



ALAN WILSON
ATTORNEY GENERAL

March 7, 2012

RECEIVED

MAR 7 2012

S.C. Supreme Court

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

Dear Mr. Shearouse:

I am in receipt of an Order granting Mr. Dana Middleton ("Petitioner") a ninety day extension to amend his pro se brief regarding his post-conviction relief appeal. Please accept this letter in lieu of a formal return, being that I have no objection to the extension.

However, I did want to note for the Court that I was never served with Petitioner's Motion or Request for an extension, which I have found to be a common occurrence, so this is the first opportunity I have had to reply. That is why there was no return filed by Respondent prior to the Court's issuance of the Order.

Thank you for your consideration.

Sincerely,

Suzanne H. White
Assistant Attorney General

cc: Robert M. Pachak, Esquire
Dana Middleton, #333427

The Supreme Court of South Carolina

Dana Middleton,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER

Petitioner requests he be granted a ninety day period of time in which to amend his pro se brief. No return has been filed. The request is granted. Petitioner shall serve and file any amendment within ninety days of the date of this order.


C. J.
FOR THE COURT

Columbia, South Carolina

February 28, 2012

cc: Appellate Defender Robert M. Pachak
Dana Middleton #333427
Assistant Attorney General Suzanne H. White

State of South Carolina In The
Supreme Court

Dana Middleton
Petitioner

vs.

State of South Carolina
Respondent

Motion To Amend
Response To
Johnson Petition
and
Pro-Se Brief

Ref: Motion Requesting Amend...

Date:

From: Dana Middleton 333427
Perry Corr. Inst. D-X-22
430 Saktawa Road
Pelzer, S.C. 29669

To Whom it may concern;

Dear Judge of the Supreme Court.

Please be advised that I filed my Pro-Se Brief in a rush and it is not in accordance with fundamental fairness of both state and defense. It would cause a miscarriage of justice if I'm not allowed to Amend my Brief. of any Pro-Se filings that have been filed up to this point. My filing cannot be properly answered by the honorable judge and was not properly answered by the Post-Conviction-relief Judge because of Petitioner(s) uneducation of-law. ~~and for~~ Due to petitioner being a layman of the law, he request this motion be granted and he given at least a 90 day time frame to send in amended Brief related to his Johnson Petition which also Includes evidence recently discovered. Please answer within (5) working days.

Truely yours

Signature x Dana Middleton

Dana Middleston 3934117
Perry L.F. D-X-22
430 Oaklawn Road
Palmer S.C. 29689

MSJ

RECEIVED

JAN 31 2012

P.C.I. MAILROOM

South Carolina Supreme Court
Daniel E. Shearouse
Clerk of Court
Post Office Box 11328
Columbia, South Carolina 29211

LEGAL MAIL

South Carolina
Supreme Court
Clerk of Court
Daniel E. Shearouse

I Dana Middleton is writing asking for your assistance. I have wrote the Clerk of Court of my county, My ~~Trial~~ Trial Judge, my appointed law, and S.C.D.C. Classification, about not receiving all my time credit. I have been Sentences to 12yrs. 85%. Now I was arrested (Aug. 28.07) at the age 15 for these same charges. I was taken to D.T.J. Holding Detention Center until I turned 17 then was transferred to Spartanburg County were I stayed until I was sentenced and transferred to S.C.D.C. I was transferred to the County (Nov. 28.08) and was sentence (Feb. 26.09). So altogether that's 18 month time credit I'm suppose to have, but the only gave me 3 months leaving short 15 months and in (State v. Boags) S.C. Code Section 24-13-40 mandates that all Inmate receive credit for time served prior to trial unless the Inmate was an escapee or was already serving time on another offense. I have never escaped or nor have I been serving time for another offense so I should have all my time pursuant to (S.C. Code 24-14-40). I'm asking you to please assist me in this matter or please forward this request to someone who can help me. If you cannot do this can you please point me in the right direction I'll truly appreciate your assistance.

Thank
you
for
your
time.

