

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of his A PCR due to the failure to request the transcript within the prescribed time as provided by Rule 207 of the S.C. Appellate Court Rules.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of allegations in the Applicant's post-conviction relief application, the parties below have consented to the granting of an appeal pursuant to Austin v. State of the Applicant's first post-conviction relief application (2008-CP-02-1271). The parties agree that the Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of the Applicant's application for post-conviction relief. Counsel for the Applicant has indicated the Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief and that he failed to file a motion to be relieved as counsel. Counsel indicated he was unaware that he was counsel of record for Applicant's appeal and therefore did not know he was required to order the PCR transcript.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first PCR (2008-CP-02-1271) pursuant to Austin v. State is warranted. It is appearing the below listed individuals all consent to the granting of a PCR appeal in this matter. This Court also finds that all other allegations raised in this application will be addressed in a separate order.

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IT IS THEREFORE ORDERED:

1. That the Applicant remain in the custody of the South Carolina Department of Corrections; and
2. That the Applicant be granted an appeal of case 2008-CP-02-1271 pursuant to Austin v. State.

AND IT IS SO ORDERED this 8th day of April, 2014.



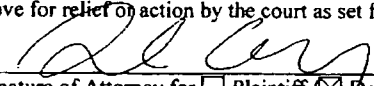
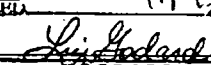
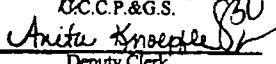
Edgar W. Dickson
Presiding Judge
2nd Judicial Circuit

Orangeburg, South Carolina.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 THADDEUS LORENZO CURRY, #301924)
)
 Plaintiff,)
 vs.)
)
 STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT
 CASE NO.: 2011-CP-02-2719
 MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney: Lance Boozer, Bar No. _____ Address: 1331 Park Street Columbia, SC 29201 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief on action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	March 7, 2014 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ FILED <u>4.14.14</u> ₂₀₀ Date: _____  J.C.C.P.&G.S.
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	 Deputy Clerk



ALAN WILSON
ATTORNEY GENERAL

April 11, 2014

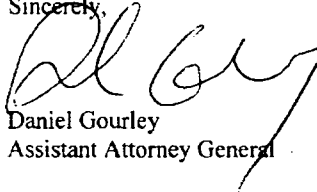
The Honorable Liz Godard
Clerk of Court, Aiken County
Post Office Box 583
Aiken SC 29802-0583

Re: Thaddeus L. Curry, 301924 v. State of South Carolina
2011-CP-02-2719

Dear Ms. Godard:

Enclosed please find the original **Order Granting an Appeal Pursuant to Austin v. State** signed by the Honorable Edgar W. Dickson in the above-captioned case, for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,



Daniel Gourley
Assistant Attorney General

DG/ck
Enclosure

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2011CP0202719

Thaddeus L Curry	South Carolina State of
------------------	-------------------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	Judge Code	Date
	For Clerk of Court Office Use Only	

This judgment was entered on 4-14-14, and a copy mailed first class or placed in the appropriate attorney's box on 4-14-14, to attorneys of record or to parties (when appearing pro se) as follows:

Lance S. Boozer 1331 Park Street Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

GS
Daniel Francis Gourley II P.O Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Sknepple

Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF AIKEN) Second JUDICIAL CIRCUIT
 Thaddeus L Curry,) CASE NO.: 2011CP0202719
 Plaintiff(s),) APPOINTMENT OF COUNSEL OR GAL
 -vs-) (Select one.)
 South Carolina State of,) ORDER
 Defendant(s).) AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case Adoption Juvenile
 SVP case Custody and/or Visitation Abuse and Neglect
 Minor Name Change Other: Post Convict Rel 500

It appears Thaddeus L Curry, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
 counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
 counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
 court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
 Other: .

Therefore, it is ordered that Lance Boozer hereby is appointed as (Select one.)

