



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

April 24, 2012

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

RECEIVED

APR 25 2012

SC Supreme Court

Re The State v Anthony Gracely

Dear Mr Shearouse

The above-referenced case is scheduled for oral argument on Tuesday, May 2, 2012 at 9 30 am Please be advised that Mr Reid T Sherard from Nelson Mullins Riley & Scarborough, LLP, has been added as second counsel to me on the Record on Appeal and Final Brief on Appellant Mr Sherard will argue the case-in-chief and I will do the reply in this case I am sending someone from our office to add the necessary labels to the Record on Appeal and the Final Brief of Appellant I would appreciate it if you would make the Justices aware of the above

By copy of this letter, I am informing opposing counsel of this matter

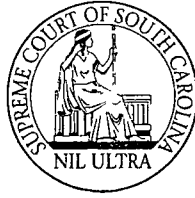
If I can be of any further assistance, please do not hesitate to contact me at your earliest convenience Thank you

Very respectfully yours,

Robert M Dudek
Chief Appellate Defender

RMD pds

cc Joshua R Underwood, Esquire
Reid T Sherard, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

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April 23, 2012

Chief Appellate Defender Robert M. Dudek
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Attorney General Alan Wilson
Chief Deputy Attorney General John W. McIntosh
Senior Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Joshua R. Underwood
Office of the Attorney General
P O Box 11549
Columbia, SC 29211

Re The State v. Gracely, Anthony

Dear Counsel

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows

Appellant	10 minutes
Respondent	10 minutes
Appellant in Reply	5 minutes

This case is scheduled for hearing on Wednesday, May 2, 2012 at 9:30 a.m.

Very truly yours,

Daniel E Shearouse, Clerk

By Debbie M Hopkins
Administrative Assistant

DES/dmh



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

MAR 26 2012

S C Supreme Court

March 26 2012

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

RE State v Anthony Gracely

Dear Mr Shearouse

I understand that this case will likely be considered during the May 2012 term of the South Carolina Supreme Court. In the event that it is placed on the oral argument roster, please be advised that I do not have any conflicts on May 2nd or 3rd.

However, I do anticipate having conflicts on May 1st, 22nd, and 23rd. On May 1st I am scheduled to argue pre-trial motions in Greenville concerning cases connected with State Grand Jury Investigation No. 2010-206. During the week of May 21st I am scheduled to be in a General Sessions trial in Georgetown County. At this time I do not know how high this trial lies on the docket.

I understand that this hearing takes precedence and will adjust my schedule as needed. Should you have any further questions, please feel free to contact me directly at 803-734-3861 or by email to Junderwood@scag.gov.

Respectfully,

Joshua R Underwood
Assistant Attorney General

cc Elizabeth A Franklin-Best, Esquire



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To Appellate Defender Elizabeth Franklin-Best
From Daniel E. Shearouse
Date March 21, 2012
RE May Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the May 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of May 1, 2, 3, 22, and 23. Please notify this office in writing prior to March 28, 2012, as to any scheduling conflicts for the May term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

The State v. Gracely, Anthony



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To Attorney General Alan Wilson
Chief Deputy Attorney General John W. McIntosh
Senior Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Joshus R. Underwood

From Daniel E. Shearouse

Date March 21, 2012

RE May Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the May 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of May 1, 2, 3, 22, and 23. Please notify this office in writing prior to March 28, 2012, as to any scheduling conflicts for the May term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

The State v. Gracely, Anthony

The Supreme Court of South Carolina

The State,

Respondent

v

Anthony Gracely,

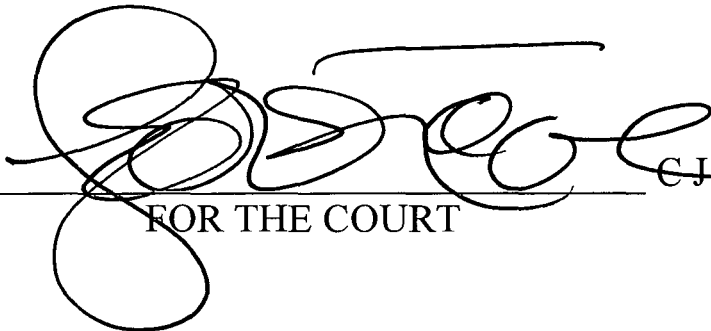
Appellant

The Honorable G Edward Welmaker
Pickens County
Trial Court Case No 2008-GS-47-01121

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court. Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED



FOR THE COURT CJ

Columbia, South Carolina
March 20, 2012

cc Appellate Defender Elizabeth Franklin-Best
Senior Assistant Deputy Attorney General Salley W Elliott
Assistant Attorney General Joshus R Underwood
Solicitor W Walter Wilkins, III
The Honorable Tanya Gee



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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January 6, 2012

Appellate Defender Elizabeth Franklin-Best
South Carolina Commission
on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re The State v Gracely, Anthony
2010166147

Dear Counsel

The following Order has been endorsed on your Motion to File Record on Appeal Out of Time in the above entitled case on appeal

"Granted

John Cannon Few, C J
For the Court

By s/ Tanya A Gee
Clerk

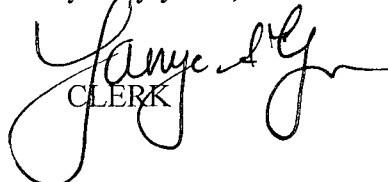
January 06, 2012 "

FILED

1 6 12 DW

Please be advised we have received the Record on Appeal

Very truly yours,


CLERK

TAG/dw

cc Assistant Attorney General Joshua R Underwood

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

G Edward Welmaker, Circuit Court Judge

RECEIVED
JAN 04 2012
SC Court of Appeals

THE STATE,

RESPONDENT,

V

ANTHONY GRACELY

APPELLANT

MOTION TO FILE RECORD ON
APPEAL OUT OF TIME

Counsel for Anthony Gracely petitions the Court to allow late filing of the record on appeal in this case. In support of this petition he shows

1 Counsel filed the initial brief of appellant and designation of matter to be included in the record on appeal on July 27, 2011. The respondent filed the initial brief of respondent on November 17, 2011. Therefore, the record on appeal was due on December 19, 2011.

2 Due to an inadvertent oversight the record on appeal due date was not updated to reflect the November 17, 2011 filing of respondent's brief. As a result, a due date of December 19, 2011 for the record on appeal was mistakenly unobserved.

3 The record on appeal has been prepared and is being filed along with this
petition

WHEREFORE, the undersigned counsel petitions the Court to allow late filing of
the record on appeal



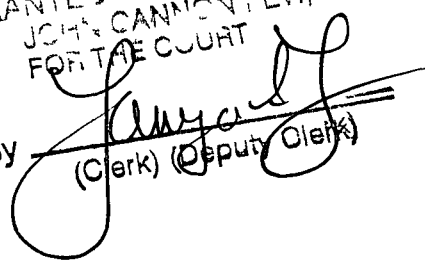
Elizabeth A Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

January 4, 2012

GRANTED
JOHN CANNON FEW, CJ
FOR THE COURT

By



(Clerk) (Deputy Clerk)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
G Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

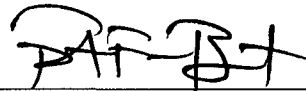
V

ANTHONY GRACELY

APPELLANT

CERTIFICATE OF SERVICE

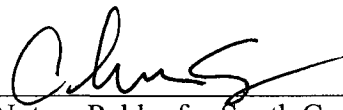
The undersigned attorney hereby certifies that a true copy of the Motion to File the Record on Appeal Out of Time in the above referenced case has been served upon Joshua R Underwood, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 4th day of January, 2012



Elizabeth A Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of January, 2012

 (L S)
Notary Public for South Carolina

My Commission Expires May 16, 2021

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Pickens County
Honorable G Edward Welmaker, Circuit Court Judge

Trial Court Case Nos 2008-GS-47-11-02

THE STATE,

Respondent,

vs

ANTHONY GRACELY

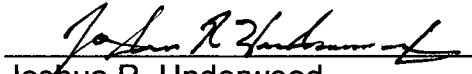
Appellant

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes the following to be included in the Record on Appeal

- 1 Indictment,
- 2 Trial transcript - pp 25-369

The undersigned hereby certifies this Designation contains no matter which is
irrelevant to this appeal


Joshua R Underwood
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803)734-3861

November 17, 2011

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NOV 21 2011

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Pickens County
Honorable G Edward Welmaker, Circuit Court Judge

THE STATE,

Respondent,

vs

ANTHONY GRACELY

Appellant

PROOF OF SERVICE

I, Joshua R Underwood, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Elizabeth A Franklin-Best, Esquire, South Carolina Commission on Indigent Defense Division of Appellate Defense, Columbia South Carolina 29211-1589

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

This 17th day of November, 2011


JOSHUA R UNDERWOOD
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

RECEIVED

NOV 21 2011

SC Court of Appeals



ALAN WILSON
ATTORNEY GENERAL

November 17 2011

Elizabeth A Franklin-Best Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P O Box 11589
Columbia, SC 29211

Re The State v Anthony Gracely

Dear Ms Franklin-Best

Enclosed please find two (2) copies of the Initial Brief of Respondent and Designation of Matter along with proof of service in the above-referenced case

Respectfully,

Joshua R Underwood
Assistant Attorney General

Enclosures

cc The Honorable Tanya A Gee
(Original and 1 Copy)

RECEIVED
NOV 21 2011
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Pickens County

Honorable G Edward Welmaker, Circuit Court Judge

Trial Court Case No 2008-GS-47-11-02

THE STATE,

Respondent,

vs

ANTHONY GRACELY

Appellant

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W McINTOSH
Chief Deputy Attorney General

CURTIS A PAULING, III
Assistant Deputy Attorney General

JOSHUA R UNDERWOOD
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

RECEIVED
NOV 21 2011
SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

I Did the trial court judge commit reversible error when he did not allow defense counsel to cross-examine the State's witnesses regarding mandatory minimum sentences they could have faced on the same charge as the Defendant, but did allow cross-examination regarding the maximum sentence of the same charge as well as the maximum and mandatory minimum sentences of other charges?

II Did the trial court judge err when he denied Appellant's motion for a directed verdict when the evidence presented at trial was sufficient to support a conviction for conspiracy to traffic methamphetamine in an amount greater than 400 grams?

STATEMENT OF THE CASE

Anthony Gracely was indicted by way of a superseding indictment for unlawful drugs by the State Grand Jury on June 10, 2009. He was tried in his absence by the Honorable G. Edward Welmaker and a jury on June 28, 2010. He was convicted of conspiracy to traffic methamphetamine in an amount greater than 400 grams and sentenced to 28 years imprisonment. This appeal follows.

STATEMENT OF FACTS

In this trial, Gracely only faced the charge of conspiracy to traffic 400 grams or more of methamphetamine. The State presented a historical case to prove the existence of and Gracely's connection to the conspiracy. The State's case included the testimony of admitted coconspirators Frank Posey, Joel Hall, Stacy Anderson, Ernest Craft, and Lance Holloway. The State also presented testimony from Brian Stegall and Kimberly Taylor who were charged in separate counts of the indictment.