Dana Middleton
333427
Perry C.I. 2-2
430 Oaklawn Road
Pelzer, Sc. 29669

Diana Middleton 3334217
Perry C.S. B-4-2
430 Oaktown Road
Pitzer, S.C. 29669

AME

Supreme Court
Clerk of Court
Daniel E. Shearouse
Post office Box 11330
Columbia, S.C. 29211

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OCT 12 2011

P.C.I. MAILROOM

LEGAL MAIL

Sc' h Carolina Supren Court
C.J. Jean Toal

C.J. Jean Toal

I just received my legal work Today June 23
2011. I'm trying to get a copy of my arrest Warrent, Can you
Please assist me. I am Indigent and I'm having trouble getting
a copy from my clerk office. I asking for this because one was not
in my case file attached to my appendix. So I appreciate your
help.

Thank
you

For your
Time

Sincerely

Dana
Middleton

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JUN 30 2011

S.C. SUPREME COURT

The Supreme Court of South Carolina

Dana Middleton,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Roger L. Couch
Spartanburg County
Trial Court Case No. 2009-CP-42-06725

ORDER

For good cause shown, the request for an extension until July 22, 2011 to serve and file the pro se response to the Johnson Petition for Writ of Certiorari in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances and state what measures are being taken to insure that no further extension will be required.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

June 10, 2011

cc: Appellate Defender Robert M. Pachak
Dana Middleton #333427
Assistant Attorney General Suzanne H. White

The Supreme Court of South Carolina

Dana Middleton

Petitioner

v.

State of South Carolina

Respondent

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JUN 09 2011

S.C. SUPREME COURT

The Honorable Roger L. Couch
Spartanburg County

Trial Court Case No. 2009-LP-42-6725

Motion For Extension

I Dana Middleton is filing a motion for extension, because I have come to lock-up May 14 at Perry Corrections, and I asked to get my legal work out my Property bag, and was told all property will be pulled at the beginning of the month it is now June 6 and I have yet to receive my legal work and my deadline is on the 11th of June.

Certificate of Service

I certify that I have send a copy of this motion to
The South Carolina Supreme Court. Clerk of Court.

Dana Middleton

South Carolina Supreme Court
Clerk of Court

I Dana Middleton, is writing because I do not have the proper or all documents in my case file I need to prepare a defense in my case. The appendix that was given to me by Appt Defense Attorney only have in Indictment in the part that ~~say~~ Case file. Also I filed a motion to your Court request a copy of ~~the~~ all motion that have been filed with the Spartanburg Court Clerk of Court. Prior to ~~my~~ my plea, and have yet to get a response.

In addition I'm requesting the State or Order on a ~~Direct~~ Direct Indictment and a Direct Warrant. Any Information on these Issues will be deeply appreciated.

RECEIVED

MAY 31 2011

S.C. SUPREME COURT

Thank you
For your
Time

Sincerely

Dana
Middleton

petitioner should bring those missing documents to the attention of his counsel so that counsel can seek to have them added in a supplemental appendix. The *pro se* response to the *Johnson* petition shall be filed within forty-five (45) days of the date of this order.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

April 26, 2011

cc: Appellate Defender Robert M. Pachak
Mr. Dana Middleton, #333427
Assistant Attorney General Suzanne H. White

The South Carolina Supreme Court

2009-CP-42-6725

Appellant's First Request for Production of Documents.

Dana Middleton
333427
Appellant

State of South Carolina
Respondent

Pursuant to Rule 34 of the South Carolina Rule of Civil Procedure Appellant hereby requests that respondent's produce for inspection and copying, the document's and tangible things identified below within thirty (30) calendar days of this document request.

RECEIVED

MAY 04 2011

S.C. SUPREME COURT

Items I need:

- 1) All Copies of motion filed before the hearing.
- 2) Copies of the Grand Jury Proceeding.
- 3) A Complete Copy of Solicitors file/Discovery.

Date: 4-29-11

Dana Middleton 333427
Perry C. I. B-Y-4
430 Oaklawn Rd
Pelzer, S.C. 29669

Certificate of Service 2009-CP-42-6725

I Dana Middleton hereby copy certify a Appellant First Request for Production of Document, was put into US Mail Prepaid and Postage to below individual on date of April, 29, 2011.