- counsel lead counsel (if capital PCR case) guardian ad litem
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
 July 9, 2013

[Signature]
 Circuit Judge Clerk of Court

Plaintiff Attorney:

Lance Boozer	Thaddeus L Curry
1331 Park Street	PO Box 205
Columbia SC 29201	Ridgeville SC 29742

Defendant Attorney:

Daniel Gourley	<i>[Signature]</i>
PO Box 11549	<i>[Signature]</i>
Post-Conviction Relief Section	<i>[Signature]</i>
Columbia, SC 29211	Deputy Clerk

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CP20 (08/08)
 SCCA/267 (03/07)

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Thaddeus Curry, #301924,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS 9 2010

2008-CP-02-1271 BY:

ORDER OF DISMISSAL

10/8/2010

Liz Godard
C.C.P. & G.S.
Anita Knepper
Deputy Clerk

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 24, 2008. The Respondent made its Return on or about February 17, 2009. An evidentiary hearing into the matter was convened on January 29, 2010, and reconvened on July 14, 2010, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by William J. Sussman, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf and presented testimony from Yvonne Fraraccio ("Mother"), Valerie Felicia Curry ("Sister"), and Charlette Broadwater ("Broadwater"). Also testifying was Michael Chesser, Esquire ("Counsel"). This Court had before it the records of the Aiken County Clerk of Court, the trial transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for

WJB

1 of 12

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

OCT 08 2010

Liz Godard
C.C.P. & G.S., Aiken County, S.C.
Anita Knepper
Deputy Clerk

Aiken County. Applicant was indicted at the May 2004 term of the Aiken County Grand Jury for Murder (2004-GS-02-0839) and Possession of Firearm or Knife during Commission of or Attempt to Commit a Violent Crime (2004-GS-02-0838). Applicant was represented by Michael Chesser, Esquire. On May 10-13, 2004, Applicant proceeded to a jury trial before the Honorable Reginald I. Lloyd. Applicant was found guilty and sentenced to life imprisonment for Murder and to a consecutive term of five (5) years for Possession of Firearm or Knife during Commission of or Attempt to Commit a Violent Crime.

A Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Curry, 370 S.C. 674, 636 S.E.2d 649 (Ct. App. 2006). The South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari, and the Remittitur was sent on April 4, 2008.

In his current application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

- a. "A copy of my arrest warrant was delivered to me 4-17-03... I was indicted a year later May 10, 2004. Rule 3(c) under criminal procedure in the South Carolina Rules of Court Handbook states (action on a warrant) within (90) days after receipt of an arrest warrant from the Clerk of Court, the Solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the Grand Jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the Grand Jury; (2) formally dismissing the warrant, noting on the face the action taken; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court. Counsel[o]r Michael Chesser did not timely move to quash my indictments, couns[el]or Michael Chesser did not challenge the legality and sufficiency of the process of State Grand Jury before the jury rendered a verdict in order to preserve the error for direct appellate review."
- b. "I went to trial the same day I was indicted..." in violation of Rule 40 (b). "...Couns[el]or Michael Chesser did not timely move to quash my indictments, couns[el]or Michael Chesser did not challenge the legality and sufficiency of the process of State Grand Jury before the Trial Jury rendered a verdict in order to

preserve the error for direct appellate review. Counsel Michael Chesser was ineffective.”

2. After-discovered evidence.
 - a. Affidavit of Anthony Savage that he was threatened by the police investigator and solicitor to lie in court in order to reduce his own sentence.

In his Recast Petition for Post Conviction Relief, Applicant set out the following claims:

1. Ineffective assistance of counsel.
 - a. “... failing to act reasonably and competently by neglecting to give Petitioner all of the evidence in his case and failing to afford Petitioner an opportunity to evaluate and receive competent counsel’s advice.”
 - b. “... the indictment against [Applicant] does not set forth the elements of the crime sufficiently to satisfy the statutes he was charged with and provide constitutional notice to the Defendant and therefore, a Motion to Quash said indictment should have been filed by his counsel who was ineffective for failing to do so. The facts alleged in the indictment are not supported by the evidence and do not sufficiently charge [Applicant] with a violation of law. Furthermore, Trial Counsel failed to Move to quash [Applicant’s] indictment and failed to move for a continuance as he was indicted and tried on the same day.”
 - c. “Trial counsel failed to conduct an independent investigation of mitigating evidence.”
 - i. Failed to retain a mitigation investigator as authorized by Ake v. Oklahoma and Wiggins v. Smith.
 - d. “Counsel failed to interview and call obvious defense witnesses and investigate sources for impeachment.”
 - e. “Counsel failed to develop evidence that Petitioner’s Co-Defendant was the one who committed the crime and failed to call his alibi witnesses.”
 - f. “Counsel failed to advise the Petitioner’s of his right to appeal and that he was not properly advised under Boykin v. Alabama.”
 - g. “Trial Counsel failed to properly keep Petitioner informed as to the evidence against him and failed to provide him copies of his file.”
 - h. “Trial Counsel failed to object to the line-up/identification as impermissibly suggestive.”
 - i. “Trial Counsel failed to file for Speedy Trial.”
 - j. “Trial Counsel failed to raise the issue of inconsistent dates of his indictment. Defendant’s indictment specifically shows that it was filed on May 6, 2004, however, the Grand Jury did not convene until May 10, 2004, and no Motion to Quash said Indictment was ever filed. Furthermore, Defendant shows that no copy of said Indictment was ever furnished to the Defendant prior to Trial and his Trial counsel never moved for a continuance in order to properly investigate whether or not a Motion to Quash said Indictment should have been filed.”
 - k. “Appellate counsel failed to raise these issues on appeal.”
 - l. “... failing to visit [Applicant] at the jail sufficiently to advise the [Applicant] of all of the evidence against him and provide the [Applicant] with an opportunity to make an

intelligent and knowing decision as to whether or not to enter a guilty plea in violation of Petitioner's constitutional and due process rights under the authority aforesaid."

- m. "Petitioner shows that Trial counsel knew that there was a motive for Co-Defendant Savage to lie on him in as much as Petitioner had been involved in an Attempted Armed Robbery earlier in the year and had given a full confession implicating Defendant Savage. This fact was known to Trial counsel and he failed to cross examine or impeach Savage on his testimony."
 - n. "Petitioner shows that the Solicitor's Office failed to act on his Arrest Warrant within ninety days of having received same from the Clerk of Court pursuant to South Carolina Rules of Procedure, Rule 3c and therefore, the Court lacked subject matter jurisdiction for trying the case."
 - o. "Petitioner shows that Trial counsel never argued the various inconsistencies between the testimony of the State's witnesses in his closing argument, specifically, the description of Petitioner, what clothes he was wearing that night, what car he was driving and who he was with."
 - p. "... Trial counsel failed to poll the jury."
 - q. "... never received notice of the possibility of being sentenced to Life Without Parole and this was not discussed with Petitioner prior to his trial nor was his potential sentence discussed."
 - r. "... Prosecutor violated Petitioner's due process rights by offering the testimony of Jeremy Simuels at trial which he knew or should have known would be perjured. Simuels made several different statements about what happened that night and yet the prosecution still had the witness take the stand and defense counsel failed to properly object."
 - s. Prosecutor failed to disclose inconsistent statements of Jeremy Simuels in violation of Brady v. Maryland.
 - t. On p. 3 of trial transcript, solicitor informed the trial court that Applicant was also charged with Attempted Armed Robbery (2004-GS-02-0037). The indictment did not exist and Applicant was not tried for the charge. Trial Counsel failed to object. This improperly prejudiced the court against Applicant. Also, Applicant was not given copies of indictments in advance, and Counsel should have moved for continuance.
 - u. "... Indictments against [Applicant] were invalid and failed to provide notice of the time or location to the Defendant so he could properly prepare his alibi defense. ..."
2. Ineffective assistance of appellate counsel.
- a. "... Appellate counsel failed to thoroughly discuss all issues of his trial and Pte-trial Motions with Petitioner prior to perfecting the appeal and failed to raise all relevant issues previously discussed for the Appellate Court to review and determine whether or not Petitioner received a fair trial."

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.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "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 v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, supra). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Summary of Facts Adduced at Trial

Heath Hamilton ("Victim") and Ronald Coursey ("Coursey") encountered Applicant, Anthony Savage ("Savage"), and Jeremy Simuel ("Simuel") on March 17, 2003, at an apartment complex as Victim and Coursey sought to purchase marijuana. Javon Rushon ("Rushon") also saw Victim at the apartment complex looking to purchase marijuana, and some of the individuals had been sitting on Rushon's car outside the apartments. It was arranged that Victim and Coursey would await a phone call from Savage and Applicant. Victim and Coursey went to Victim's home to wait for the phone call. Though Savage, Simuel, and Applicant did not procure any marijuana, they arranged a meeting with Victim and Coursey at a gas station in Beech Island in the early morning hours of March 18, 2003.