Frank Posey testified that Lance Holloway brokered a deal between Posey and Gracely in which Posey and Gracely agreed for Posey to "front," or give to Gracely on credit, one half pound of methamphetamine for Gracely to sell and repay Posey. Tr 89, l 16 – p 91, l 16. Gracely started to repay Posey up to \$1,500 over the course of five to eight meetings in which Gracely gave Posey drugs which Posey in turn sold and converted to cash. Tr 96, ll 2-16, Tr 96, l 24– p 97, l 12. Posey further testified that at these meetings, Gracely also tried to sell Posey methamphetamine from his other supplier Joey DiFresco. Tr 96, ll 19-23.

At the beginning of cross-examination, trial counsel reviewed Posey's criminal history. Tr 97, l 19 – p 99, l 1. After further questioning, Posey admitted that he was charged with two counts of trafficking 400 grams or more, facing up to 60 years (up to 30 years on each count), but pled guilty to trafficking 10-28 grams of methamphetamine with a recommendation from the State that he be sentenced to five years in exchange for his cooperation. Tr 101, l 23- p 104, l 15. During this examination, trial counsel asked Posey if trafficking in methamphetamines, 400

grams and over, carried a minimum of 25 years and up to 30 years Posey answered "[t]rue " Tr 102, ll 9-13 Posey was again asked about the potential sentence of 25-30 years when an objection was made by the State at which time counsel approached the bench for a conference with no announced ruling from the Court Tr 102, ll 14-24 Trial counsel asked about that sentencing range a third time when the State objected and the Court sustained the objection without any curative instructions Tr 103, ll 2-6

Brian Stegall testified Gracely would front him methamphetamine to sell so Stegall could get high, sell the rest, and bring the money back to Gracely Tr 116, ll 7-17 Stegall further testified he would act as a middle-man by bringing people to Gracely to buy methamphetamine and Gracely would give him a proportionate amount of drugs for brokering the deal Tr 117, l 10 – p 118, l 20 On four or five occasions, he brought Joel Hall to Gracely to purchase a quarter to half of an ounce on each occasion Tr 118, ll 6-13 Stegall also testified that Gracely and Lance Holloway sold methamphetamine together and he saw them selling methamphetamine together many times Tr 122, l 13 – p 123, l 12 He also testified he knew Stacy Anderson was one of Gracely's sources because Stegall would act as Anderson's driver and was present during at least one transaction when Anderson gave Gracely two ounces of methamphetamine on front, meaning that Gracely did not need to pay for it until he resold it Tr 118, l 24 – p 121, l 11 He identified Joey DiFresco as another of Gracely's methamphetamine sources Tr

123, II 13-21 Stegall estimated that during the time of this conspiracy he helped Gracely sell “half a pound, if not more ” Tr 124, II 8-14

During cross-examination, Stegall testified that he faced up to 30 years on a separate count of trafficking more than 400 grams of methamphetamine and that he could have been charged in Count II with Gracely and face up to another 30 years Tr 125, I 17 – p 126, I 9 Trial counsel also questioned Stegall about his prior record and elicited testimony that he would have faced another 25 or 30 years for third or subsequent distribution of methamphetamine Tr 127, II 20-22, Tr 128, I 23 – p 130, I 2 In response to trial counsel’s question, Stegall admitted that after facing up to 90 years he received a deal of 15 years in exchange and filed a motion to reconsider, asking the court to reduce his sentence even lower, all in exchange for his cooperation with the State Tr 131, II 14-18

Following the testimony of Brian Stegall, the defense and the State presented arguments regarding the limitation of cross-examination that prohibited questions concerning the minimum sentence for trafficking 400 grams or more of methamphetamine, the subject of the earlier bench conference Tr 135-140 The Court also heard arguments concerning questions pertaining to the minimum sentence of 15 years each of the witnesses faced for their third or subsequent distribution offense Tr 140-147 The trial judge ruled that trial counsel could not cross-examine the witnesses about the minimum sentence on trafficking, but could question them about the maximum for trafficking and both the minimum and maximum sentence for distribution Tr 135, II 5-9, Tr 147, II 7-10

Kimberly Taylor testified she purchased methamphetamine from Lance Holloway and Holloway's source of methamphetamine was Anthony Gracely. She was involved in a drug transaction with Holloway and Gracely in which Gracely provided two ounces of methamphetamine to Holloway. Taylor, in turn, purchased one of those ounces to use and resell. Tr 152, l 10 – p 153, l 17. On another occasion, Holloway and Gracely came to her ex-boyfriend's shop and made arrangements to sell him an ounce of methamphetamine for \$1,600 which they later did at another location. Tr 153, l 21 – p 156, l 5.

During cross-examination, trial counsel questioned her regarding her criminal history. Tr 157. Trial counsel then questioned her about her pending charges, pointing out that she faced a minimum of 30 years and a maximum of 90 years before accepting a deal for 20 years in exchange for cooperating with the State. Tr 165, l 21- p 166, l 18. In response to trial counsel's question, she also admitted she did not identify Gracely until after accepting the plea deal. Tr 166, ll 19-22.

Joel Hall testified that on one occasion he purchased half an ounce of methamphetamine from Anthony Gracely but did not pay for it all at once and had to pay another \$200 after he sold some of it. Tr 183, l 14 – p 185, l 14. Hall also testified about numerous other coconspirators. Tr 176, l 17 – p 191, l 18.

Trial counsel cross-examined Hall that, due to his criminal record and pending charges, Hall faced a minimum of 15 years and up to 150 years imprisonment. Tr 193, l 8 – p 195, l 18. Trial counsel also elicited testimony that in exchange for Hall's cooperation, the State offered reduced charges and a

recommendation of only 10 years to run concurrent to Hall's federal sentence Tr 195, ll 19-25 In response to another question from trial counsel, Hall admitted that if not for his cooperation he faced significantly more than 10 years Tr 198, ll 8-11

Stacy Anderson testified that he got his methamphetamine from a source in Hendersonville, NC Tr 206, ll 5-8 He regularly sold methamphetamine for \$1,450 an ounce and Gracely owed him \$7,300 for methamphetamine Tr 207, l 18 – p 208, l 5 , Tr 210, ll 8-14 On cross-examination trial counsel asked Anderson about needing to continue cooperating with the State to get a favorable recommendation of 15 years to run concurrent with an expected federal sentence Tr 217, l 19 – p 218, l 16

Ernest Craft testified he was present and saw at least an ounce of methamphetamine in Gracely's hotel room when Gracely sold half an ounce of methamphetamine to Dwayne Mitchell, who in turn sold an eighth of an ounce, or an eight ball, to Craft Tr 233, l 14 – p 235, l 10 Craft also testified that for a period of time Stacy Anderson supplied Gracely and him with methamphetamine Tr 235 l 21 – p 236, l 7

During cross-examination, trial counsel asked Craft if he had at least four prior drug convictions Tr 238, ll 16-25 Counsel also confronted Craft about potentially facing up to 60 years in prison before the State offered 15 years in exchange for his cooperation Tr 240, ll 1-16

Lance Holloway testified that between June 2007 and February 2008 he and Gracely worked together to profit by selling methamphetamine at a rate of one and

half to two ounces per week Tr 254-256 At that time, Joey DiFresco and Stacy Anderson were supplying Gracely with methamphetamine Tr 255, ll 2-8

Trial counsel briefly cross-examined Holloway about his prior convictions Tr 268, ll 5-14 Counsel then confronted Holloway about facing up to 30 years for trafficking plus 15 to 30 years for distribution before agreeing to cooperate with the State for a sentence of 12 years Tr 268, l 15 – p 270, l 23

After the conclusion of the State's case, trial counsel moved for a directed verdict which was denied by the trial court Tr 293, l 11 – p 297, l 12 The jury found Anthony Gracely guilty of trafficking more than 400 grams of methamphetamine by conspiracy Tr 357, ll 1-7

ARGUMENTS

I The trial judge did not commit reversible error when he prohibited defense counsel from cross-examining State's witnesses about the mandatory minimum sentence they could have faced on a conspiracy charge in common with the Defendant because the Defendant was not unfairly prejudiced and any error was harmless beyond a reasonable doubt

Gracely alleges that his confrontation clause rights were violated because his trial counsel was not permitted to cross-examine the State's witnesses concerning the mandatory minimum sentence they could have faced for conspiring to traffic 400 grams or more of methamphetamine. However, he was not unfairly prejudiced by this alleged error because trial counsel was permitted to cross-examine the witnesses concerning the potential maximum exposure they faced on the trafficking charge as well as the minimum and maximum sentences they faced on third or subsequent unlawful distribution charges. Further, any error was harmless beyond a reasonable doubt.

A THE DEFENDANT SUFFERED NO UNFAIR PREJUDICE

The Confrontation Clause of the Sixth Amendment guarantees a defendant the right to cross-examine witnesses concerning facts which tend to show bias, interest, or partiality. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105 (1974), State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991), State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002). This constitutional protection includes the right to cross-examine

State's witnesses about possible sentences faced when a substantial possibility exists that the witness would give biased testimony in an effort to receive more favorable treatment from the State State v Gillian, 360 S C 433, 602 S E 2d 62 (Ct App 2004)

A violation of the defendant's Sixth Amendment right to cross-examine witnesses is not reversible if the defendant was not unfairly prejudiced or if the error was harmless beyond a reasonable doubt State v Sherard, 303 S C 172, 399 S E 2d 595 (1991) "The materiality and prejudicial character of the error must be determined from its relationship to the entire case " Gillian, 360 S C at 455, 602 S E 2d at 73

In Sherard, our Supreme Court held that a defendant is not prejudiced when a trial court refused to allow cross-examination of a witness regarding the minimum sentence for a charged offense after another witness had already revealed the minimum sentence for the same offense and defense counsel was otherwise able to demonstrate bias on the part of the witnesses 303 S C at 175, 399 S E 2d at 596 Sherard was charged with murder and armed robbery in General Sessions Court Two codefendants, Outen and Clark, pled guilty to reduced charges in Family Court in exchange for their cooperation against Sherard and two other codefendants On cross-examination Outen testified he was previously convicted of other crimes and had been incarcerated He admitted he did not want to go back to prison Later in that cross-examination it came out that he was charged with murder and was facing a life sentence if tried and convicted in General Sessions Court During the cross-

examination of Clark, the defense was not able to elicit the specific sentences Clark would have faced in General Sessions Court. However, Clark did testify he knew the sentences were much less severe in Family Court and that he had to testify for the State to have his charges reduced in Family Court. Our Supreme Court found this line of questioning sufficiently revealed the witnesses' motives for testifying. Id

The cross-examination issues in this case constitute a nearly perfect parallel to those in Sherard, thus Gracely was not unfairly prejudiced. During cross-examination of the first codefendant witness in this case, Frank Posey, the following discussion took place:

Q You were charged with trafficking in methamphetamine, four hundred grams and over?

A Uh-huh (affirmative)

Q That's a yes?

A Yes, sir

Q And as a matter of fact, trafficking in methamphetamine, four hundred grams and over, carries a minimum of twenty-five years and up to thirty years isn't [sic] it?

A True

Q And they came up to you and told you that when they wanted you to cooperate. You face a minimum of twenty-five years and up to thirty years. And you want to help yourself.