Dana Middleton 333427
Perry C. I. B-Y-4
430 Oaklawn Road
Pelzer, S.C. 29669

Dana Middleton
333427

State Of South Carolina
In The Supreme Court

Dana Middleton 333427

Petitioner

v.

South Carolina, State

Respondent

RECEIVED

APR 25 2011

S.C. SUPREME COURT

Motion For Discovery/Case file

I Dana Middleton, is filing this motion to request a copy of my complete case file so I can build a defense to redress the Court. I need all Paper Work and Documents that have been filed under these General Session Number (2008-42-2869)-(2008-42-2870). I'm requesting, Warrants, Police Reports, C.I. Statements, Indictments, Preliminary Hearing transcript, General Session Motion, General Session Transcript, (P.C.R.) Application-(2009-CP-42-6725) (P.C.R.) transcript, Cops of the Grand Jury Convene transcript, and the Copy of the Grand Jury Convene Schedule for the year of 2008, Also once again all paper work and Documents that have been filed in this case.

Certificate Of Service

I certify that a true copy of this motion for Discovery/Case file, in this case have been served on the South Carolina Supreme Court's Clerk of Court Daniel E. Shearouse on this 15th day of April, 2011.

Dana Middleton
Dana Middleton 333427
Petitioner

South Carolina

In The Supreme Court

Dana Middleton 333427

Petitioner

v.

State Of South Carolina

Respondent

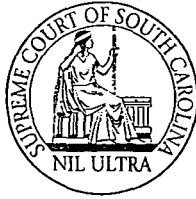
Motion For Extension

I Dana Middleton is filing a motion before this court requesting a motion for Extension. I have only 45 days to build a defense to redress the Court so I'm asking for more Time.

Certificate Of Service

I certify that a true copy of this Motion for Extension ~~and~~ in this case have been served on the South Carolina Supreme Court's Clerk of Court Daniel E. Shearouse on this 15th day of April, 2011

Dana Middleton
Dana Middleton
333427
Petitioner



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 4, 2011

Dana Middleton #333427
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Middleton, Dana v. The State

Dear Mr. Middleton:

Your counsel has submitted a Petition for Writ of Certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition and Appendix on April 1, 2011.

You may, within forty-five (45) days of the date of this letter, file with this Court a pro se response to the Petition filed by your counsel. In this response, you may raise and argue any issues you believe the Court should consider in this appeal. Upon receipt of your pro se response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

If you do decide to file a pro se response, the response must be either typewritten or legibly hand printed, and must have at least a one inch margin on all sides. Further, you will need to only submit one copy of your response, and this copy should **not** be stapled or bound in any manner.

Very truly yours,

CLERK

DES/jj

cc: Appellate Defender Robert M. Pachak
Assistant Attorney General Suzanne H. White



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 3, 2011

RECEIVED

FEB 03 2011

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

S.C. Supreme Court

Dear Mr. Shearouse:

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

Dana Middleton v. State of South Carolina

2/3/2011

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,

Sharon A. Graham
Administrative Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

January 20, 2011

RECEIVED

JAN 20 2011

S.C. Supreme Court

Ms. Pamela E. Green
Circuit Court Reporter
121 Bradford Crossing Drive
Roebuck, SC 29376

Dear Ms. Green:

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

Dana Middleton v. State of South Carolina Case #: 09-CP-42-06725

County: Ms. Lisa H. Hicklin Date of Trial: September 16 & 17, 2010

Presiding Judge: Roger L. Couch

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.

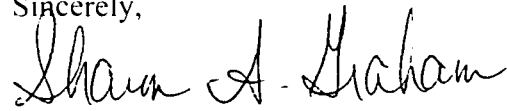
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Pamela E. Green
January 20, 2011
Page Two

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,

A handwritten signature in black ink that reads "Sharon A. Graham". The signature is written in a cursive style with a large initial 'S' and 'G'.

