



ALAN WILSON
ATTORNEY GENERAL

July 13, 2011

RECEIVED

JUL 12 2011

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

S.C. Supreme Court

RE: Paul Gray v. State of South Carolina
2005-CP-10-2277

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/arh
Enclosures

cc: Appellate Defender Wanda H. Carter, Esquire (2 copies)

The Supreme Court of South Carolina

Paul Gray,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Roger M. Young
Charleston County
Trial Court Case No. 2009-CP-10-02522

ORDER

The request for an extension until July 13, 2011 to serve and file the Return to the Petition for Writ of Certiorari is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

June 10, 2011

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Matthew J. Friedman



RECEIVED

JUN - 9 2011

S.C. Supreme Court

ALAN WILSON
ATTORNEY GENERAL

June 12, 2011

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

Re: Paul Gray #288130 v. State of South Carolina
2005-CP-10-2277

Dear Mr. Shearouse:

The Return to the Petition for a Writ of Certiorari in the above appeal is due to be served and filed today. I would respectfully request a 30-day extension in which to serve and file this Return.

This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/arh

cc: Wanda H. Carter, Esquire

The Supreme Court of South Carolina

Paul Gray,

Petitioner,

v.

State of South Carolina,

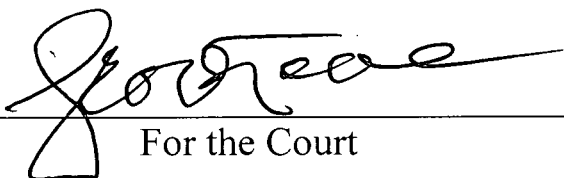
Respondent.

The Honorable Roger M. Young
Charleston County
Trial Court Case No. 2009-CP-10-02522

ORDER

Petitioner seeks an extension until April 28, 2011 to serve and file the Petition for Writ of Certiorari and Appendix, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension is granted. Pursuant to this 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 extensions will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.



For the Court C.J.

Columbia, South Carolina

April 4, 2011

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Matthew J. Friedman

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Roger M. Young, Circuit Court Judge

RECEIVED

MAR 30 2011

S.C. Supreme Court

PAUL GRAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**

(4)

The undersigned counsel would respectfully request a **final twenty-one-work-day** extension, until **April 28, 2011**, in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. Petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by three prior orders of this Court.
2. Counsel is filing the initial brief of appellant and designation of matter in the case of State v. Rafael Horlbeck today. In addition, Counsel is working on the initial briefs of appellant and designations of matter in the cases of State v. Michael Lackey and State v. Melinda Richmond, both of which are due to be filed next week. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of *Ronald Jenkins v. State* on March 25, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of *Michael Turner v. State* on March 23, 2011. Counsel filed the petition for writ of certiorari in the case of Emmett Kelly v. State Monday, March 21, 2011. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Ernesto Ortiz v. State and Beryl Ray Johnson v. State on March 18, 2011. Additionally, Counsel filed the initial brief of appellant and


designation of matter in the case of State v. Kenwood Bright on March 14, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Nicholas Macklen on March 10, 2011. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Devario Marshatt Simpson v. State, Walter Martez Thomas v. State, Vaughn Williams v. State, Terry J. Hardin v. State, and Darrell Keith Emory v. State on Monday, March 7, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of James Matthews v. State on March 2, 2011.

3. This request is made in good faith, and not for purposes of delay.


4. As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final twenty-one-work-day** extension, until **April 28, 2011**, in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

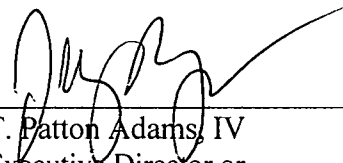
Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender




Robert M. Dudek
Chief Appellate Defender



T. Patton Adams, IV
Executive Director or
J. Hugh Ryan, III
General Counsel

March 30, 2011

I DO NOT OPPOSE:



Matthew J. Friedman

The Supreme Court of South Carolina

Paul Gray,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Roger M. Young
Charleston County
Trial Court Case No. 2009-CP-10-02522

ORDER

For good cause shown, the request for an extension until March 30, 2011 to serve and file the Petition for Writ of Certiorari and Appendix 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, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY


Clerk

Columbia, South Carolina

March 1, 2011

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Matthew J. Friedman

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Roger M. Young, Circuit Court Judge

RECEIVED

FEB 28 2011

S.C. Supreme Court

PAUL GRAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**

(3)

The undersigned counsel would respectfully request a thirty day extension in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. Petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by two prior orders of this Court.
2. Counsel will be filing the petition for writ of certiorari and accompanying appendix in the case of Anne Gordon v. State today. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Timothy Tyrone Murray v. State on February 22, 2011. Counsel filed the initial briefs of appellant and designations of matter in the cases of State v. Robert Upchurch and State v. Johnnie Jones on February 18, 2011. Counsel filed the petition for rehearing in the case of State v. Leroy A. Brown on