(Tr. 102, lines 4-17) Immediately after this exchange, the State made an objection and all counsel approached the bar for a bench conference. Following the bench

conference trial counsel again stated that the witness would have faced between twenty-five and thirty years, prompting the State to object and the Court to sustain the objection. Trial counsel then asked “[a]nd on that one you faced up to thirty years?” to which the witness acknowledged. (Tr 102, l 18 – Tr 103, l 11) No “curative” instruction from the Court was ever requested or given concerning this perceivably improper questioning regarding the minimum sentence of the trafficking methamphetamine charge. The remaining cooperating codefendants all testified that they could have faced the same charge with the same maximum sentence, that they could have faced a mandatory minimum sentence of 15 years for distribution of methamphetamines, and that they were cooperating to avoid these sentences. (Tr 125-131, 161-166, 193-194, 216-218, 224, 238-240, 268-270)

During the first break in testimony, the defense and the State were permitted to present arguments concerning the scope of cross-examination related to potential sentences. (Tr 135-147) The Court ruled that trial counsel could cross-examine the witnesses regarding the potential 30 year maximum sentence for their common trafficking charge, but not the mandatory minimum 25 year sentence. (Tr 135, ll 5-9) The Court further permitted trial counsel to cross-examine the witnesses regarding the mandatory minimum sentence of 15 years each of the witnesses potentially faced on third or subsequent distribution charges. (Tr 147, ll 7-10)

Sherard eviscerates Gracely’s entire argument concerning this issue. Just as exemplified in Sherard, there is no unfair prejudice in this case. Here the jury was made aware of the mandatory minimum sentence for trafficking 400 grams or more

of methamphetamine during the cross-examination of Frank Posey. The Court never instructed the jury that they could not consider that mandatory sentence. Each of the subsequent codefendant-witnesses testified that they potentially faced the same charge. All of the codefendant-witnesses testified during cross-examination as to the specific total maximum punishments they faced, including the mandatory minimum punishment for third or subsequent distribution offenses, and admitted the benefits of the plea deals they were receiving in exchange for their testimony. Therefore, just as in Sherard, there was no unfair prejudice to the Defendant because the jury was made fully aware of the information that Gracely argues he was unfairly permitted to elicit. Thus, Gracely's conviction should be affirmed because the Court did not commit reversible error.

B ANY ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT

Even if Gracely did suffer unfair prejudice, any error committed by the trial court was harmless beyond a reasonable doubt and not subject to reversal.¹

The improper denial of a defendant's right to impeach a witness for bias is not *per se* reversible error, but is subject to a harmless-error analysis to determine if the error was harmless beyond a reasonable doubt. Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431 (1986). When determining if a Confrontation Clause violation is harmless error, appellate courts may consider a number of factors, including

“the importance of the witness’ testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or

¹ As discussed above, the State contends that Gracely suffered no unfair prejudice.

contradicting the testimony of the witness on material points, **the extent of cross-examination otherwise permitted**, and of course, the overall strength of the prosecution's case ”

Id., 475 U S at 684, 106 S Ct at 1438 (emphasis added)

Reversible error can occur when defense counsel is prohibited from eliciting **any** testimony concerning an adverse witness' potential sentence or when counsel is limited to an examination that only results in vague descriptions of a long prison sentence Brown, *supra*, Mizzell, *supra* However, when the extent of the permitted cross-examination is not overly restricted, the reviewing court may determine that the error is harmless and does not warrant reversal State v. Clark, 315 S C 478, 445 S E 2d 633 (1994), State v. Whitner, 380 S C 513, 670 S E 2d 655 (Ct App 2008)

Gracely's argument relies upon Brown and Mizzell to establish his claim that a Confrontation Clause violation occurred, but fails to address all of the Van Arsdall factors to determine if the error is harmless beyond a reasonable doubt The defendant in Brown was unfairly prejudiced when cross-examination was improperly limited The State's witness testified on direct examination that she was allowed to plead guilty to one charge for which the maximum sentence was seven and one-half years as part of a plea agreement On cross-examination the witness testified she was originally charged with trafficking cocaine but that charge was dropped per the agreement Defense counsel attempted to elicit testimony from the witness concerning the mandatory minimum punishment of twenty-five years for the dropped charge, but the court did not allow **any** questions as to the possible sentence

Brown, 303 S C at 171, 399 S E 2d at 594, see Sherard, 303 S C at 176, 399 S E 2d at 596 (distinguishing Sherard's case from Brown where no evidence was presented concerning the sentence avoided by the witness)

In Mizzell, the defendant and the State's witness were both charged with the same crime. There, the trial court only allowed the defense to cross-examine the witness in general terms about the sentence he could face if he did not cooperate with the State. Due to the witness' vague testimony that "he could go to jail for a 'long time'" and admission that he "could get a long sentence for these crimes," the Supreme Court reversed and found that the trial court committed prejudicial error by imposing such stringent limitations on the defendant's cross-examination into the witness' possible sentence. Mizzell, 349 S C at 334, 563 S E 2d at 319.

Although this case bears certain factual similarities to Brown and Mizzell, a legal analysis compares better with Clark, Whitner, and, as discussed above, Sherard. In Clark, our Supreme Court determined that the cross examination of a State's witness was in accord with Van Arsdall when the trial court prohibited questions about a pending murder charge against the witness but allowed Clark to impeach the witness' credibility with a prior conviction, a parole revocation, and an admission that the witness had recently gotten into "some trouble." Clark, 315 S C at 481-482, 445 S E 2d at 635.

In Whitner this Court determined that the limitation on cross-examination was not reversible error. Whitner was only prevented from asking the witness, "Do you know how much time you're looking at in prison?" He was allowed to ask the

witness if she had pled guilty to the same offense and if she hoped that her testimony would help with her sentencing Whitner, 380 S C at 517, 670 S E 2d at 657

In light of the Van Arsdall factors and the examples set forth in Clark, Whitner, and Sherard any error in limiting Gracely's cross-examination of the State's witnesses proves harmless beyond a reasonable doubt. This court must consider the extent of cross-examination otherwise allowed. In contrast to Brown, where the defense was prohibited from asking any questions about the sentence the witness could have faced on the dropped charge, and Mizzell, where the defense could only elicit vague terms about a long sentence, Gracely was permitted to ask the witnesses a great deal about their plea agreements and the specific amount of potential prison time they could have faced. Just as in Whitner, trial counsel was permitted to ask the witnesses what charges they faced and if they hoped their cooperation would help them with their own sentencing. Tr 97-102, 125-131, 161-166, 193-194, 216-218, 224, 238-240, 268-270. Similarly to Clark trial counsel was able to cross-examine the witnesses about their prior offenses and the charges they faced in connection to Gracely's case. Tr 97-102, 125-131, 161-166, 193-194, 216-218, 224, 238-240, 268-270.

More importantly, trial counsel was permitted to cross-examine each of the witnesses about their potential minimum and maximum sentences on the other charges they faced in connection to the indictment, the maximum potential sentence they faced on the same trafficking charge faced by Gracely, and to contrast the

witnesses' potential liability with their expected reduced sentences based on their assistance given to the State Tr 135, 147, 97-102, 125-131, 161-166, 193-194, 216-218, 224, 238-240, 268-270 When comparing the trial court's minor limitation of cross-examination to the vast amount of cross-examination otherwise allowed, any error committed by the trial court was harmless beyond a reasonable doubt

II The trial judge did not err by denying Appellant's motion for a directed verdict because sufficient evidence was presented at trial to support a conviction for conspiracy to traffic methamphetamine in an amount greater than 400 grams

Gracely argues that the trial court should have granted a directed verdict on the charge of conspiracy to traffic methamphetamine in an amount greater than 400 grams, ignoring the testimony of Lance Holloway that two of them worked together to sell methamphetamine for profit, that between June 2007 and February 2008 they sold at least one and a half to two ounces of methamphetamine per week, and that Stacy Anderson and Joey DiFresco were Gracely's methamphetamine suppliers This evidence is sufficient for the jury to determine that Gracely and others conspired together to traffic 400 grams or more of methamphetamine

When reviewing a trial court's denial of a directed verdict, this Court must view all of the evidence in the light most favorable to the State and affirm the denial if there is any direct or substantial circumstantial evidence State v Horne, 324 S C 372, 478 S E 2d 289 (Ct App 1996) When addressing a motion for directed

verdict the courts are concerned with the existence or nonexistence of evidence, not the weight of the evidence State v Williams, 303 S C 274, 400 S E 2d 131 (1991)

The uncorroborated testimony of a coconspirator can be sufficient to sustain a conviction for conspiracy State v Steadman, 257 S C 528, 186 S E 2d 712 (1972)

The crime of conspiracy consists of the agreement or mutual understanding to achieve a criminal or unlawful object. A criminal conspiracy does not require proof of overt acts, but substantive crimes committed in furtherance of the conspiracy can be used as circumstantial evidence to prove the existence of the conspiracy State v Wilson, 315 S C 289, 433 S E 2d 864 (1993). The State must prove that the coconspirators intended to act together for their shared, mutual benefit within the scope of the charged conspiracy State v Gunn, 313 S C 124, 437 S E 2d 75 (1993). Although proof of a buyer-seller relationship, alone, is not sufficient to connect a buyer to the larger conspiracy, the fact-finder can infer an agreement to distribute drugs from frequent contacts among the coconspirators and their joint appearances at drug transactions and negotiations State v Barroso 320 S C 1, 462 S E 2d 862 (Ct App 1995), *reversed on other grounds*, 328 S C 268, 493 S E 2d 854 (1997). The State does not need to prove direct contact or explicit agreement between all of the coconspirators, provided that it proves defendants knew or had reason to know the scope of the conspiracy while believing that each defendant believed that his own benefit from the conspiracy depended upon the success of the conspiracy as a whole Id

The State presented more than sufficient evidence to submit this case to the jury. The testimony of admitted coconspirator Lance Holloway, in and of itself, meets the State's burden of presenting sufficient evidence to prove Gracely's involvement in the conspiracy and guilt beyond a reasonable doubt. *Accord Steadman, supra*. Holloway testified that he partnered with the Defendant to sell methamphetamine from June 2007 until February 2008. He explained that they "had the same agenda to make money." Tr. 254, ll. 7-9. Holloway estimated that he and the Defendant together sold one and a half to two ounces of methamphetamine a week during this time period, conservatively totaling more than 1100 grams. Tr. 256, ll. 6-25. Holloway further testified he knew Stacy Anderson and Joey DiFresco supplied Gracely with his methamphetamine because Holloway partnered with Gracely and was present on at least a couple occasions when they delivered the drugs to Gracely. Tr. 255, ll. 2-8.