Sharon A. Graham
Administrative Coordinator

cc: S.C Supreme Court
Attorney General's Office



The Brough Law Firm



Christopher D. Brough
175 Magnolia Street, Suite 202
Spartanburg, SC 29306

Phone: 864-585-3088
Fax: 864-585-3058
www.broughlaw.com

November 22, 2010

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

RECEIVED

DEC 17 2010

S.C. SUPREME COURT

RE: THE STATE VS. DANA MIDDLETON

Dear Mr. Shearouse:

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

- (1) Original Proof of Service upon opposing counsel.
- (2) Order of Dismissal.

If I can be of any further assistance please feel free to call me.

Sincerely,

Christopher D. Brough

Enclosure

cc: South Carolina Office of the Attorney General

U.S. Postal Service™
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 (Domestic Mail Only; No Insurance Coverage Provided)

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7009 2250 0003 0592 5081

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Return Receipt Fee (Endorsement Required)	\$2.30	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 6.32	11/22/2010

Sent To SC Attorney General
 Street, Apt. No.,
 or PO Box No. 1000 Assembly St.
 City, State, ZIP+4 Columbia, SC 29201
 PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SC Attorney General
Remberth Dennis Building
1000 Assembly St.
Room 519
Columbia, SC 29201

2. Article Number

(Transfer from service label)

7009 2250 0003 0592 5081

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] Agent Addressee

B. Received by [Signature] Printed Name [Name] Date of Delivery 11-23-10

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DEC 17 2010

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2009-CP-42-6725

The State,

Respondent,

v.

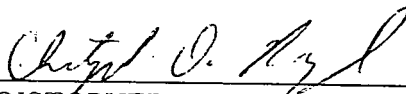
Dana Middleton,

Appellant.

NOTICE OF INTENT TO APPEAL

Dana Middleton appeals the denial of his application for Post-Conviction Relief in this case. The Order of Dismissal was imposed by the Honorable Roger L. Couch on November 16, 2010. Appellant received notice of the same on that date.

November 19, 2010


CHRISTOPHER D. BROUGH
175 Magnolia St., Suite 202
SPARTANBURG, SC 29306
(864) 585-3088
ATTORNEY FOR APPELLANT

Other Counsel of Record:
Suzanne H. White
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-11549
(803) 734-3737

RECEIVED

DEC 17 2010

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2009-CP-42-6725

The State,

Respondent,

v.

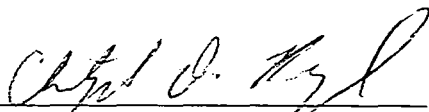
Dana Middleton,

Appellant.


PROOF OF SERVICE

The undersigned, Christopher D. Brough, hereby certifies that he is a person of such age and discretion as to be competent to serve papers and that a copy of the **Notice of Intent to Appeal**, was served upon the following person(s) on the State, by depositing copies of the same in the United States Mail, with sufficient postage affixed thereto, on November 22, 2010, addressed as follows:

The Honorable Henry McMaster
SC Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, S.C. 29201


CHRISTOPHER D. BROUGH

SWORN BEFORE ME THIS
22 DAY OF November, 2010.


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 10/29/2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Dana Middleton, #333427,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2009-CP-42-6725

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 15, 2009. The Respondent made its Return on or about April 27, 2010. An evidentiary hearing into the matter was convened on September 16, 2010, with a supplemental hearing held on September 17, 2010. The Applicant was present and represented by Christopher D. Brough, Esquire, at the hearing. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Applicant also presented testimony from his mother, Shalonda Mitchell, and Ed Ballenger. Tanya R. Jones, Esquire, testified on behalf of the State. This Court also had before it a copy of the guilty plea transcript, the records of the Spartanburg County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the July 2008 term of the Spartanburg County Grand Jury for attempted armed robbery

CLERK OF COURT
 SPARTANBURG COUNTY
 2010 NOV 17 PM 4:29
 HOPE BLAUGLEY

(2008-GS-42-2869) and assault and battery with intent to kill (2008-GS-42-2870). Applicant was represented by Tanya Jones, Esquire. On February 25-26, 2009, the Applicant pled guilty as indicted. The Applicant was sentenced by the Honorable J. Derham Cole to confinement for a period of twelve (12) years on each charge, both sentences to run concurrently. Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of counsel; and
2. Subject-matter jurisdiction.

