

"Exhibit A"

testified he was lead attorney but that he brought in assistant public defender Newton Howle to help at the trial. Mr. Kilgo stated he met with Applicant many times and that they reviewed discovery materials. Counsel further testified the State had a strong case against Applicant based, in large part, on eyewitness testimony. Counsel testified he did not agree to the voluntary manslaughter charge, but that he discussed it with Applicant. Counsel stated he did not recall any issues regarding charges on either witness impeachment or accomplice liability. Mr. Kilgo also stated it was unnecessary to object to the voluntary manslaughter charge because it did not shift the burden of proof. He testified the State made ten (10), fifteen (15), and twenty (20) year plea offers that he relayed to Applicant. Counsel testified that Applicant turned down the offers because he wanted a trial. Finally, counsel stated he recalled the Solicitor informing him that the testifying co-defendant would be entering a guilty plea. *which he never made aware to the Jury or myself*

Applicant's second trial attorney, Newton I. Howle, Jr., Esquire, testified he made himself familiar with the evidence and discovery in this case and visited the crime scene in the two weeks before the trial. (Mr. Howle stated he met with Applicant prior to trial.) Counsel agreed with attorney Kilgo's opinion that the State had a strong case against Applicant. Mr. Howle testified he was present when the ten (10) year plea offer was conveyed to Applicant. Counsel stated Applicant was "very confident" that he would not be convicted and turned down the offer.

DISCUSSION OF THE LAW

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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he

()

grab
5

"Exhibit B"

must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); Sanchez v. State, 351 S.C. 270, 274-75, 569 S.E.2d 363, 365 (2000). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). Where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (citations omitted); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992).

jud B
6

This Court finds Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court finds trial counsel advised Applicant of the advantages and disadvantages of proceeding to trial, that Applicant rejected several plea offers, and that Applicant chose to have a jury trial. This Court notes there is mention in the record that Applicant had rejected prior plea offers of fifteen (15) and twenty (20) years. (Trial transcript, pp.197-98). This Court has reviewed the trial transcript and does not find any error in the trial court's charge to the jury on the law of voluntary manslaughter. (Trial transcript, pp.825-28). This Court also finds Applicant's claim that trial counsel should have asked the trial judge to charge the jury on the law of accomplice liability and impeachment of a witness is not supported by the trial record.

(~~scribble~~)

ANDERSON LAW FIRM, P.A.

HENRY M. ANDERSON, JR.

265 WEST EVANS STREET
FLORENCE, SOUTH CAROLINA 29501-3464

POST OFFICE BOX 1904
FLORENCE, SC 29503-1904

PHONE (843) 665-4300
FAX (843) 665-5511

June 14, 2005

Darnell Hunter, SCDC #260730
Lieber Correctional Institute, MX-B-139
Post Office Box 205
Ridgeville, South Carolina 29472

Exhibit C

2013 MAY 16 AM 11:25
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

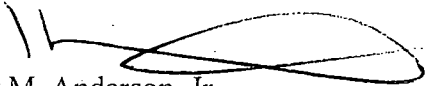
FILED

Dear Darnell:

Enclosed please find a copy of the proposed Order. I am also enclosing a copy of the letters that I sent to Karen Ratigan and to Judge Baxley. Please review the Order and let me know about any objections that you have immediately.

With kindest personal regards, I am

Sincerely,



Henry M. Anderson, Jr.

mdt

Enclosures

(3, 9)

ANDERSON LAW FIRM, P.A.


HENRY M. ANDERSON, JR.

265 WEST EVANS STREET
FLORENCE, SOUTH CAROLINA 29501-3464

POST OFFICE BOX 1904
FLORENCE, SC 29503-1904

PHONE (843) 665-4300
FAX (843) 665-5511

June 30, 2005

Exhibit 
D

Darnell Hunter, SCDC #260730
Lieber Correctional Institute, MX-B-139
Post Office Box 205
Ridgeville, South Carolina 29472

2013 MAY 16 AM 11:25
SCOTT B. SUGGS
CLERK OF COURT/R.O. SR.
DARLINGTON COUNTY, SC
FILED

Dear Darnell:

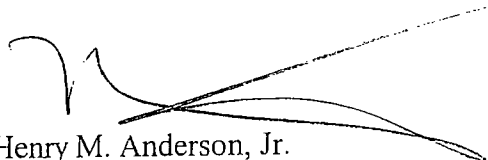
Thank you for your recent letters. I received a letter from you dated June 14, 2005, and another dated June 27, 2005. In your latest letter, which is dated June 27, 2005, you state as follows, "I truly hope by now you have gotten my response from the order and have since articulated a master piece to present to the P.C.R. Judge."

I have not received anything from you in response to the order. If you have sent me anything, please send it to me again. As of yet I have not received anything from you. Please be advised that I have been doing some work on the case and have also asked someone else to help me articulate a response.