Holloway's testimony demonstrates sufficient evidence to prove the existence of a conspiracy to traffic methamphetamine in an amount of 400 grams or more. Calculations using the rate of sales from Holloway's testimony establish that they worked together to sell far more than the threshold amount of 400 grams of methamphetamine. By testifying that he and Gracely were dealing in methamphetamine to make money, Holloway established that more than a simple buyer-seller relationship such as from dealer to consumer existed. The jury could infer that an agreement existed based upon the regular contacts Gracely had with Anderson and DiFresco as his suppliers. It was in their shared interest to sell

methamphetamine Gracely and Holloway bought and sold the drugs to make money Gracely used some of the money from his sales to purchase more drugs from Anderson and DiFresco Therefore, it was in their interest for Gracely to continue selling his drugs so that he would buy more from them This arrangement constitutes a conspiracy, directly involving Gracely, to traffic more than 400 grams of methamphetamine

The testimony of other codefendant-witnesses corroborates the testimony of Lance Holloway and adds additional evidence to sustain Gracely's conviction Frank Posey testified that he fronted Gracely half of a pound of methamphetamine and that Gracely tried to sell him methamphetamine from his other supplier, Joey DiFresco Tr 89, I 16 – p 91, I 16, Tr 96, II 19-23 The fact that Gracely accepted drugs on front constitutes evidence of a conspiracy because indicates cooperation and a mutual interest State v Hammit, 341 S C 638, 645, 535 S E 2d 459, 463 (Ct App 2000)

Brian Stegall testified that Gracely fronted him methamphetamine to sell Tr 116 II 7-17 He admitted to brokering four or five drug deals between Gracely and Joel Hall for up to half an ounce on each occasion Tr 118, II 6-13 Stegall also confirmed that Gracely and Holloway sold drugs together and that Anderson and DiFresco supplied Gracely with methamphetamine Tr 122, I 13 – p 123, I 12, Tr 118, I 24 – p 121, I 11, Tr 123, II 13-21

Kimberly Taylor also confirmed that Gracely and Holloway sold drugs together while testifying about two drug transactions involving them Tr 152, I 10 –

p 156, l 5 Joel Hall testified about several other individuals involved with the conspiracy and about one incident in which Gracely sold him half an ounce of methamphetamine, partially on front Tr 176, l 17 – p 191, l 18 Stacy Anderson testified that he sold methamphetamine for \$1,450 an ounce and that Gracely owed him \$7,300 for methamphetamine Tr 207, l 18 – p 208, l 5, Tr 210, ll 8-14 Ernest Craft testified that Stacy Anderson supplied Craft and Gracely with methamphetamine Tr 235, l 21 – p 236, l 7

The testimony of Lance Holloway, Frank Posey, Brian Stegall, Kimberly Taylor, Joel Hall, Stacy Anderson, and Ernest Craft constitute ample sufficient evidence to warrant the trial court's denial of Gracely's request for a directed verdict Therefore, the trial judge properly denied the motion for a directed verdict

CONCLUSION

Based upon the foregoing arguments, the State respectfully requests that this Court affirm the trial court's rulings, verdict, and sentencing

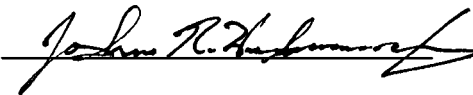
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W McINTOSH
Chief Deputy Attorney General

CURTIS A PAULING, III
Assistant Deputy Attorney General

JOSHUA R UNDERWOOD
Assistant Attorney General

BY 

Joshua R Underwood

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

November 17, 2011



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 18, 2011

Assistant Attorney General Joshus R. Underwood
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Gracely, Anthony
2010166147

Dear Counsel:

The following Order has been endorsed on your Petition For Extension Of Time In Which To File The Initial Brief Of Respondent And Designation Of Matter in the above entitled case on appeal:

"Granted

John Cannon Few, C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

November 18, 2011 "

For good cause shown, the request for an extension to file the Respondent's Initial Brief and Designation of Matter is granted until December 12, 2011. Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

Very truly yours,


DEPUTY CLERK

VCA/dw

cc: Appellate Defender Elizabeth Franklin-Best

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Pickens County
Honorable G Edward Welmaker, Circuit Court Judge

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12.12.11
RECEIVED

NOV 16 2011

SC Court of Appeals
Respondent,

THE STATE

vs

ANTHONY GRACELY,

Appellant

**PETITION FOR EXTENSION OF TIME TO SERVE AND FILE THE INITIAL
BRIEF OF RESPONDENT AND DESIGNATION OF MATTER**

Respondent, through its undersigned counsel, would respectfully show unto this
Court as follows

I

The Initial Brief of Respondent and Designation of Matter are due to the Court today,
pursuant to a previous extension granted by the Court

II

Due to work required in other cases pending before this Court and the South Carolina
Court of General Sessions, I am unable to complete this Brief on time I would therefore
request an extension of time within which to serve and file the Initial Brief of Respondent
and Designation of Matter

III

This extension request is not intended for purposes of delay, but rather to ensure that the Brief is properly researched and prepared

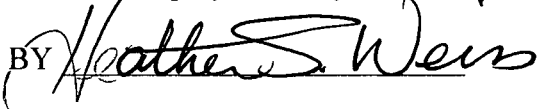
WHEREFORE, Respondent prays that the Court extend the deadline for the service and filing of the Initial Brief of Respondent and Designation of Matter in this case for thirty (30) days, and for such other and further relief as the Court may deem just and proper

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W McINTOSH
Chief Deputy Attorney General

HEATHER S WEISS
Assistant Deputy Attorney General

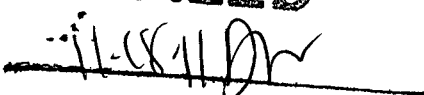
BY 
JOSHUA R UNDERWOOD
Assistant Attorney General

BY 
Joshua R Underwood

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 14, 2011

FILED


STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Pickens County
Honorable G Edward Welmaker, Circuit Court Judge

THE STATE

Respondent,

VS

ANTHONY GRACELY,

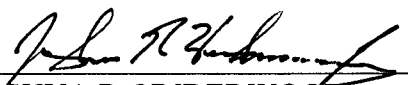
Appellant

PROOF OF SERVICE

I, Joshua R Underwood, certify that I have served the Petition for Extension of Time to Serve and File the Initial Brief of Respondent and Designation of Matter on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Elizabeth A Franklin-Best, Esquire, Division of Appellate Defense, P O Box 11589, Columbia, SC 29211-1589

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

This 14th day of November, 2011


JOSHUA R UNDERWOOD
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

RECEIVED

NOV 16 2011

SC Court of Appeals



ALAN WILSON
ATTORNEY GENERAL

November 14, 2011

Elizabeth A Franklin-Best, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P O Box 11589
Columbia, SC 29211

RE State v Anthony Gracely

Dear Counsel

Enclosed please find two (2) copies of the Petition for Extension of Time to Serve and File the Initial Brief of Respondent and Designation of Matter in the above case

Respectfully,

Joshua R Underwood
Assistant Attorney General

Enclosures
cc The Honorable Tanya A Gee
(Original and 6 copies enclosed)

RECEIVED
NOV 16 2011
SC Court of Appeals

The South Carolina Court of Appeals

The State,

Respondent

v

Anthony Gracely,

Appellant

The Honorable G Edward Welmaker
Pickens County
Trial Court Case No 2008-GS-47-01121

ORDER

The request for an extension to serve and file Respondent's Initial Brief and Designation of Matter is granted until November 12, 2011 Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc Appellate Defender Elizabeth Franklin-Best
Assistant Attorney General Joshua R Underwood

FILED
10/12/11

White, Della

From COA Extensions
Sent Tuesday, October 11, 2011 11:16 AM
To White, Della
Subject FW: State v. Anthony Gracely

2nd
10/12/11
11:11:11

From Angela Bennett [mailto:ABennett@scagov.gov]
Sent Tuesday, October 11, 2011 10:48 AM
To csanchez@sccid.dc.gov, csanchez@sccid.sc.gov, efranklin@sccid.sc.gov, COA Extensions
Cc Joshua Underwood
Subject State v. Anthony Gracely

Clerk's Office
South Carolina Court of Appeals

RE: State v. Anthony Gracely

Dear Ms. Gee:

The Initial Brief of Respondent and Designation of Matter in the above appeal are due to be served and filed today. However, due to an unusually heavy workload, I am requesting a 30-day extension.

By copy of this e-mail, I am advising counsel for Appellant, Elizabeth A. Franklin-Best of this extension request.

Joshua Underwood
Assistant Attorney General

The South Carolina Court of Appeals

The State,

Respondent

v

Anthony Gracely,

Appellant

The Honorable G Edward Welmaker
Pickens County
Trial Court Case No 2008-GS-47-01121

ORDER

The request for an extension to serve and file Respondent's Initial Brief and Designation of Matter is granted until October 12, 2011 Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc Appellate Defender Elizabeth Franklin-Best
Assistant Attorney General Joshua R Underwood

9/15/11 **FILED**

White, Della

From COA Extensions
Sent Tuesday September 13 2011 10 50 AM
To White Della
Subject FW State v Anthony Gracely

1st 818
9-12-11
10-12-11

From Angela Bennett [mailto:ABennett@scag.gov]
Sent Friday, September 09, 2011 11 34 AM
To csanchez@sccid dc gov, efranklin@sccid sc gov, COA Extensions
Cc Joshua Underwood
Subject State v Anthony Gracely

Clerk's Office
South Carolina Court of Appeals

RE State v Anthony Gracely

Dear Ms Gee

The Initial Brief of Respondent and Designation of Matter in the above appeal are due to be served and filed on Monday, September 12, 2011. However, due to an unusually heavy workload, I am requesting a 30-day extension.

By copy of this e-mail, I am advising counsel for Appellant, Elizabeth Franklin-Best, of this extension request.

Joshua R. Underwood
Assistant Attorney General

Angela S. Bennett
Administrative Assistant
SC Attorney General's Office
(803) 734-0368

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

G Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V

ANTHONY GRACELY

APPELLANT

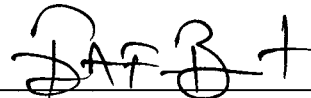
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal

- (1) True-billed indictment(s),
- (2) Tr Pages 25- 369

I certify that this designation contains no matter which is irrelevant to this appeal

July 27th, 2011



Elizabeth A Franklin-Best
Appellate Defender

South Carolina Commission on Indigent Defense
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Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
G Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

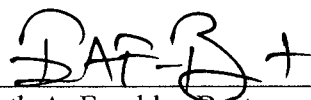
V

ANTHONY GRACELY

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Joshua R Underwood, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 27th day of July, 2011


Elizabeth A Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of July, 2011


Notary Public for South Carolina (L S)

My Commission Expires May 16, 2021

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

G Edward Welmaker, Circuit Court Judge

RECEIVED

JUL 27 2011

SC Court of Appeals

THE STATE,

RESPONDENT,

V

ANTHONY GRACELY

APPELLANT

INITIAL BRIEF OF APPELLANT

ELIZABETH A FRANKLIN-BEST
Appellate Defender

South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I Did the trial court judge err when he did not allow defense counsel to cross-examine the slew of state's witnesses regarding the mandatory minimum sentences they could have received had they not accepted the state's generous plea offers and testified against Gracely, and when the evidence was relevant to potential bias and denied Gracely the right to confront the witnesses against him?

II Did the trial court judge err when he denied Gracely's motion for a directed verdict when the evidence adduced at trial was not sufficient to support his conviction for conspiracy to traffic in methamphetamine?

STATEMENT OF THE CASE

Anthony Gracely was indicted by way of a superseding indictment for unlawful drugs by the State Grand Jury on June 10, 2009. He was tried by the Honorable G. Edward Welmaker and a jury on June 28, 2010 and was convicted of conspiracy to traffic in methamphetamine. He was prosecuted by Susan Porter and John Crout, Esquires. He was represented by Michael Coulter, Esquire. He was sentenced to 28 years in prison.

This appeal timely follows.