SUMMARY OF TESTIMONY

Applicant testified at his hearing that he wanted to proceed on claims of ineffective assistance of counsel and involuntary guilty plea. Applicant testified that he was a juvenile at the time of the crime and had a waiver hearing in Family Court before proceeding to trial. Applicant testified that his intention was to proceed to trial with an alibi defense. Applicant testified that he first met with his attorney, Tanya Jones (Counsel), in June or July 2008 when his case was waived to General Sessions. Applicant testified that he then met with Counsel in November when he was returned to the county jail and in January, before the trial in February. Applicant testified that Counsel filed a notice of alibi defense, as evidenced by Applicant's Exhibit #1. Applicant testified that at the time of the crime at Mr. Bingo, he was at a card game at a home on Sunnyside Drive. Applicant testified that he informed Counsel of his alibi and informed her of several witnesses to call, including Ornie Mack, Santoria Dodd, and Sharon Miller. However, Applicant testified that none of the witnesses were present when his trial was to begin. Applicant testified that he had accurate contact information

Roll
2

CLERK OF COUNTY
FAMILY AND DISTRICT COURT
2011 NOV 17 PM 4:58
MOUNTAIN VIEW COUNTY

for each of the witnesses at the time he gave their names to Counsel.

Applicant testified that at the beginning of his trial, he made a Motion to relieve Counsel. Applicant testified that Counsel had discussed a twelve-year offer with him previously, but he had not accepted the offer because he wanted to go to trial. Applicant testified that the DNA evidence on the cigarette lighter was not his. Applicant also testified that Counsel did not file a pre-trial motion challenging the photo line-up. Applicant testified that he pled guilty because none of the witnesses were present to support his alibi defense and he was told he might receive a forty-year sentence if he proceeded to trial.

Shalonda Mitchell (Mitchell) testified that she received a call from the Applicant, who was fifteen, on the night of the crime, asking her to bring money to the card game. Mitchell testified that she went to the house on Sunnyside Drive and gave Applicant forty dollars. Mitchell also testified that there were several people present at that card game, including Sharon Miller, Ornie Mack, and Keisha Miller. Mitchell testified that she received a call saying that he had been arrested and when she arrived at the police station, she signed a paper given consent for Applicant to be questioned. However, Mitchell testified that an Officer came to her house to question Applicant about a carjacking that occurred after Applicant's arrest because the suspect apparently resembled Applicant. Mitchell testified that she believes someone who looks like her son committed the crime related to this conviction as well.

Mitchell testified that she tried to locate all of the witnesses to testify and brought two of the witnesses in to meet with Counsel at one time. Mitchell testified that she informed Counsel that Mitchell did not believe Counsel had enough time to prepare and work on the case. Mitchell testified that she was not allowed to speak at the guilty plea and thought there was pressure put on

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7th NOV 17 PM 4:29
CLERK OF COURT

her son to plead guilty.

Edward Ballenger (Ballenger) testified that he was the confidential informant who was contacted by the Greer police regarding the Mr. Bingo incident. Ballenger testified that he told the police that he saw a guy during daylight hours coming from the vicinity of the Wal-Mart in a t-shirt and jeans. Ballenger testified that he did not identify Applicant by the nickname of "Bean," or place Applicant near the scene of the crime at or around the time of the crime, as the Officer's investigative report indicated, which was entered as Applicant's Exhibit #3.

Counsel testified that she was appointed to represent the Applicant in June 2008 following the waiver hearing. Counsel testified that she met with Applicant at least five times. Counsel testified that she spoke with Applicant and he initially indicated that he had been at Mr. Bingo and then left to go to a friend's house. Counsel testified that she did speak with Ornie Mack and Applicant's mother at a subsequent meeting. Counsel also testified that she was unsuccessful in contacting any of the other alleged alibi witnesses, as Applicant and others only provided first names and could not provide last names or phone numbers for any witnesses. Counsel testified that she did call someone named Trisha, who never returned her phone call. Counsel also testified that she was informed that Grayson had left the area for a while and no one had any idea where Sherry resided. Counsel testified that she did speak with Sharon Miller and based on her use of profanity and demeanor, Counsel was not interested in having Ms. Miller testify. Counsel testified that she did subpoena Ornie Mack and the officer who took Applicant's booking photo, since the victim stated that he hit or kicked the suspect in the face and Applicant's photo indicated no facial injuries. Counsel testified that Ms. Mack did appear on the first day of the trial. Counsel also testified that the first time she heard that Applicant's mother went to the house on the night in question was during the