I will write the Judge again today and advise him that he can go ahead and sign the Order. Once that is done, I will go ahead and file our responses after I get a certified copy. That will give you and me at least an additional 30 days. In the meantime, I look forward to hearing from you soon.

With kindest personal regards, I am

Sincerely,



Henry M. Anderson, Jr.
mdt

(B.R.)

ANDERSON LAW FIRM, P.A.

HENRY M. ANDERSON, JR.
265 WEST EVANS STREET
FLORENCE, SOUTH CAROLINA 29501-3464

POST OFFICE BOX 1904
FLORENCE, SC 29503-1904

PHONE (843) 665-4300
FAX (843) 665-5511

Exhibit
E

July 18, 2005

Darnell Hunter, SCDC #260730
Lieber Correctional Institute, MX-B-139
Post Office Box 205
Ridgeville, South Carolina 29472

2013 MAY 16 AM 11:25
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.
FILED

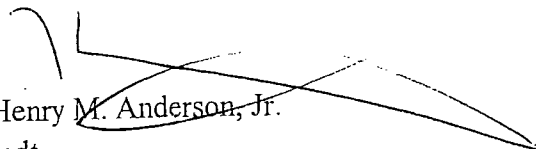
Dear Darnell:

Thank you for your recent letters. I have now received four from you in the last month and have reviewed all of them in detail. I am preparing a response and once I complete it, I will of course send a copy of it to you.

In the meantime, I still do not have the certified copy from the Courthouse or the Judge. Once I do have that, I will send that to you as well. If you have any questions or comments, please do not hesitate to call.

With kindest personal regards, I am

Sincerely,


Henry M. Anderson, Jr.
mdt

(3.8)

ANDERSON LAW FIRM, P.A.

HENRY M. ANDERSON, JR.

265 WEST EVANS STREET
FLORENCE, SOUTH CAROLINA 29501-3464

POST OFFICE BOX 1904
FLORENCE, SC 29503-1904

PHONE (843) 665-4300
FAX (843) 665-5511

July 26, 2005

Exhibit

F

Darnell Hunter, SCDC #260730
Lieber Correctional Institute, MX-B-139
Post Office Box 205
Ridgeville, South Carolina 29472

2013 MAY 16 AM 11:25
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

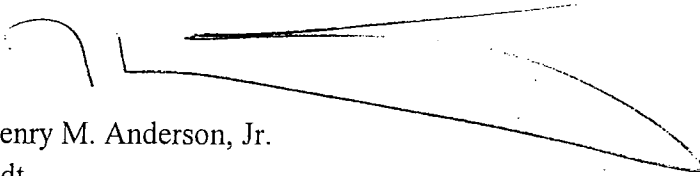
Dear Darnell:

Enclosed please find a copy of a signed Order by Judge Baxley. The case has not actually been clocked in and filed by the Clerk's Office; however, it has been signed. I wanted you to have a copy of that for your records.

Please be advised that I am preparing our motions and will send them to you. In the meantime, if you have any questions or comments, please do not hesitate to call.

With kindest personal regards, I am

Sincerely,



Henry M. Anderson, Jr.
mdt
Enclosure

(S.T.)

(3.M)

Darrell Hunter #262730

Lieber C.T. AA-11

P.O. Box 205

Ridgeville, S.C. 29472

Exhibit ~~1~~ 6

Mr. Henry Anderson, Jr., Esq.

265 West Evans Street

Florence, S.C. 29501-3464

FILED
2013 MAY 16 AM 11:25
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Dear Mr. Anderson,

I received your letter dated 12-20-05 and I must say thank you. It's been a while since I've last heard from you and I assumed you were busy on some other things that's why I haven't been bothering you. But as I can last recall in a letter to me from you, you stated you had some one helping you with my case and you were finishing up some briefs for the supreme court and you would send them to me once finished.

However, Mr. Anderson it's been 7 months going on 8 months and I haven't received or heard any thing from you pertaining to my issue. I sent you law/analysis for those three issues that are to be presented to the Supreme Court for review but I have not heard from you on them issues. I truly feel from the letter dated 12-20-05 that the Supreme Court may grant me another P.C.R. hearing for that continuance issue. But upon research I find that the granting of a motion for a continuance is within the sound discretion of the ~~judge~~ ^{Judge} and

(5, N)

will not be disturbed absent "clear showing of an abuse of discretion. State v. White, 311 S.C. 289, 293, 428 S.E.2d 740, 742 (Cot App. 1993) Reversals of Refusals of Continuances "are about as rare as the proverbial hen's teeth." State v. McMillian, 349 S.C. 17, 21, 561 S.E.2d 602 604, (2002).