ARGUMENTS

I The trial court judge erred when he did not allow defense counsel to cross-examine the slew of state's witnesses regarding the mandatory minimum sentences they could have received had they not accepted the state's generous plea offers, and testified against Gracely, and when the evidence was relevant to potential bias and denied Gracely the right to confront the witnesses against him

Gracely was convicted of trafficking methamphetamine (conspiracy) as part of a State Grand Jury prosecution called "Vanilla Ice" Tr 62, ll 8-15. The State Grand Jury returned an indictment alleging 52 separate crimes against various individuals. Gracely was implicated solely in Court II, which reads

That STACY ANDERSON, TREVOR KAY, RAINER KOCH, ERNEST CRAFT, PATRICK BRIDGES, APRIL COX, DESIREE HOPKINS, JOEL HALL, SHANNON SMITH, CHRIS LATHAM, FRANK POSEY, EDGAR SHIPMAN, MELINDA CUDDY, CANDACE DUNCAN, JOSEPH DIFRESCO, LANCE HOLLOWAY and ANTHONY GRACELY and other persons whose names are both known and unknown to the State Grand Jury, did in Greenville County, Spartanburg County and Pickens County of South Carolina, during the period of time extending from on or about June 1, 2007 until the present, conspired to sell, manufacture, deliver, purchase, or bring into this state, more than four hundred (400) grams of methamphetamine ("ice" or "crank"), a controlled substance under provisions of 44-53-110 *et seq*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law in such activity occurring and/or having significance in more than one county of this state

The State purported to offer an "historical" case prosecution which means that they relied solely on the testimony of cooperating witnesses to secure the conviction against Gracely. Of the 17 people alleged in this particular count of the indictment, the State presented 5 witnesses, Stacy Anderson, Ernest Craft, Frank Posey, Joseph DiFresco, and Lance Holloway. They also offered the testimonies of witnesses alleged in Count I, which

alleged that a different set of characters were involved in a conspiracy to traffic methamphetamine scheme. Gracely was not present for his trial, and did not offer any evidence in his defense at trial.

All of these alleged co-conspirators were charged with trafficking methamphetamine. Some of the witnesses that the State called to testify were additionally charged with distribution of methamphetamine. With respect to these distribution charges, the trial court judge allowed the defense counsel to cross-examine on the mandatory minimum sentences they could receive. Tr 146 -- 147. The trial court judge did **not** allow defense counsel to cross-examine these witnesses as to the mandatory minimum sentence on trafficking methamphetamine, because he did not want the jury to realize that Gracely was subject to this same mandatory minimum.

THE COURT: Well, I believe that, Mr. Coulter, with your skills that you will be able to cross-examine these witnesses sufficiently, showing the amount of time they could get. I believe to bring up a minimum sentence, even though your intent is to impeach this witness, the ripple effect is that it's going to, I think, prejudice the state because of what the jury is going to now have in their mind, that if we convict this person, it's going to be a twenty-five year.

Tr 138, l 24- 139, l 7

Defense counsel argued that cross-examination as to mandatory minimums was necessary because the credibility of the witnesses in this case was critical. Tr 135, l 10- p 136, l 3. He additionally argued that he could not properly and fully cross-examine them without cross-examining them as to the minimum sentences they could receive. Tr 137, l 13- p 138, l 4. All of the state's witnesses had at least 3 prior drug convictions which mandated a mandatory minimum of 15 years on the distribution charges, Tr 142, l 1 and would have mandated a mandatory minimum of 25 years for trafficking. Tr 143, ll 3-4.

The trial court ruled

I'm going to allow you to cross-examine on the minimum on the distribution charges So, you can address those with the witnesses, but not on the trafficking

Tr 147, ll 7-10

These are the deals the state made with these cooperating witnesses to secure its conviction against Gracely

NAME	SENTENCE	PRIOR RECORD
Frank Posey	5 years, Tr 86, l 20	Unlawful possession of a firearm, possession of marijuana, possession with intent to distribute cocaine, possession with intent to distribute methamphetamine, possession of methamphetamine with intent to distribute within a half mile of a school zone, conspiracy Manufacturing and trafficking methamphetamine Tr 87, l 4-88, l 12
Brian Stegall	15 years, with a motion to reconsider sentence pending at time of trial Tr 111 (Actually received 9 years, 11 months, per SCDC website, <i>last visited</i> July 19, 2011)	Conspiracy to distribute and traffic 400 g of methamphetamine, possession with intent to distribute methamphetamine, grand larceny, possession of ecstasy, distribution of methamphetamine Tr 107-110
Kimberly Taylor	20 years	Possession of marijuana, possession of drug paraphernalia, possession of crack cocaine or ice, trafficking in methamphetamine (this indictment, but for which she pleaded to a reduced charge) Tr 149, ll 13-18
Joel Hall	10 years, to run concurrent with his federal sentence	Obtaining controlled substances by fraud, possession of marijuana, driving under the influence,

		forgery, obtaining controlled substances by fraud, attempting to obtain controlled substances by fraud, habitual traffic offender, grand larceny (3 or 4 times), obtaining controlled substances by fraud, burglary 3 rd degree, DUI, grand larceny, another drug charge, possession of tools of a crime, habitual traffic offender, another grand larceny Tr 169-172
Stacy Anderson	15 years, to run concurrent with federal sentence Tr 204, ll 6-25	“Some failures to register and indecent liberties” Tr 201, ll 21-22 Possession of marijuana, possession with intent to distribute, and charged with trafficking offenses Tr 202, ll 21-23
Ernest Craft	State will recommend 15 years (He actually received 10 years, per the SCDC website, <i>last visited</i> July 19, 2011)	Possession of methamphetamine (2 counts), possessing methamphetamine (2 more counts), shoplifting, burglary 2nd degree and grand larceny, another count of possession of methamphetamine, possession of a stolen pistol, driving under suspension, drug paraphernalia, and pleaded guilty to conspiracy and was also charged with distribution of methamphetamine Tr 222, l 2- 225, l 9
Lance Holloway	12 years Tr 249, ll 17-23	Possessing with intent to distribute, paraphernalia, possession of 28 g or less of marijuana, lynching, conspiracy (but allowed to plead to reduced charge of 28- 100 grams, 1 st offense), and allowed to plead guilty to trafficking 28- 100 grams, 1 st offense Tr 246-259 Also allowed to plead to a distribution, 1 st offense

The trial court judge erred by not allowing Gracely to cross-examine the state witnesses about the minimum sentences that they could receive had they not accepted the state's sweetheart deals

A defendant has the right to cross-examine a witness concerning bias under the Confrontation Clause Davis v Alaska, 415 U S 308 (1974), State v Brown, 303 S C 169, 399 S E 2d 593 (1991) Information regarding the witnesses' potential mandatory minimums was relevant to the witnesses' possible biases

“The jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence However, other constitutional concerns, such as the Confrontation Clause, limit the applicability of this rule in circumstances where the defendant's right to effectively cross examine a co-conspirator witness of possible bias outweighs the need to exclude the evidence ”

State v Mizzell, 349 S C 326, 331-32, 563 S E 2d 315, 318 (2002)

All of the witnesses against Gracely had significant incentives to implicate Gracely in this conspiracy Without the state's willingness to make such sweetheart deals, they were looking at a mandatory minimum sentence of 25 years—they obviously received extraordinary benefits by cooperating with law enforcement which counsel should have been allowed to reveal to the jury Even the SLED investigator, Constance Sonnefeld, admitted there were no controlled purchases made from Gracely, Tr 280, ll 17-19, and no methamphetamine recovered from him when he was arrested, Tr 280, ll 20-23 Law enforcement never even attempted to purchase methamphetamine from Gracely Tr 290, ll 7-13 They never attempted to place a wire on any confidential informants to purchase drugs from him They never checked phone records to see if he contacted any purported co-conspirators Tr 290, ll 17-23 As SLED admitted, the **sole** evidence against him was

“[1]information that was provided by persons within the organization that dealt with him ”
Tr 288, ll 19-20 Gracely was denied his right to fully cross-examine the witnesses against him when the judge did not allow counsel to cross-examine the witnesses as to their exposure on the charges of trafficking in methamphetamine Davis, supra , Mizzell, supra
The jury should have been allowed to know about the extraordinary benefits these witnesses received in exchange for their cooperation Gracely was denied his right to due process and the right to confront the witnesses against him Respectfully, Gracely asks this Court to reverse his convictions and remand his case for trial

II The trial court judge erred when he did not grant Gracely’s motion for a directed verdict because the evidence adduced at trial was not sufficient to support his conviction for conspiracy to traffic in methamphetamine

The testimony offered by the witnesses in this case does not support a conviction for conspiracy to traffic in methamphetamine

Trial counsel objected at the close of the State's case that the evidence was insufficient to support a finding that Gracely was involved in this conspiracy Tr 293, ll 11-15 Trial counsel argued that the state failed to prove that the alleged “conspirators” intended to act together for their mutual benefit within the conspiracy Tr 296, ll 4-22

The trial court judge overruled the objection

While there may be some dispute in the evidence, I can't weight the credibility of the witness as to amounts That’s certainly a jury issue there The same on the conspiracy I think there's certainly sufficient credible evidence to go to the jury on whether or not there was a conspiracy and whether or not Mr Gracely was part of it

Tr 297, ll 5-11

Law enforcement never made a controlled buy from Gracely, either directly or indirectly Tr 76, ll 4-25 Law enforcement did not conduct any surveillance on Gracely Tr 85, ll 2-3 Frank Posey testified that upon his (Posey's) release from prison, he and Gracely made an agreement that Gracely would sell half a pound of "ice" for him Tr 89, l 24- 90, l 10 He testified that he "fronted" the drugs to Gracely and that Gracely paid him back with drugs Tr 91, l 11, Tr 96, l 6 Posey testified that Gracely's supplier was Joey DeFresco Tr 96, ll 22-23

Brian Stegall testified that he received methamphetamine from Gracely and others Tr 115, ll 5-7 Gracely would give him "dope on front" and then he would give money back to Gracely Tr 116, ll 7- 117, l 23 Stegall testified that Stacey Anderson was Gracely's supplier Tr 119, ll 19-21 He saw Gracely purchase drugs from others Tr 123, ll 18-21

Kimberly Taylor testified that she has only see Gracely on two occasions at a local methamphetamine hang-out Tr 154, l 3- 156, l 16

Joel Hall testified that he bought meth from Gracely Tr 183, ll 18-22 He dealt with him once Tr 187, ll 17-20

Stacey Anderson said Gracely purchased methamphetamine from him (always under a quarter ounce), and that he never sold any methamphetamine to him Tr 208, l 23- 210, l 14

Ernest Craft testified that he and Gracely used drugs together Tr 232, ll 12- 233, l 5 He observed another methamphetamine user purchase methamphetamine from Gracely Tr 234, ll 2-10 Craft was told that in exchange for his testimony, he would not have to go to jail Tr 243, ll 18-23

Lance Holloway testified that he would buy methamphetamine from Gracely Tr 254, ll 10-23 He testified they would “move” at least 2 ounces of methamphetamine a week Tr 256, ll 12-18 He did not observed Gracely in possession of more than 3 ounces of methamphetamine Tr 264, ll 5-13

The trial court judge erred by not granting Gracely’s motion for a directed verdict because the State failed to show that these people intended to act together before their shared mutual benefit

The conspiracy is “a combination or agreement between two or more persons for the purpose of accomplishing a criminal or unlawful object The gravamen of conspiracy is the agreement or mutual understanding Although the gravamen of the offense of conspiracy is the agreement, it is the individual participation of the actor by agreeing which subjects him to criminal liability as a co-conspirator State v Hammit, 341 S C 638, 644, 535 S E 2d 459, 462 (2000) (internal citations omitted)