SEARCHED
SERIALIZED
INDEXED
FILED
NOV 1 2008
FBI - WASHINGTON
PH: 2

PCR hearing testimony.

Counsel testified that she discussed the plea offer with Applicant one to two times prior to January, but Applicant continued to say he wanted to proceed to trial. However, Counsel testified that on the day of trial, Applicant specifically requested to speak with James Cheek, another attorney. Counsel testified that after speaking with Mr. Cheek, Applicant decided to plead guilty. Counsel testified that she discussed the plea with Applicant, including the fact that this was a non-violent charge, but also a serious charge, which would give Applicant one strike. Counsel also discussed with Applicant the options of strong armed robbery or a YOA sentence, but the State would not reduce the charges or provided a better deal than the twelve years.

Counsel testified that the victim was a good witness during the waiver hearing, so she expected the victim to be equally as compelling at trial. Counsel also testified that although the DNA did not belong to the Applicant on the cigarette butt or lighter, those items were later tested and determined to contain DNA from the victim. Counsel indicated the results on the two separate SLED forensic reports, State's Exhibits #1 and #2. Counsel testified that she saw no legal reason to challenge the photo line-up identification of Applicant by the victim. Counsel testified that she explained all of the choices, facts, and potential sentences to the Applicant, but he made his choice to plead guilty freely and voluntarily.

CLERK OF COURT
SPARTANBURG COUNTY
2018 NOV 17 PM 4:09
MICHOPE BRANCH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required

pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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As to Applicant's allegation that Counsel was ineffective for her failure to call witnesses in support of Applicant's alibi defense, this Court finds that Applicant has failed to meet his burden of proof. This Court found Counsel's testimony more credible than Applicant's or other witnesses' testimony. This Court also finds that Counsel made sufficient attempts to locate alibi witnesses for trial. Counsel subpoenaed the witness she was able to contact and determined would be helpful for Applicant's case. Counsel also attempted to contact other witnesses from minimal information given to her by the Applicant.

Furthermore, prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Applicant failed to present any witnesses at the hearing to support his claims or indicate what the witnesses might have said had they testified at trial. Therefore, this allegation is denied and dismissed.

Regarding Applicant's allegation that Counsel was unprepared to proceed to trial, this Court finds that Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony to be the most credible regarding this issue. This Court finds that Counsel was prepared and ready to go to trial. Counsel investigated the case, contacted witnesses, reviewed discovery

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materials and prepared a defense. Counsel is an experienced attorney who was clearly prepared for trial. Therefore, this allegation is denied and dismissed.

Involuntary Guilty Plea

The Applicant also alleges that his guilty plea was entered into involuntarily and unknowingly. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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

This Court finds that the record conclusively refutes this allegation. The Applicant showed no reason why he should be allowed to depart from the truth of the statements he made during his

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guilty plea hearing. This Court finds the Applicant's testimony at the PCR hearing regarding the voluntariness of his plea lacked credibility, in particular as to Applicant's testimony that he only pled guilty because of Counsel's failure to secure witnesses to testify on his behalf. This Court also finds Counsel's testimony credible in that she gave Applicant all available options and allowed him to make his own informed decision. Therefore, this Court finds that Applicant's guilty plea was freely and voluntarily entered.

CONCLUSION

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

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243¹ for appropriate procedures for appeal.

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¹ Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 16th day of November, 2010.

[Signature], South Carolina

[Signature]
Roger L. Couch
Presiding Circuit Court Judge

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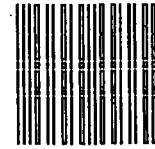
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