Victim and Coursey arrived in Victim's truck. Applicant and Savage exited a vehicle driven by Simuel and approached the truck. Simuel testified that Applicant had a black bag with him when he entered the car and took the bag when he and Savage exited. Coursey testified that they demanded money and Victim began to try to leave. Thereafter, Victim was shot. Coursey stated that Applicant fired the shots and that Savage did not have a gun. Applicant and Savage fled in the car driven by Simuel. Coursey moved Victim in order to drive the vehicle away and immediately called 9-1-1.

Savage's phone number was written on Victim's hand. All casings from the scene were from the same gun. Coursey identified Applicant as the shooter. Savage also identified Applicant as the

shooter. Savage testified that as they fled in the car afterward, Applicant said he "dome capped him," meaning he shot Victim in the head. Simuel also testified that Applicant was boisterous about the shooting in the car. Simuel testified that when he spoke to Applicant the following day, Applicant said he had gotten rid of the gun. Rushon testified that the day after the shooting, Simuel had told him that his car was seen in association with the crime. According to Rushon, Savage and Simuel showed him a statement and told him to "stick to it." Rushon conceded that his initial statement to police was what he had been told to say. After meeting with police, Rushon, Savage, and Simuel picked Applicant up from an unspecified location alongside the road. Rushon testified that the four then went to a car wash. Rushon stated that he overheard Applicant tell Savage to get rid of a jacket, that the hammer on the gun had broken, and that Applicant had disposed of the gun. Simuel also testified that Savage and Applicant discussed disposal of the jacket and gun.

Failure to Present Alibi Witnesses

Applicant asserts that Counsel erred in failing to present alibi witnesses on his behalf. At PCR hearing, Applicant presented testimony from Mother, Sister, and Broadwater in support of his claim. Applicant testified at PCR hearing that he was at his mother's house until 8:00 or 9:00 pm on the evening of March 17, 2003. Applicant reported that a friend, Margie Darden ("Darden"), came by and asked him to go to the liquor store with her. Applicant and Darden purchased some beverages and proceeded to Food Lion where Sister was a cashier. After purchasing Coca-Cola and cigarettes, Applicant testified that he and Darden then proceeded to Darden's home. Sister joined them after she got off work around 11:00 or 11:30 pm. Applicant stated that he remained at Darden's home until about 2:00 am on March 18, 2003. Applicant testified that he then returned to Mother's house.

Mother testified that Applicant was living with her on March 17, 2003. Mother testified that



Applicant and his fiancée, Broadwater, had been at the home that afternoon watching movies and playing board games. Mother reported that Darden came over around 6:00 pm and wanted Applicant to come to her St. Patrick's Day party. According to Mother, Darden left so that Applicant could shower and dress, planning to return around 8:00 pm. Mother stated that Anthony Savage ("Savage") stopped by and spoke to Applicant; the two left for about ten (10) minutes. Darden then returned, and Applicant left with her. Mother stated that Darden and Applicant returned between 9:30 pm and 10:00 pm to bring her some food. Mother believed that they then went to Darden's house. Mother stated that Sister woke her up when she called around 1:00 am to report that she and Applicant would be home soon. Mother stated that when she woke up the next morning around 10:00 am that Sister and Applicant were home.

Sister testified at PCR hearing that she worked as a cashier at Food Lion on March 17, 2003. Sister stated that she got off work between 11:00 and 11:30 pm that evening and went to Darden's house. Sister stated that Darden, Applicant, and some of Darden's friends were there. Sister stated that Applicant was at Darden's house the entire time she was there. Sister reported that Applicant called Broadwater from her phone at some point during the night. Sister stated that she called Mother around 1:00 am. Sister testified that she and Applicant left Darden's house around 3:00 am. In speaking with Counsel's investigator David Kuneman ("Kuneman"), Sister stated that she had fallen asleep for a brief period sometime around 1:30 am.

Broadwater testified that Applicant was her fiancée in March 2003. Broadwater did not recall being with Applicant on March 17, 2003, and did not recall being at Mother's house on March 17, 2003. Broadwater stated that Applicant would always call her whenever the two were not together. Broadwater stated that Applicant would typically call around midnight if the two were not together.

prejudice where witnesses' testimony did not establish an alibi because the petitioner could have traveled to the crime scene); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989) (no prejudice where testimony of witness did not establish an alibi defense).