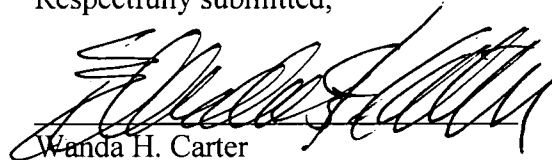
February 16, 2011. Additionally, Counsel filed the initial brief of appellant and designation of matter in the case of State v. Arnold Ward on February 14, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. George Jones on February 7, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Jennifer Rayanne Dykes on February 4, 2011. Counsel filed the Brief of Petitioner in the case of Brian Gebhard v. State on February 3, 2011. In January 2011, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Herman Lee Beasley and State v. Larry B. Horton. Also in January 2011, Counsel filed the initial briefs of appellant and designations of matter in the cases of State v. Donald Jones, State v. Abel Jacobs and State v. Andrew Ladron.

3. This request is made in good faith, and not for purposes of delay.

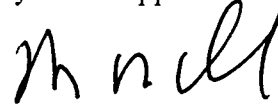
4. As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a thirty-day extension in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



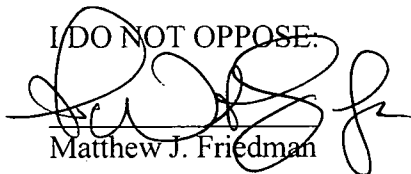
Wanda H. Carter
Deputy Chief Appellate Defender



Robert M. Dudek
Chief Appellate Defender

February 28, 2011

I DO NOT OPPOSE:



Matthew J. Friedman

The Supreme Court of South Carolina

Paul Gray,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Roger M. Young
Charleston County
Trial Court Case No. 2009-CP-10-02522

ORDER

For good cause shown, the request for an extension until February 28, 2011 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this 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.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Brenda J. Shealy
Clerk

Columbia, South Carolina *Chief Deputy*

January 31, 2011

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Matthew J. Friedman

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Roger M. Young, Circuit Court Judge

RECEIVED

JAN 28 2011

S.C. Supreme Court

PAUL GRAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**

(2)

The undersigned counsel would respectfully request a thirty day extension in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

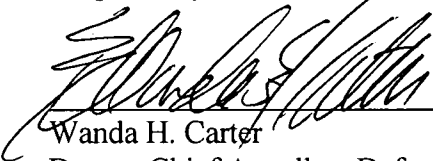
1. Petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.
2. Counsel will be filing the petition for writ of certiorari and accompanying appendix in the case of State v. Larry B. Horton today. This case was previously assigned to former Appellate Defender Joseph L. Savitz, III, but has been recently

reassigned to Counsel. Counsel will also be filing the petition for writ of certiorari and accompanying appendix in the case of Herman Lee Beasley v. State, due on January 31, 2011. On January 18, 2011, Counsel filed the initial brief of appellant and designation of matter in the case of State v. Donald Jones. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Abel Jacobs on January 14, 2011. Also, on January 6, 2011, Counsel filed the initial brief of appellant and designation of matter in the case of State v. Andrew Ladron.

3. This request is made in good faith, and not for purposes of delay.

WHEREFORE, the undersigned counsel would respectfully request a thirty-day extension in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

January 28, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Roger M. Young, Circuit Court Judge

PAUL GRAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

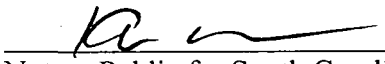
The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Matthew J. Friedman, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 28th day of January, 2011.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 28th day of January, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.

The Supreme Court of South Carolina

Paul Gray,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Roger M. Young
Charleston County
Trial Court Case No. 2009-CP-10-02522

ORDER

The request for an extension until January 28, 2011 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Dwenda I. Shealy*
Clerk

Columbia, South Carolina *Chief Deputy*

December 30, 2010

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Matthew J. Friedman



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

December 29, 2010

RECEIVED

DEC 29 2010

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

S.C. Supreme Court

Re: Paul Gray v. State of South Carolina

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in the above-referenced case are due to be served and filed today. Because of my present workload, I respectfully request a thirty-day extension of this deadline. No prior extensions have been requested in this case.

By copy of this letter, I am informing Matthew J. Friedman, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/kam

cc: Matthew J. Friedman



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) 734-1343
Facsimile: (803) 734-1397

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

October 28, 2010

RECEIVED

OCT 28 2010

S.C. Supreme Court

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

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.

Paul Gray v. State of South Carolina

10/28/2010

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,

Lorie French
Legal Services 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

RECEIVED

AUG 24 2010

S.C. SUPREME COURT

August 24, 2010

Ms. Linda D. Moffitt
Circuit Court Reporter
800 Belcher Road
Spartanburg, SC 29316

Dear Ms. Moffitt:

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

Paul Gray v. State of South Carolina Case #: 09-CP-10-02522.