What is required is a *shared*, single criminal objective, not just similar or parallel objectives between similarly situated people It is not enough that a group of people separately intended to distribute drugs in a single area, nor enough that their activities occasionally or sporadically place them in contact with each other People in the same industry in the same locale (even competitors) can occasionally be expected to interact with each other without thereby becoming co-conspirators What is needed is proof they intended to act together for their shared mutual benefit within the scope of the conspiracy charged

State v Gunn, 313 S C 124, 134, 437 S E 2d 75, 80-81 (1993)

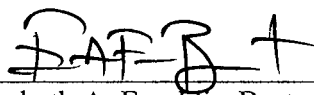
The state failed to show that Gracely was involved in a conspiracy with his alleged co-conspirators At most they offered evidence that he engaged in some illegal drug dealing, but that was not sufficient to prove the allegation contained in the indictment Cf State v Amerson, 311 S C 316, 320, 428 S E 2d 871, 874 (1993) (“The conspirators drove

to their source in Texas and brought the marijuana back to the Lamar, South Carolina area for distribution”), State v Horne, 324 S C 372, 375, 478 S E 2d 289, 291 (Ct App 1997) (Noting “numerous State’s witnesses” who testified “with specificity” as to the appellant’s role in the “complex trafficking operation”) The evidence adduced at trial did not support the charge of conspiracy to traffic in methamphetamine and the trial court judge erred by not granting Gracely’s motion for a directed verdict Respectfully, Gracely asks this Court to direct a verdict of acquittal for his charge of conspiracy to traffic in methamphetamine

CONCLUSION

For the preceding reasons, Gracely respectfully asks this Court, with respect to Issue I to reverse his convictions and remand his case for trial. With respect to Issue II, he asks this Court to direct a verdict of acquittal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'EAF-Best', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2011



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
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July 19, 2011

Appellate Defender Elizabeth Franklin-Best
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re The State v Gracely, Anthony
2010166147

Dear Counsel

The following Order has been endorsed on your Petition For Extension Of Time In Which To File The Initial Brief Of Appellant And Designation Of Matter in the above entitled case on appeal

"Granted

John Cannon Few, C J
For the Court

By s/ V Claire Allen
Deputy Clerk

July 19, 2011 "

For good cause shown, the request for an extension to file the Appellant's Initial Brief and Designation of Matter is granted until August 12, 2011 Pursuant to the Supreme Court's order dated March 18, 2009 any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys

Very truly yours,

V Claire Allen, Deputy
DEPUTY CLERK

VCA/dw

cc Assistant Attorney General Joshua R Underwood

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable G Edward Welmakee, Circuit Court Judge

THE STATE,

RESPONDENT,

V

ANTHONY GRACELY,

APPELLANT

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

Counsel for Anthony Gracely respectfully petitions this Court for an additional 30 days to file the initial brief of appellant and designation of matter on behalf of her client. In support of this petition, counsel shows

1 The initial brief of appellant and designation of matter is due today. The Court has granted three previous extensions.

2 Counsel respectfully submits that extraordinary circumstances exist to warrant the granting of an additional extension of time.

3 Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. See Evitts v. Lucey, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair). See also Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001), Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999), South Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA

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JUL 13 2011
SC Court of Appeals

maximum caseload standards of 25 appeals) *See generally* Polk County v Dodson, 454 U S 312 (1981), Gideon v Wainwright, 372 U S 335 (1963) Counsel has prioritized her caseload to complete the cases with the largest number of extensions first

4 Counsel diligently works to keep up with her case load On July 11, 2011 counsel filed the initial brief of appellant and designation of matter in State v Walter James Greene with this Court On June 29, 2011 counsel filed the petition for writ of certiorari and appendix in State v Darrell Efird, in the Supreme Court and the initial brief of appellant and designation of matter in State v Octavious O Collins and State v Melvin Webb with this Court Also counsel filed the petition for writ of certiorari in the Court of Appeals and appendix in State v Paris Avery On June 23, 2011 counsel filed the initial brief and designation of matter in Lavario Hampton v State with this Court and the petition for writ of certiorari and appendix in Demetrius Smalls v State in the Supreme Court On June 22, 2011 counsel filed the petition for writ of certiorari and appendix in Timothy Wallace v State Also, on June 22, 2011 counsel filed the petition for writ of certiorari and appendix in the death penalty case Bayan Aleksey v State in the Supreme Court The Appendix is that case is over **6,000 pages long**, and there are at least **97 exhibits** involved On June 20, 2011 counsel filed the petition for writ of certiorari and appendix in Dexter Lawrence v State in the Supreme Court On June 15, 2011 counsel filed the petition for writ of certiorari and appendix in Raheem J Singletary v State in the Supreme Court

5 In the month of July, counsel is assigned to file **28** briefs and cert petitions

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

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

Respectfully counsel requests a 30 day extension in which to file her client's initial brief of appellant and designation of matter

Respectfully submitted,

EAT-B

Elizabeth A Franklin-Best
Appellate Defender

RM

Robert M Dudek
Chief Appellate Defender

TP

T Patton Adams
Executive Director/
J Hugh Ryan, III
General Counsel

July 13, 2011

I do not oppose

JS
Salley W Elliott

JOSHUA R UNDERWOOD

GRANTED
JOHN CANNON FEW, C J
FOR THE COURT

By V. Claire Allen
(Clerk) (Deputy Clerk)

7/19/11 **FILED**



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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June 16, 2011

Appellate Defender Elizabeth Franklin-Best
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re The State v Gracely Anthony
2010166147

Dear Counsel

The following Order has been endorsed on your Petition For Extension Of Time In Which To File The Initial Brief Of Appellant And Designation Of Matter in the above entitled case on appeal

"Granted

John Cannon Few, C J
For the Court

By s/ V Claire Allen
Deputy Clerk

June 16, 2011 "

For good cause shown the request for an extension to file the Appellant's Initial Brief and Designation of Matter is granted until July 13, 2011 Pursuant to the Supreme Court's order dated March 18 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys

Very truly yours,

V Claire Allen

DEPUTY CLERK

VCA/dw

cc Michael T Coulter, Esquire
Assistant Attorney General Joshua R Underwood

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable G Edward Welmakee, Circuit Court Judge

THE STATE,

RESPONDENT,

V

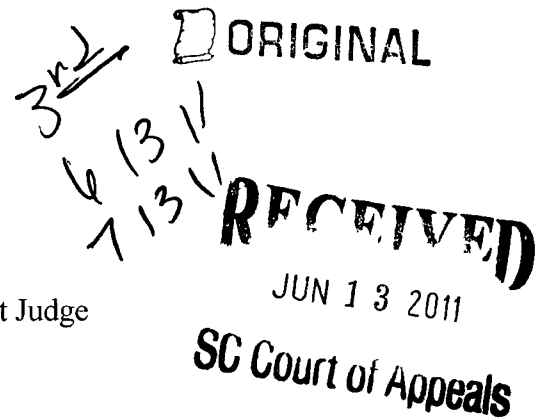
ANTHONY GRACELY,

APPELLANT

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

Counsel for Anthony Gracely respectfully petitions this Court for an additional 30 days to file the initial brief of appellant and designation of matter on behalf of her client. In support of this petition, counsel shows

- 1 The initial brief of appellant and designation of matter is due today. The Court has granted two previous extensions.
- 2 Counsel respectfully submits that good cause exists to warrant the granting of an additional extension of time.
- 3 Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. See Evitts v. Lucey, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make



appellate proceedings fair) *See also Ezell v State*, 345 S C 312, 548 S E 2d 852 (2001),
Southerland v State, 337 S C 610, 524 S E 2d 833 (1999), South Carolina Bar Ethics
Advisory Committee, Advisory Op 04-12 (2004) (citing the 2002 ABA maximum
caseload standards of 25 appeals) *See generally Polk County v Dodson*, 454 U S 312
(1981), *Gideon v Wainwright*, 372 U S 335 (1963) Counsel has prioritized her
caseload to complete the cases with the largest number of extensions first

4 Counsel diligently works to keep up with her case load

5 In the month of June, counsel is assigned to file **28** briefs and writ of certioraris

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

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

Respectfully, counsel requests a 30 day extension in which to file her client's
initial brief of appellant and designation of matter

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT
BY V. Claire Allen
(Clerk) (Deputy Clerk)

Respectfully submitted,

Elizabeth A. Franklin-Best
Elizabeth A. Franklin-Best
Appellate Defender

Robert M. Dudek
Robert M. Dudek
Chief Appellate Defender

June 13, 2011

I do not oppose

Salley W. Elliott for Joshua Underwood

FILED
6/16/11

The South Carolina Court of Appeals

The State,

Respondent

v

Anthony Gracely,

Appellant

The Honorable G Edward Welmaker
Pickens County
Trial Court Case No 2008-GS-47-01121

ORDER

The request for an extension to serve and file Appellant's Initial Brief and Designation of Matter is granted until June 13, 2011 Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claus Allen, Deputy
CLERK

Columbia, South Carolina

cc Appellate Defender Elizabeth A Franklin-Best
Assistant Attorney General Joshua R Underwood

FILED
5/17/11

White, Della

From COA Extensions
Sent Thursday May 12 2011 2 11 PM
To White Della
Subject FW Anthony Gracely

2nd
5.12.11
6.13.11

From Felicia K Berry [mailto:FBerry@sccid.sc.gov]
Sent Thursday, May 12, 2011 12:38 PM
To COA Extensions
Cc Elliott, Salley, Angela Bennett
Subject Anthony Gracely

Clerk's Office
South Carolina Court of Appeals

Re The State v Anthony Gracely

Dear Ms Gee

The Initial Brief of Appellant and Designation of Matter in the above case are due to be served and filed with the Court today. However, due to my heavy work-load, I am requesting a thirty day extension in which to serve and file this brief.

By copy of this email, I am informing Salley Elliott, Esquire, of the Attorney General's office of my request.

Sincerely,

Elizabeth A Franklin-Best
Appellate Defender

EAF/fkb



ALAN WILSON
ATTORNEY GENERAL

April 15, 2011

Elizabeth A. Franklin-Best, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P O Box 11589
Columbia, SC 29211

Re The State v. Anthony Gracely

Dear Counsel

This letter is to confirm that our office received an Order granting an extension to serve Appellant's Initial Brief and Designation of Matter in the above-referenced case and to advise you that I will be representing the State in this appeal. Please forward all future correspondence regarding this matter directly to me.

I look forward to working with you on this case.

Respectfully,

Joshua R. Underwood
Assistant Attorney General

cc The Honorable Tanya A. Gee
Salley Elliott, ADAG

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APR 18 2011

SC Court of Appeals

The South Carolina Court of Appeals

The State,

Respondent

v

Anthony Gracely,

Appellant

The Honorable G Edward Welmaker
Pickens County
Trial Court Case No 2008-GS-47-01121

ORDER

The request for an extension to serve and file Appellant's Initial Brief and Designation of Matter is granted until May 12, 2011 Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claude Allen, Deputy
CLERK

Columbia, South Carolina

cc Chief Appellate Defender Robert M Dudek
Assistant Attorney General John Crout

FILED
4/18/11

White, Della

From COA Extensions
Sent Wednesday April 13 2011 7 00 AM
To White Della
Subject FW Anthony Gracely

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From Felicia K Berry [mailto:FBerry@sccid.sc.gov]
Sent Tuesday, April 12, 2011 12 44 PM
To COA Extensions
Cc Elliott, Salley, Angela Bennett
Subject Anthony Gracely

Clerk's Office
South Carolina Court of Appeals

Re The State v Anthony Gracely

Dear Ms Gee

The Initial Brief of Appellant and Designation of Matter in the above case are due to be served and filed with the Court today. However, due to my heavy work-load, I am requesting a thirty day extension in which to serve and file this brief.

