

Madame Chief Justice Jean Toal  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, S.C. 29211

May 13<sup>th</sup>, 2014

**RECEIVED**

MAY 19 2014

**S.C. SUPREME COURT**



Re: Request For Appeal Bond  
Melvin Daniel, 11#323062 v. state of South Carolina  
Case No. 2010-CP-15-805 (Colleton County)  
Order Granting Post Conviction Relief to Applicant

Dear Madame Chief Justice Toal,

I am writing you today to request an appeal bond in the above-referenced case, a Post Conviction Relief Applicant Order granting relief ("order" Attached). The state appealed the PCR Courts decision.

Madame Chief Justice Toal, I was charged with Homicide by child Abuse May 12<sup>th</sup>, 2004, and indicted by a Colleton County Grand Jury. Indictment #2004-GS-15-0400.

I remained in the Colleton County Detention Center for approximately two (2) months awaiting a bond hearing. I then appeared before the Honorable Daniel F. Pieper, Circuit Court Judge.

Judge Pieper granted me a twenty-five thousand (\$25,000) surty bond. Thereafter, I was released from the Colleton County detention Center and remained on bond for approximately three (3) years until July 18, 2007, at which I was convicted and sentenced to twenty (20) years as charged.

Appeal of conviction and sentence was taken. The South Carolina Court appeals affirmed conviction and sentence on February 23rd, 2010 by unpublished opinion (2010-up-149, App. 2010) (per curiam).

Thereafter, I filed a pro se application for post conviction relief ("PCR") on August 2, 2010.

On February 20, 2014, a PCR hearing was held at the Beaufort County Court of Common Pleas [for Colleton County] before the Honorable James R. Barber, III, Circuit Court Judge. I was represented by Gerald A. Mabee of the Colleton County Bar. The state was represented by Ms. Ashleigh R. Wilson, Esquire of the South Carolina Attorney General's office.

During my PCR hearing I withdrew several of the enumerated grounds alleged in my application for PCR.

The PCR court held that trial counsel's performance was deficient and that this deficiency prejudiced my defense resulting in my receiving ineffective assistance of counsel, pursuant to Strickland v. Washington, 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed. 2d. 674 (1984) (Order page # 45), on the following particulars:

- (A) Trial counsel testified that the testimony given by Dr. Mark Shuman (expert) would have assisted the defense in preparation of the testimony of the state's medical experts at trial;
- (B) Trial counsel testified that the testimony given by Dr. Mark Shuman would have assisted the defense in mitigating the testimony of the state's medical experts at trial.

Dr. Shuman testified that there were several medical studies in existence prior to my trial in July 2007, that demonstrated children could have fatal accidental falls from short distances. He testified that according to these studies several children who suffered accidental fatal short distance falls sustained very similar head injuries as the child in this case. He further testified that my statement given to law enforcement was consistent with the nature of the injuries sustained by the child. Dr. Mark Shuman testified to a reasonable degree of medical certainty that accidental head trauma, not abusive head trauma, was the cause of death of the child in this case. He also testified that he was Court certified as an expert in forensic pathology at the time that I was tried in July 2007, and that the testimony he gave at my PCR hearing would have been substantially the same if he had been retained as an expert during my criminal trial.

Madame Chief Justice Tolal, I respectfully request an appeal bond in this matter.

I would respectfully show unto you the following:

- (1) That I have no prior criminal records;
- (2) That prior to my trial in July 2007, I was granted a twenty-five thousand (\$25,000~~00~~) surety bond and remained on bond for approximately three (3) years with no incidents with law enforcement or other authorities;
- (3) That I am neither a flight risk nor pose any danger to the community;
- (4) That I am informed and believe that I will prevail in this matter;
- (5) That I can abide by and obey all conditions the Court imposes should it grant me an appeal bond;

(6) That should the Court grant me an appeal bond that I will return to employment;  
and

(7) That I'll reside with my sister in Walterboro, South Carolina, in the County of Colleton at the following address  
Delia Lvat, 54 Oswald Court, Walterboro, South Carolina 29488  
(please redact).

Thank you in advance for your consideration in this matter.