Brady Violation / Simuel Investigation

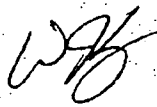
Applicant contends that the prosecution failed to inform the defense that Simuel's trial testimony would not be consistent with his written statement. Counsel testified that he became aware early on that Simuel's story had changed. Applicant argues that he was prejudiced in that he did not have the opportunity to effectively cross-examine Simuel or call additional witnesses. Simuel's testimony at trial was not exculpatory or favorable to Applicant. Therefore, there was no Brady violation.

Simuel's written statement was introduced at trial by Counsel during cross-examination. Counsel elicited Simuel's criminal record for impeachment. Counsel also elicited that Simuel was charged with the same crimes that Applicant was in order to inject the theory that he may have a reason to place blame on Applicant. Counsel's performance was well within reasonable professional norms in this regard. Applicant has failed to present testimony of any additional witness which could have been found had he known of Simuel's trial testimony. Moreover, Savage's testimony largely echoed Simuel's, but Savage was able to identify Applicant as the shooter. Therefore, additional impeachment of Simuel would not likely affect the outcome of the trial.

Notice of Life Without Parole

Applicant contends that Counsel should have objected to a sentence of life without parole absent written notice as required by S.C. Code §17-25-45. Applicant was convicted of Murder.

explanation regarding reasonableness.



Pursuant to S.C. Code §16-3-20(A), "A person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years." Applicant was sentenced to life imprisonment pursuant to S.C. Code §16-3-20(A), not the provisions of S.C. Code §17-25-45. Counsel also testified that he had discussed the potential sentence with Applicant and had discussed with Applicant an offered plea for thirty (30) years. Therefore, I find no error in this regard.

Mitigation

Applicant further contends that Counsel failed to present an adequate mitigation case for him in sentencing. (Tr. pp. 360-369.) In support, Applicant cites to Wiggins v. Smith, 539 U.S. 510 (2003), a factually distinguishable case regarding an attorney's performance in the sentencing phase of a capital murder case wherein attorneys failed to pursue mitigating evidence. In the present case, Applicant has pointed to no information provided to Counsel upon which an investigation would be reasonably pursued. Moreover, Applicant has presented no additional evidence which such investigation would have yielded. See for example Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (no prejudice where claim of failure to investigate is supported only by mere speculation as to the result). Finding that no relief is warranted, a question of whether resentencing would be appropriate relief need not be reached.

Indictments

Applicant argues that Counsel should have moved to quash the indictments. Applicant asserts first that the indictment failed to provide adequate notice of the offense charged in that the location within Aiken County was not provided. The indictment is sufficient to provide notice of the charged offense. Moreover, Counsel and Applicant acknowledge preparing a defense, including investigation

of an alibi defense, based on the details provided in the warrants. Applicant further asserts that Counsel should have made motions based on the date of the Grand Jury signature. The indictment was true billed and filed on May 6, 2004, but bears the date of the May 10, 2004, term of court. An Aiken County solicitor explained that the Grand Jury meets on the Thursday before the term of court. Therefore, there appears to be no irregularity upon which to base an objection with regard to date.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

Based on all 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.

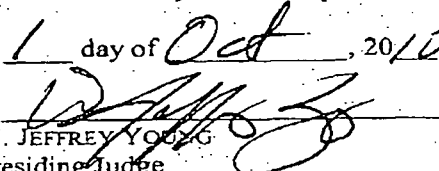
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

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 1 day of Oct, 2010

Sumter, South Carolina.


W. JEFFREY YOUNG
Presiding Judge
Second Judicial Circuit

Thaddeus L Curry vs. SOUTH CAROLINA, STATE

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), SCRCP;
 - Rule 41(a), SCRCP (Vol. Nonsuit);
 - Rule 43(k), SCRCP (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRCP;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Aiken, South Carolina, this 8th day of October, 2010.

Court Reporter:

PRESIDING JUDGE

This judgment was entered on the 8th day of October, 2010, and a copy mailed first class this 8th day of October, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by L Knopp

Liz Godard - Clerk of Court

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The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
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