* Mr. Anderson, Sir You did not file the rule 59E motion I asked you to file for me in my behalf, which was a very vital motion that I truly felt should have been filed. You came to see me and we agreed with three issues to present to the Supreme Court along with the continuance motion which makes 4 issues altogether. I sent you strong case law to substantiate all the issues that are to be raise with Supreme Court Cases but I have yet to receive any ~~motion~~ arguments from you.

Sir = truly feel there is a misunderstanding and being that the lack of communication leads to all misunderstandings I'm coming to you with the hopes of ^{bringing understanding} ~~clearing up~~ to my confuse mind and send the best issues so I can go to the law library and do my "homework" I've learnt that ignorance of the law is no excuse that's why I study the way I do, and freedom is never voluntarily given by the oppressor it must be fought for and demanded by the oppressed. No one is gonna fight for my freedom like I will that's why I sent you the case law to present to the Supreme Court on all the issues. So please let me know something on such capital matters. Thanking you
In advance.

12-25-05 Sincerely I AM



State of South Carolina
The Circuit Court of the Fourth Judicial Circuit

Paul M. Burch
Judge

September 26, 2014

Post Office Box 276
Pageland, SC 29728-0276
Telephone: (843) 672-3270
Facsimile: (843) 672-5960

Darnell Hunter #260730
ECI Warsaw A #270
610 Hwy 9 West
Bennettsville, SC 29512

Exhibit H

Re: Civil Matter as well as Letter dated September 17, 2014
2013-CP-16-00571

Dear Mr. Hunter:

I have reviewed your letter dated September 17, 2014 and have enclosed a copy of an Order which was filed with the office of the Clerk of Court for Darlington County on May 16, 2014. As allowed by the Rules of Civil Procedure your Rule 59(e) motion was addressed without further hearing.

If you have any further questions concerning this matter please contact your attorney of record, Mr. Tristan Shaffer.

With kindest regards,

Paul M. Burch
Circuit Judge for the Fourth Judicial Circuit

Applicant asks this court to extend Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), to impose upon initial PCR counsel a duty to file Rule 59(e) motions.

The Court has reviewed the original pleadings and Applicant's response. Applicant's claim is essentially one that initial PCR counsel was ineffective. However, there is no constitutional right to effective collateral counsel. Pennsylvania v. Finley, 481 U.S. 551, 555 (1987). This Court declines to extend the Supreme Court's ruling in Austin to include a requirement that initial collateral counsel file Rule 59(e) motions to preserve all issues for appeal. The Supreme Court has indicated Austin "is limited to its particular factual situation," which is limited to a case where the applicant "was prevented from seeking any review of the denial of his PCR application." Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). Here, Applicant received an appellate review. Regarding his allegation some grounds for appeal were not properly preserved, this Court "will not engage in an exploration of why the grounds were not raised, it is sufficient that they could have been raised, but were not." Id. at 450, 409 S.E.2d at 394.

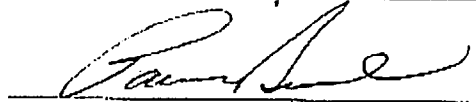
Accordingly, the Court finds Applicant has not shown a sufficient reason why the application is not successive, untimely, and fails to state a claim upon which relief should be granted, nor has he shown why the conditional order should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for Post-Conviction Relief is hereby **denied and dismissed with prejudice**.

This Court notes Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. See Rule 203,

SCACR, Rule 71.1(g), SCRCR, and Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS SO ORDERED THIS 15th DAY OF May, 2014.


THE HONORABLE PAUL M. BURCH
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

Chesterfield, South Carolina

2014 MAY 16 PM 12:42
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

Forwarded to Solicitor
and Public Defender

Darrell Hunter #260730
ECI MAX B #222
610 Hwy 9 West
Bennettsville, S.C. 29512

Mr. Scott B. Suggs, Clerk
Clerk of Court
P.O. Box 1177
Darlington, S.C. 29540

JUNE 20, 2014

2014 JUN 24 AM 11:15
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

RE: Pertinent Documentation

Dear Mr. Suggs,

Hello Sir, I want to really thank you for the help that you have provided over the years, and may continue to do.

Hence, I am in dire need of your help at the moment, it's important that I receive these pertinent documents as soon as time allows you. The documentation that I am in need of is a [copy] of the Rule 59(e) motion that was filed in my behalf January 31, 2014 at 12:07 pm and the disposition of such motion [also] The Motion To Reconsider The Conditional order of Dismissal And request for A Hearing" filed April 22, 2014 at 12:37 pm has the [SCDC # 282106], ~~SCDC #~~ ~~SCDC #~~ ~~SCDC #~~ after the name on the motion. Sir, [my] SCDC Number is 260730, could you please straighten that out and let me know the disposition of the said motion as soon as time allows you

(1 of 2) (Exhibit I)

Again Mr. Suggs, I thank you so much Sir, and
your assistance and cooperation is greatly appreciated.