County: Charleston Date of Trial: June 1, 2007

Presiding Judge: J. Derham Cole

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. Linda D. Moffitt
August 24, 2010
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,


Loriene French
Legal Services Coordinator

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

qmf

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Paul Gray, #288130)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2005-CP-10-2277

ORDER OF DISMISSAL

2008 OCT 10 AM 10:15
JULIE J. ARMSTRONG
CLERK OF COURT
FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 26, 2005. The Respondent made its Return on October 14, 2005. An evidentiary hearing into the matter was convened on June 1, 2007 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by William L. Runyon, Jr., Esquire. Jeanette Van Ginhoven, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Trial counsel Leslie Sarji Locklair, trial counsel David Wolf, the Applicant, and the Applicant's mother, Loretta Buie, all testified at the hearing. The Court had before it a copy of the trial transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the appellate briefs, the Court of Appeals opinion and Remittitur, the application for post-conviction relief, and the Respondent's return.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the August 2001 term of the Charleston

20 # 1

County Grand Jury for two counts of criminal sexual conduct (CSC) with a minor – 1st degree (2001-GS-10-4890, 4891) and lewd act upon a minor (2001-GS-10-4892). Leslie Sarji Locklair, Esquire, and David Wolf, Esquire, represented the Applicant. On October 14, 2002, the Applicant proceeded to trial at which he was found not guilty of one count of CSC with a minor – 1st degree and found guilty of one count of CSC with a minor – 1st degree and lewd at upon a minor. The Honorable John Milling sentenced him to confinement for eighteen (18) years for CSC with a minor and eight (8) years suspended upon time served and five (5) years of probation for lewd act upon a minor. The sentences were to run consecutively.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Paul A. Gray, Op. No. 2004-UP-552 (S.C. Ct. App. filed November 1, 2004).

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel failed to present an expert witness.
2. Ineffective assistance of counsel in that counsel failed to call Applicant's mother as a witness.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A handwritten signature or set of initials, possibly "LW", written in black ink. The signature is somewhat stylized and includes a small cross-like mark above the main strokes.

Ineffective Assistance of Counsel

The Applicant alleges that 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 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 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006).

The Applicant testified that he told his attorneys about potential witnesses, including his mother, his niece, and his sister. None of these potential witnesses testified at trial.

Ms. Locklair, trial counsel, testified that she did not recall talking to Loretta Buie, the Applicant’s mother. She testified that she did not recall making a conscious decision to not call an expert witness to testify at trial. She does not recall considering hiring an expert witness. Ms. Locklair testified that an expert witness probably would have been relevant to Applicant’s defense, and she wishes she had hired an expert. She also testified that Applicant’s financial situation did not factor into the decision not to hire an expert.

Mr. Wolf, trial counsel, testified that he and Ms. Locklair did not discuss getting an expert. He contended that not hiring an expert witness was not part of their trial strategy. He did recall speaking with Applicant’s mother. Mr. Wolf testified that they did not feel Applicant’s mother was prepared to testify from her personal knowledge.

Ms. Buie, the Applicant’s mother, testified that she talked with the attorneys once at her house. She testified that the victim made up the accusations against the Applicant because she



wanted to go live with her mother.

This Court finds that the trial attorneys are criminal trial practitioners with extensive experience in the trial of serious offenses. The attorneys never discussed hiring an expert witness. This Court finds that the Applicant has failed to prove that an expert would have been beneficial to Applicant's defense. The Applicant's contention that an expert witness would have benefited his defense is purely speculative. This Court finds no prejudice in counsel's failure to hire an expert.

With respect to counsel's alleged failure to call the Ms. Buie, Applicant's mother, as a witness, this Court finds no deficiency or prejudice resulted from counsel's representation. Mr. Wolf testified at the PCR hearing that he did not believe Ms. Buie was prepared to testify from personal knowledge at trial. Ms. Buie's testimony at the PCR hearing confirmed Mr. Wolf's belief. Ms. Buie merely testified that the victim made up the accusations against the Applicant because the victim wanted to go live with her mother. This Court finds that counsel made a reasonable trial strategy in not calling Ms. Buie as a witness at trial.

This Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier, 351 S.C. at 389, 570 S.E.2d at 174.

A handwritten signature or set of initials, possibly "G" or "G+", written in black ink at the bottom center of the page.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.




A long, thin, slightly curved diagonal line extends from the bottom left towards the top right of the page. At the bottom center, there is a handwritten signature that appears to be "J.S." with a small star or asterisk above the "S".

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 31st day of October, 2008.



The Honorable J. Derham Cole
Presiding Judge
9th Judicial Circuit

_____, South Carolina.

MASELLA LAW FIRM, P.A.