Respectfully Submitted,  
Melvin Daniel

Melvina Daniel, ID # 3238702  
Lieber Corr. Inst. Wando-A Rm # 115  
P.O. Box 265  
Ridgeville, S.C. 29472

May 13<sup>th</sup>, 2014  
Ridgeville, South Carolina

Melvin Daniel, II # 323062  
Lieber Corr. Inst. Wando-A rm#F15  
P.O. Box 205  
Ridgeville, S.C. 29472

May 13<sup>th</sup>, 2014

Hon. Patricia C. Grant  
Clerk of Court for Colleton County  
P.O. Box 620  
Walterboro, S.C. 29488

Re: Request for an Appeal Bond to Madame Chief Justice Jean Toal  
Melvin Daniel, II # 323062 v. State  
Case No. 2010-CP-15-805

Dear Ms. Grant,

Enclosed for filing with your office, please find the original and one (1) copy of my letter Requesting An Appeal Bond. Please file the original with your office and return the clock-stamped copy to me in the enclosed self addressed first class postage prepaid envelope.

Please be advised that I have also served a true and exact copy of this Request on the attorneys for the state: Hon. Ashleigh R. Wilson, of the South Carolina Attorney General's office and Solicitor Isaac McDuffie Stone, III of the Fourteenth Circuit Solicitors office.  
Thank you for your assistance in this matter.

file

cc: Ms. Ashleigh R. Wilson  
Asst. Attorney General  
and

Mr. Isaac McDuffie Stone, III  
Solicitor

Melvin Daniel, II  
*Melvin Daniel, II*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF COLLETON )  
 )  
MELVIN DANIEL, II #323062, )  
 )  
APPLICANT, )  
 )  
VS. )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
RESPONDENT. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

CASE NUMBER: 2010-CP-15-805

ORDER

2014 APR -2 PM 2:52

PATRICIA C. GRANT  
COLLETON COUNTY  
COMMON PLEAS

DATE OF HEARING: FEBRUARY 20, 2014  
PRESIDING JUDGE: JAMES R. BARBER, III  
ATTORNEY FOR APPLICANT: GERALD A. MAREE  
ATTORNEY FOR RESPONDENT: ASHLEIGH R. WILSON  
COURT REPORTER: RUTH MOTT

This case is before the Court pursuant to an Application for Post Conviction Relief (PCR) originally filed by Melvin Daniel, II (hereinafter referred to as the Applicant) on August 2, 2010. The Applicant was tried and convicted for the charge of Homicide by Child Abuse by a Colleton County jury on July 18, 2007. He received a sentence of twenty years imprisonment. His Application alleges ineffective assistance by his trial counsel, Harris Beach. His Application was modified by his PCR counsel pursuant to the filing of two subsequent Supplemental Applications filed August 2, 2013 and February 18, 2014, respectively. Present at the hearing were the Applicant along with his attorney Gerald A. Maree of the Colleton County Bar; Applicant's witnesses Andrew Grimes, Esquire, Dr. Mark Shuman, a Forensic Pathologist from Miami, Florida and Applicant's former trial counsel, Harris Beach, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Attorney General's Office appeared on

behalf of the Respondent.

During the presentation of his case, counsel for the Applicant voluntarily withdrew several of the enumerated grounds alleged in his PCR application. The grounds that were actually presented to the Court for consideration were as follows:

1. Defense trial counsel erroneously stipulated to the admission of prejudicial photographs of the deceased child into evidence.
2. Defense trial counsel failed to procure expert testimony to benefit the Applicant, and/or failed to properly cross-examine the state's expert witnesses with medical literature.
3. Defense trial counsel failed to request a lower/shorter sentence for the Applicant during sentencing, and further failed to file a Post Trial Motion for Reconsideration of Sentencing.

I find that Applicant's ground concerning the admission of photographs of the deceased child into evidence lacks merit. I further find that the Applicant failed to establish how his trial counsel's stipulation to a portion of the state's proposed photographic evidence was prejudicial to his defense.

I find that Applicant's ground concerning the failure of trial counsel to request a lower/shorter sentence for the Applicant or to file a Post Trial Motion for Reconsideration of Sentencing is without merit. I further find that the Applicant failed to establish how his trial counsel's failure to request a shorter sentence or to file a post trial motion concerning same was prejudicial to his defense or his sentencing.

I find that the Applicant's ground concerning the failure of trial counsel to procure

or retain expert testimony favorable to the Applicant during his criminal trial convincing and with merit. Trial counsel for the Applicant testified that his only attempt to procure the services of an expert consisted of him having a conversation with his personal physician about the case. He testified during examination by Applicant's PCR counsel that he was aware of an Order Authorizing Funds For Expert Services that was issued by the Honorable Daniel F. Pieper on December 14, 2004. Although the Order authorized up to Fifteen Thousand Dollars (\$15,000) for obtaining the services of a medical expert, he indicated that he did not utilize any of the funds towards the defense of the Applicant's case. He was later recalled as a witness by the State after the Applicant had concluded its case. During direct and cross examinations, Mr. Beach admitted that the testimony given by the Applicant's expert would have been beneficial to the Applicant's criminal trial. He agreed that having an expert at the Applicant's criminal trial would have assisted in the preparation of cross-examining the State's experts. He further agreed that having an expert testify at trial would have assisted him in attempting to mitigate the testimony of the State's experts.