By copy of this email, I am informing Salley Elliott, Esquire, of the Attorney General's office of my request.

Sincerely,

Elizabeth A Franklin-Best
Appellate Defender

EAF/fkb



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia South Carolina 29201 3332

Post Office Box 11589
Columbia South Carolina 29211 1589
Telephone (803) 734 1343
Facsimile (803) 734 1397

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

February 15, 2011

The Honorable Tanya A Gee
Clerk, S C Court of Appeals
PO Box 11629
Columbia, SC 29211

Dear Ms Gee

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

The State v Anthony Gracely

2/11/2011

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

Thank you for your assistance in this matter

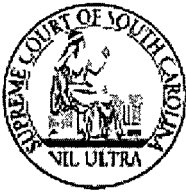
Sincerely,

Lorlene French
Legal Services Coordinator

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FEB 15 2011

SC Court of Appeals



The Supreme Court of South Carolina

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TITLE OF (V 2008GS471121
CASE (
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(Anthony Gracely
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Notice

Upon request and for good cause shown, S Hanks, Court Reporter, is hereby granted an extension up to and including February 10, 2011 to prepare and deliver the Transcript of Record in the above case

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
01/07/2011

cc Division of Appellate Defense
Office of Attorney General
S Hanks

RECEIVED

JAN 14 2011

SC Court of Appeals



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street Suite 401
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Robert M. Dudek Chief Appellate Defender
Wanda H. Carter Deputy Chief Appellate Defender
Joseph L. Savitz III Senior Appellate

November 10 2010

Michael T. Coulter, Esquire
P O Box 6728
Greenville, SC 29606

RECEIVED

NOV 10 2010

SCC COURT OF APPEALS

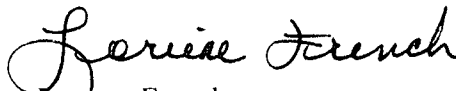
Re The State v Anthony Gracely

Dear Mr. Coulter

The Chief Appellate Defender has reviewed the Affidavit of Indigency for the above case and has approved for this Office to perfect the appeal for Mr. Gracely

Please contact me if you should have any questions concerning this matter

Sincerely,


Lorlene French
Legal Services Coordinator

cc SC Court of Appeals



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Telephone (803) 734 1330
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Robert M. Dudek Chief Appellate Defender
Wanda H. Carter Deputy Chief Appellate Defender
Joseph L. Savitz III Senior Appellate Defender

November 10 2010

Ms. Danette Hanks
Circuit Court Reporter
P O Box 2493
Anderson, SC 29622

Dear Ms. Hanks:

Our office has been requested to perfect the appeal arising out of

The State v. Anthony Gracely

Case #

08-GS-47-11-21

County Pickens

Date of Trial

June 30 and September 1, 2010 (Trial in
Absentia and Sentencing)

Presiding Judge G. Edward Welmaker

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

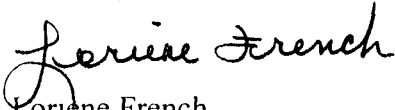
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms Dancette Hanks
November 10, 2010
Page 1wo

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,


Loriane French
Legal Services Coordinator

cc S C Court of Appeals
Attorney General's Office



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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www.sccourts.org

November 9, 2010

Michael T Coulter, Esquire
Clarkson Walsh Terrell & Coulter, PA
P O Box 6728
Greenville, SC 29606

Re The State v Gracely, Anthony
2010166147

Dear Mr Coulter

The following Order has been endorsed on your Motion for Extension of Time to Request Transcript in the above entitled case on appeal

"Granted

John Cannon Few, C J
For the Court

By s/ Tanya A Gee
Clerk

November 9, 2010 "

For good cause shown, the request for to order the Transcript has been extended until November 24, 2010 Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys

Very truly yours

✓ Claire Allen, Deputy

CLERK

TAG/dw

cc Chief Appellate Defender Robert M Dudek
Assistant Attorney General John Crout

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Edward G. Welmaker, Circuit Court Judge

2008-GS-47-11-21

RECEIVED

OCT 27 2010

SC Court of Appeals

Anthony Gracely,

Appellant

v

The State,

Respondent

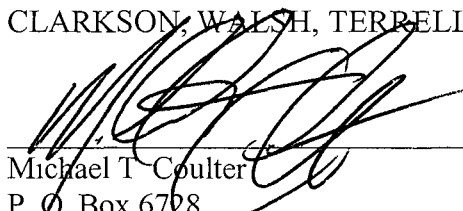
MOTION FOR EXTENSION OF TIME
TO REQUEST TRANSCRIPT

YOU WILL PLEASE TAKE NOTICE that the defendant, upon motion of the attorney for the Appellant, Michael T. Coulter, of Clarkson, Walsh, Terrell & Coulter, P.A., will move before the Court at such time and place as the Court may determine for an Order granting the defendant's counsel an extension of time to request the transcript from the defendant's trial which was held on June 30, 2010 in Pickens County.

CLARKSON, WALSH, TERRELL & COULTER, P.A.

GRANTED
JULIE C. CLEW, CJ
FOR THE COURT

By V. Claire Allen
~~(Clerk)~~ (Deputy Clerk)


Michael T. Coulter
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400
(864) 235-4399 – fax
Attorneys for Appellant

October 25, 2010
Greenville, South Carolina

FILED

11/9/10

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Edward G. Welmaker, Circuit Court Judge

2008-GS-47-11-21

RECEIVED

OCT 27 2010

SC Court of Appeals

Anthony Gracely,

Appellant

v

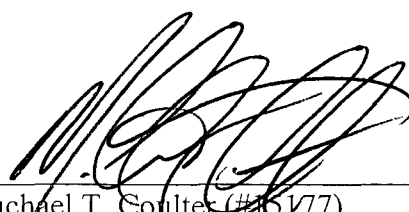
The State

Respondent

PROOF OF SERVICE

I certify that I have served the Motion for Extension of Time to Request Transcript for Anthony Gracely by depositing a copy of it in the United States Mail, postage prepaid, on October 26, 2010, addressed to the attorney of record for the State Wide Grand Jury, John Crout, P O Box 11549, Columbia, South Carolina 29211. I further certify that I deposited a copy of the Motion for Extension of Time to Request Transcript in the United States Mail, postage prepaid, on October 26, 2010 for Anthony Gracely to James R. Parks, Clerk of Court, State Wide Grand Jury, Post Office Box 11508, Columbia, South Carolina 29211 for filing in the Circuit Court.

October 26, 2010



Michael T. Coulter (#15177)
1164 Woodruff Road
Greenville, South Carolina 29607
(864) 232-4400
Attorneys for Appellant

CLARKSON, WALSH, TERRELL & COULTER, P.A.

ATTORNEYS AT LAW

Michael T. Coulter
mcoulter@clarksonwalsh.com
(864)232 4400

October 26, 2010

RECEIVED

OCT 27 2010

SC Court of Appeals

The Honorable Kenneth A. Richstad
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re *Anthony Gracely vs. State of South Carolina*
2008 GS-47-11-21

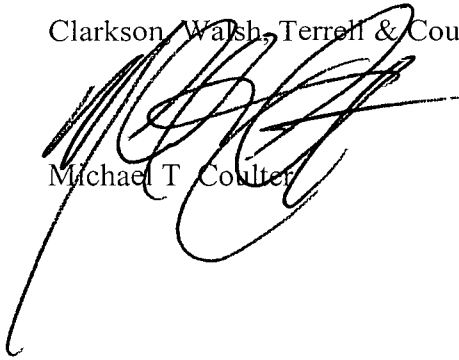
Dear Mr. Richstad:

Enclosed for filing is a Motion for Extension of Time to Request Transcript regarding the appeal in the above-captioned case. It would be greatly appreciated if you could file the original and return a clocked copy to my attention in the self-addressed postage paid envelope enclosed for your convenience. I was retained to represent Mr. Gracely for trial only and is indigent. As such, I will contact the South Carolina Office of Appellate Defense to advise them of the pendency of this appeal.

2-

Very truly yours,

Clarkson, Walsh, Terrell & Coulter, P.A.


Michael T. Coulter

MTC/tth
Enclosures

cc John K. Crout
Office of the Attorney General

Loriene French
SCCID



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED

September 27, 2010

SEP 28 2010

SC Court of Appeals

Michael T Coulter, Esquire
Clarkson, Walsh, Terrell & Coulter, P A
P O Box 6728
Greenville, SC 29606

Re The State v Anthony Gracely
Case No 2008-GS-47-11

Dear Mr Coulter

The State Grand Jury Section of the Office of the Attorney General will be handling the above-referenced appeal on behalf of the State Please direct all future pleadings and correspondence in this matter to me

Please note that under Rule 207 'Appellant shall contemporaneously furnish all counsel of record, the Office of Court Administration, and the Clerk of the Court of Appeals or the Clerk of the Supreme Court with copies of all correspondence with the court reporter ' Therefore, please provide this Office with a copy of your correspondence requesting the transcript in the above matter and any additional correspondence you may have with the court reporter

Sincerely,

John K Crout
Assistant Attorney General
State Grand Jury

JKC/dlr

cc The Honorable Tanya A Gee
The Honorable Daniel E Shearouse



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

September 28, 2010

Michael T. Coulter, Esquire
Clarkson Walsh Terrell & Coulter, PA
P O Box 6728
Greenville, SC 29606

Re The State v. Gracely, Anthony

Dear Mr. Coulter:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Please be advised that pursuant to Rule 602, SCACR and the order of the Chief Justice dated December 12, 1997, if you expect the Office of Indigent Defense to pursue this appeal, you must provide that office with all information required to proceed with this appeal, failing which, this office will consider you counsel of record.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S C 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within thirty (30) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the

transcript) with the Court's order for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S C Code Ann Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases

- 1) any final judgment from the circuit court which includes a sentence of death,
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58,
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance,
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state,
- 5) any final judgment from the circuit court pertaining to elections and election procedure,
- 6) any order limiting an investigation by a State Grand Jury under S C Code Ann Section 14-7-1630,
- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41-33

Very truly yours,

Tanya A. Gee

Tanya A. Gee
CLERK

TAG/dw

cc Chief Appellate Defender Robert M. Dudek
Assistant Attorney General John Crout



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
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September 28, 2010

Michael T Coulter, Esquire
Clarkson Walsh Terrell & Coulter, PA
P O Box 6728
Greenville, SC 29606

Re The State v Gracely, Anthony
2010166147

Dear Mr Coulter

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/dw

cc Chief Appellate Defender Robert M. Dudek
Assistant Attorney General John Crout

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Edward G Welmaker, Circuit Court Judge

2008-GS-47-11-21

POS 9/2/10
PM-9/3/10
RECEIVED
SEP 07 2010
SC Court of Appeals

Anthony Gracely,

Appellant

v

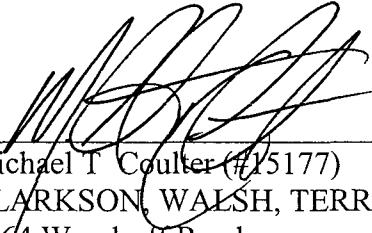
The State,

Respondent

NOTICE OF APPEAL

Anthony Gracely appeals his conviction in this case. The jury returned a verdict of guilty against the defendant on the charge of Conspiracy to Traffic in Methamphetamine over 400 grams on June 30, 2010. The trial was conducted in his absence and the sentence was sealed. Mr. Gracely was later arrested on a bench warrant. Mr. Gracely's sentence was unsealed and imposed on September 1, 2010.