Envelope Included

~~Spencer F. [unclear]~~
S. [unclear]
Darnell Hunter #269130
EOI #13 #22
610 Hwy 9 west
Bennettsville, S.C. 29512

2014 JUN 26 AM 11:45
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

Bennettsville, S.C.
June 20, 2014

(2 of 2)

(Exhibit J)

IN The Court of Common Pleas
for The 4th Judicial Circuit

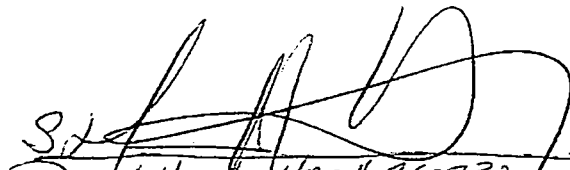
DARNELL HUNTER #260730 Applicant

VS.

State of South Carolina Respondent's

FILED
2014 AUG 8 PM 1:23
SCOTT B. SUTHERS
CLERK OF COURTY
DARLINGTON COUNTY, S.C.

EX PARTE MOTION


DARNELL HUNTER #260730
ECI WAXSAW A #270
610 Hwy 9 west
Bennettsville, S.C. 29512

Bennettsville, S.C. 29512
August 6, 2014

Forwarded to Solicitor & Public Defender 8-11-14

State of South Carolina)
County of Darlington) In The Court of Common Pleas
For The 4th Judicial Circuit
Case No. 2013-CP-16-571

Darrell Hunter #260730)
Applicant,) ⁶⁶ EX PARTE MOTION ⁹⁹

vs)
The State of South Carolina)
Respondents)

FILED
2014 AUG - 8 PM 1:23
SCOTT B. SURGE, D.D.
CLERK OF COURT
DARLINGTON COUNTY, S.C.

Now Comes Applicant Darrell Hunter # 260730
hereby requesting The Honorable Paul Dorch To send
me a [copy] of the Rule 59(e) motion that was filed
in my behalf January 31, 2014 at 12:07pm. Sir,
It's been (7) seven months that the Rule 59(e)
motion has been filed and a disposition has yet
to be rendered. [ALSO] Sir, The lawyer Tristan
Shaffer filed a ⁶⁶ Motion To Reconsider The Conditional
order of Dismissal and Request for a Hearing ⁹⁹
that was filed April 22, 2014 at 12:37pm on
my behalf, which a disposition has not been
rendered either.

Your honor, on the motion that the lawyer
Tristan Shaffer filed in my behalf was the SCDC

Number 282106 [behind] (my) Name which is erroneous AND shows the ineffective actions of Said Counsel. My SCDC Number is 260730.

Hence, your honor it's been (7) seven months with no word from no one about this pertinent situation. It's imperative that a disposition be rendered on [Both] motions as soon as time allows Sir.

I sent a letter to Mr. Scott B. Suggs on June 20, 2014, which was forward to the Solicitor and Public Defender on June 24 at 11:45 am.

Sir I am in dire need of your help in rectifying this situation. [If] you can't, please guide me in the direction I need to go to get the disposition of the said motions that's been pending in the courts for (7) seven months.

I thank you in advance for your time and assistance Sir.

August 6, 2014

~~Spencerly # Am~~
S.A.
Darcell Hunter # 260730
CCI WATSON # 270
610 Hwy 9 West
Bennettsville, S.C. 29512

(3 of 4)

SCOTT B. SUGGS
CLERK OF COURT, D.D.
DARLINGTON COUNTY, S.C.

2014 AUG 8 PM 1:23

FILED

AXELROD & ASSOCIATES, P.A.

Attorneys and Counselors at Law

Stuart Mark Axelrod
W. Chris Castro*
Carlton E. Elliott
Grant Smaldone
Tristan M. Shaffer

4701 Oleander Drive
Myrtle Beach, SC 29577
Phone: (843) 916-9300
Fax: (843) 916-9311

* Currently on Active Military Duty

635 East Bay Street
Charleston, SC 29403
Phone: (843) 805-7200
Fax: (843) 577-3911

September 8, 2014

Darnell Hunter #260730
Evans Correctional Institute
P.O. Box 2951202
Bennettsville, SC 29512

RE: Darnell Hunter v. State of South Carolina
Case No.: 2013-CP-16-0571

Dear Mr. Hunter:

I am writing to update you on the status of your case. As you are aware, a Motion to Reconsider the Conditional Order of Dismissal was filed on April 22, 2014. To my knowledge, my motion has not been ruled upon. Please know that when this matter is ruled upon, I will notify you of the Court's decision.

With kind regards,



Tristan M. Shaffer

TMS/dke

(Exhibit K)