Dr. Mark Shuman, a board certified forensic pathologist, rendered expert testimony in the field of forensic pathology that was favorable to the Applicant. Dr. Shuman testified that in preparation of his testimony he reviewed the autopsy and coroner's reports; examined forensic slides pertaining to the autopsy; examined post mortem photographs of the deceased; examined autopsy photographs; reviewed the voluntary statement given by the Applicant prior to arrest; and reviewed portions of the trial transcript. He testified that there were several medical studies in existence prior to

the Applicant's criminal trial in July, 2007 that demonstrated children could have fatal accidental falls from short distances. He testified that according to these studies several children who suffered accidental fatal short distance falls sustained very similar head injuries as the child in this case. He further testified that the Applicant's statement given to law enforcement was consistent with the nature of the injuries sustained by the child. He testified to a reasonable degree of medical certainty that accidental head trauma, not abusive head trauma, was the cause of death of the child in this case. He stated that he was court certified as an expert in forensic pathology at the time Applicant was tried in 2007, and that the testimony he gave at this hearing would have been substantially the same if he had been retained as an expert during Applicant's criminal trial.

THEREFORE, I CONCLUDE AS FOLLOWS:

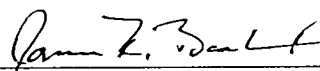
1. Trial counsel's performance was deficient and this deficiency prejudiced the Applicant's defense resulting in the Applicant receiving ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 688, 104 S. Ct 2052, 80 L.Ed.2d 674 (1984). Specifically, I conclude that trial counsel's failure to retain an expert or experts to testify for the Applicant at trial constituted deficient performance. I further conclude that this deficiency prejudiced the Applicant's defense in the following particulars:

- A. Trial counsel testified that the testimony given by Dr. Mark Shuman would have assisted the defense in preparation of the testimony of the State's medical experts at trial;
- B. Trial counsel testified that the testimony given by Dr. Mark

Shuman would have assisted the defense in mitigating the testimony of the State's medical experts at trial.

2. I hereby grant the Applicant's application for Post Conviction Relief, and further order the Applicant's conviction for Homicide by Child Abuse (Case No. 04-GS-15-0400) vacated and the case remanded to the county of its origin, Colleton County, for further disposition including rearraignment, retrial, custody, bail, or discharge.

IT IS SO ORDERED.



---

James R. Barber, III  
Circuit Court Judge

31<sup>st</sup> day of March, 2014  
Columbia, SC

SUPREME COURT OF SOUTH CAROLINA  
Court of Common Pleas for Colleton County  
The Honorable James R. Barber, III, Judge  
Case No. 2010-CP-15-805

CERTIFICATE OF SERVICE

I, Melvin Daniel, II #323062, certify that I am the Respondent/  
Petitioner in Melvin Daniel, II #323062 v. State, case no. 2010-CP-15-805  
and that I have this 13<sup>th</sup> day of May, 2014 served a copy of Request  
For Appeal Bond on the Petitioners/Respondents attorneys of record  
by placing Request for Appeal Bond in a properly addressed postage  
prepaid envelope [First class mail], addressed as follows:

Hon. Ashleigh R. Wilson  
Asst. Attorney General  
Office of the Attorney  
General - South Carolina  
P.O. Box 11549  
Columbia, S.C. 29211-1549

Hon. Isaac McDuffie Stone, III  
Solicitor  
Fourteenth Circuit Solicitor's office  
P.O. Box 1880  
Bluffton, S.C. 29910

and placing said envelopes and contents in the U.S. Mail  
at the Lieber Correctional Institution's mailroom P.O. Box 205  
Ridgeville, South Carolina 29472

Dated this 13<sup>th</sup> day of May, 2014

Respectfully submitted,  
1s) Melvin Daniel, II  
Melvin Daniel, II

Melvin Daniel, II #323062  
Lieber Corr. Inst. Ward A ~~115~~ #115-  
P.O. Box 205  
Ridgeville, S.C. 29472

Melvin Daniel, 11 # 323062  
Lieber CI Wan 20 A-115  
P.O. Box 205  
Ridgeway, S.C. 29422

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Madame Chief Justice  
Jean Toal  
Supreme Court of  
South Carolina  
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