September 2, 2010


Michael T. Coulter (#15177)
CLARKSON, WALSH, TERRELL & COULTER, P A
1164 Woodruff Road
Greenville, South Carolina 29607
(864) 232-4400
Attorney for Defendant

Other Counsel of Record
John Crout
Assistant Attorney General
State Wide Grand Jury
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3790

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Edward G. Welmaker, Circuit Court Judge

2008-GS-47-11-21

RECEIVED

SEP 07 2010

SC Court of Appeals

Anthony Gracely,

Appellant

v

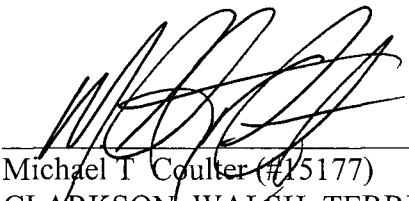
The State,

Respondent

NOTICE OF APPEAL

Anthony Gracely appeals his conviction in this case. The jury returned a verdict of guilty against the defendant on the charge of Conspiracy to Traffic in Methamphetamine over 400 grams on June 30, 2010. The trial was conducted in his absence and the sentence was sealed. Mr. Gracely was later arrested on a bench warrant. Mr. Gracely's sentence was unsealed and imposed on September 1, 2010.

September 2, 2010



Michael T. Coulter (#15177)
CLARKSON, WALSH, TERRELL & COULTER, P A
1164 Woodruff Road
Greenville, South Carolina 29607
(864) 232-4400
Attorney for Defendant

Other Counsel of Record
John Crout
Assistant Attorney General
State Wide Grand Jury
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3790

THE STATE OF SOUTH CAROLINA
In the Court of General Sessions

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Edward G. Welmaker, Circuit Court Judge

2008-GS-47-11-21

Anthony Gracely,

Appellant

v

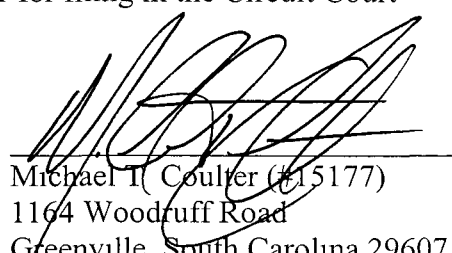
The State,

Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal for Anthony Gracely by depositing a copy of it in the United States Mail, postage prepaid, on September 2, 2010, addressed to the attorney of record for the State Wide Grand Jury John Clout, P O Box 11549, Columbia, South Carolina 29211. I further certify that I deposited a copy of the Notice of Appeal in the United States Mail, postage prepaid, on September 2, 2010 for Anthony Gracely to James R. Parks, Clerk of Court, State Wide Grand Jury, Post Office Box 11508, Columbia, South, South Carolina 29211 for filing in the Circuit Court.

September 2, 2010



Michael T. Coulter (#15177)
1164 Woodruff Road
Greenville, South Carolina 29607
(864) 232-4400
Attorney for Defendant

CLARKSON, WALSH, TERRELL & COULTER, P.A.

ATTORNEYS AT LAW

Michael T Coulter
mcoulter@clarksonwalsh.com
(864)232 4400

September 2, 2010

RECEIVED

SEP 07 2010

SC Court of Appeals

The Honorable Kenneth A Richstad
Clerk of the South Carolina Court of Appeals
P O Box 11629
Columbia SC 29211

Re *Anthony Gracely vs State of South Carolina*
2008-GS-47-11-21

Dear Mr Richstad

Enclosed for filing is a notice of appeal and proof of service in the above-captioned case

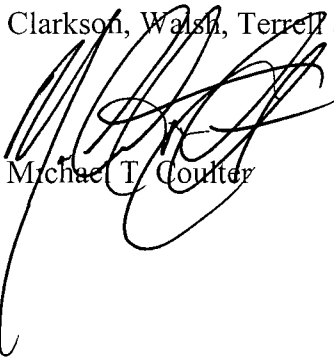
The jury returned a verdict of guilty against Mr Gracely on June 30, 2010 Mr Gracely was not present for the trial As such, his sentence has been sealed Mr Gracely was later arrested and a bench warrant and the sentence was imposed on September 1, 2010

Also enclosed is a self-addressed, postage paid envelope for return to me of the additional clocked copies of the notice of appeal

I was retained to represent Mr Gracely for trial only and is indigent As such, I will contact the South Carolina Office of Appellate Defense to advise them of the pendency of this appeal

Very truly yours

Clarkson, Walsh, Terrell & Coulter, P A


Michael T. Coulter

MTC/tth
Enclosures

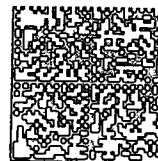
cc Anthony Gracely
Pickens County Jail

CLARKSON, WALSH, TERRELL & COULTER, P.A.

ATTORNEYS AT LAW

POST OFFICE BOX 6728 GREENVILLE SC 29606

SEP 03 2010



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SEP 03 2010

MAILED FROM ZIP CODE 29607

The Honorable Kenneth A. Richstad
Clerk of the South Carolina Court of Appeals
P O Box 11629
Columbia SC 29211



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

August 13, 2010

Michael T Coulter, Esquire
Clarkson Walsh Terrell & Coulter, PA
P O Box 6728
Greenville, SC 29606

Re The State v Gracely, Anthony

Dear Mr Coulter

Our records indicate that the transcript in the above matter should have been ordered by August 2, 2010. As of today's date, I have not received any information indicating that the transcript was ordered.

According to Rule 207 of the South Carolina Appellate Court Rules the transcript must be ordered within thirty (30) days of the date of service of the Notice of Appeal. You must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(e), SCACR, also, please advise the Court in writing upon receipt of the transcript.

Please advise the Court of the status of the transcript within ten (10) days of the date of this letter, or your appeal may be dismissed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/lb

cc Chief Appellate Defender Robert M Dudek
Assistant Deputy Attorney General Salley W Elliott



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

July 20, 2010

Michael T Coulter, Esquire
Clarkson Walsh Terrell & Coulter, PA
P O Box 6728
Greenville, SC 29606

Re The State v Gracely, Anthony
Case No 2010166147

Dear Mr Coulter

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Tanya A. Gee". Below the signature, the word "CLERK" is printed in a small, sans-serif font.

CLERK

TAG/lb

cc Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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July 20, 2010

Michael T Coulter, Esquire
Clarkson Walsh Terrell & Coulter, PA
P O Box 6728
Greenville, SC 29606

Re The State v Gracely, Anthony

Dear Mr Coulter

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Please be advised that pursuant to Rule 602, SCACR and the order of the Chief Justice dated December 12, 1997, if you expect the Office of Indigent Defense to pursue this appeal, you must provide that office with all information required to proceed with this appeal, failing which, this office will consider you counsel of record.

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NOTE If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S C Code Ann Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases

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- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58,
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance,
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state,
- 5) any final judgment from the circuit court pertaining to elections and election procedure,
- 6) any order limiting an investigation by a State Grand Jury under S C Code Ann Section 14-7-1630,
- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41-33

Very truly yours,
Tanya A Gee
CLERK

 TAG/lb,
cc

Chief Appellate Defender Robert M Dudek
Assistant Deputy Attorney General Salley W Elliott

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Edward G. Welmaker, Circuit Court Judge

2008-GS-47-11-21

RECEIVED

JUL 06 2010

SC Court of Appeals

POS-7/2/10
PM-7/2/10

Anthony Gracely,

Appellant

v

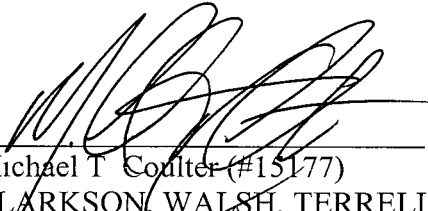
The State,

Respondent

NOTICE OF APPEAL

Anthony Gracely appeals his conviction in this case. The jury returned a verdict of guilty against the defendant on the charge of Conspiracy to Traffick in Methamphetamine over 400 grams on June 30, 2010.

July 2, 2010


Michael T. Coulter (#15177)
CLARKSON, WALSH, TERRELL & COULTER, P A
1164 Woodruff Road
Greenville, South Carolina 29607
(864) 232-4400
Attorney for Defendant

Other Counsel of Record
John Crout
Assistant Attorney General
State Wide Grand Jury
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3790

THE STATE OF SOUTH CAROLINA
In the Court of General Sessions

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Edward G. Welmaker, Circuit Court Judge

2008-GS-47-11-21

RECEIVED

JUL 06 2010

SC Court of Appeals

Anthony Gracely,

Appellant

v

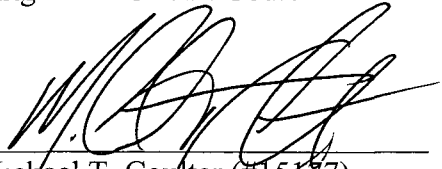
The State,

Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal for Anthony Gracely by depositing a copy of it in the United States Mail, postage prepaid, on July 2, 2010, addressed to the attorney of record for the State Wide Grand Jury, John Crout, P O Box 11549, Columbia, South Carolina 29211. I further certify that I deposited a copy of the Notice of Appeal in the United States Mail, postage prepaid, on July 2, 2010 for Anthony Gracely to James R. Parks, Clerk of Court, State Wide Grand Jury, Post Office Box 11508, Columbia, South, South Carolina 29211 for filing in the Circuit Court.

July 2, 2010



Michael T. Coulter (#15177)
1164 Woodruff Road
Greenville, South Carolina 29607
(864) 232-4400
Attorney for Defendant

CLARKSON, WALSH, TERRELL & COULTER, P.A.

ATTORNEYS AT LAW

RECEIVED

July 2, 2010

JUL 06 2010

SC Court of Appeals

The Honorable Kenneth A. Richstad
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re Anthony Gracely v. State
2008-GS-47-11-21

Dear Mr. Richstad:

Enclosed for filing is a notice of appeal and proof of service in the above-captioned case.

The jury returned a verdict of guilty against Mr. Gracely on June 30, 2010. Mr. Gracely was not present for the trial. As such, his sentence has been sealed.

Also enclosed is a self-addressed, postage paid envelope for return to me of the additional clocked copies of the notice of appeal.

I was retained to represent Mr. Gracely for trial only and is indigent. As such, I will contact the South Carolina Office of Appellate Defense to advise them of the pendency of this appeal.

Very truly yours,

CLARKSON, WALSH, TERRELL & COULTER, P.A.

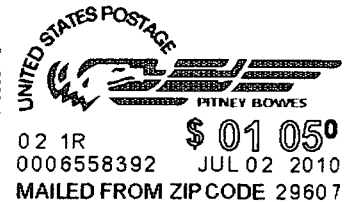
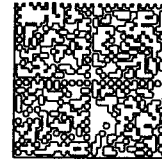

Michael T. Coulter

Enclosures
cc Anthony Gracely

CLARKSON, WALSH, TERRELL & COULTER, P.A.

ATTORNEYS AT LAW

POST OFFICE BOX 6728 GREENVILLE SC 29606



The Honorable Kenneth A. Richstad
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211