Reply to Columbia Office

ROBERT M.P. MASELLA
ALSO LICENSED IN GEORGIA

S. PRENTISS COUNTS

REYNOLDS H. BLANKENSHIP, JR.

917 CALHOUN STREET
COLUMBIA, SC 29201
(803) 748-9990

1045 WEST OAKLAND AVENUE
ROCK HILL, SC 29732
(803) 980-4400

FACSIMILE
(803) 748-9948

July 19, 2010

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

RE: *Gray v. State*
05-CP-10-2277

Dear Mr. Shearouse:

Enclosed please find notice of appeal in the above-captioned matter. I represented the Petitioner in a successive PCR (09-CP-10-2522) where he was granted a belated appeal to this PCR pursuant to Austin v. State. It is my understanding that counsel will be appointed for him from the Office of Appellate Defense. As this case was previously appealed but dismissed, the transcript of the PCR has already been transcribed.

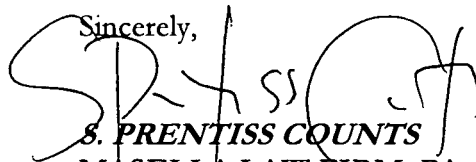
Please feel free to contact me with any questions you may have regarding this matter.

RECEIVED

JUL 21 2010

S.C. SUPREME COURT

Sincerely,


S. PRENTISS COUNTS
MASELLA LAW FIRM, PA
917 Calhoun Street
Columbia, SC 29201

SPC

cc: Matthew Friedman
Office of Appellate Defense
Paul Gray

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2005-CP-10-2277

Paul Gray,

Petitioner,

v.

State of South Carolina,

Respondent.

RECEIVED

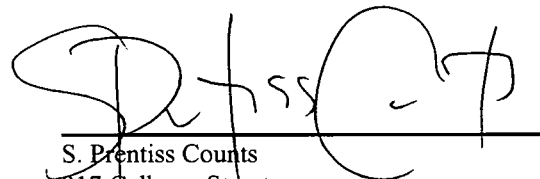
JUL 21 2010

S.C. SUPREME COURT

NOTICE OF APPEAL

Paul Gray appeals the order of the Honorable J. Derham Cole dated October 3, 2008. Petitioner's appeal of his PCR was dismissed by order of the Supreme Court on January 22, 2009 for failing to provide a proof of service showing that the notice of appeal had been timely served on opposing counsel. Petitioner filed a subsequent PCR (09-CP-10-2522) where a Consent Order Granting Belated PCR Appeal Pursuant to Austin and Dismissing All Other Claims was executed and signed by the Honorable Roger M. Young, Sr. on June 28, 2010 and filed on June 29, 2010. Appellant received written notice of entry of this order on July 16, 2010.

July 19, 2010.



S. Prentiss Counts
917 Calhoun Street
Columbia, South Carolina 29201
(803) 748-9990
Attorney for Petitioner

Other Counsel of Record:
Matthew Friedman
Post Office Box 456
Greenville, South Carolina 29000
Attorney for Respondent
(803) 734 3737

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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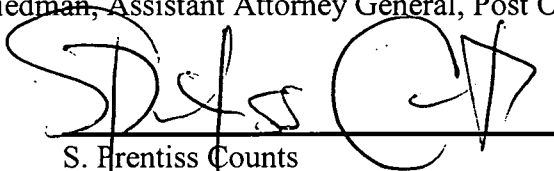
State of South Carolina,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on South Carolina Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on July 19, 2010, addressed to his attorney of record, Matthew Friedman, Assistant Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.

July 22, 2010


S. Frentiss Counts
Masella Law Firm
917 Calhoun Street
Columbia, South Carolina 29201
(803) 748 9990
Attorney for Appellant

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AT
AG

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Paul Gray, #288130,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2009-CP-10-2522

FILED
 2010 JUN 29 AM 10:10
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

**CONSENT ORDER GRANTING
 BELATED PCR APPEAL PURSUANT
 TO AUSTIN AND DISMISSING
 ALL OTHER CLAIMS**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 22, 2009. The Respondent made its Return on December 3, 2009.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the August 2001 term of the Charleston County Grand Jury for two counts of criminal sexual conduct (CSC) with a minor – 1st degree (2001-GS-10-4890, 4891) and lewd act upon a minor (2001-GS-10-4892). Leslie Sarji Locklear, Esquire, and David Wolf, Esquire, represented him. On October 14, 2002, the Applicant proceeded to trial, after which the jury found him guilty of one count of CSC and lewd act upon a minor and not guilty of the other count of CSC. The Honorable John Milling sentenced him to confinement for eighteen (18) years for CSC with a minor and eight (8) years suspended upon time served plus five (5) years probation for lewd act upon a minor. The sentences were to be served consecutively.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v.

Gray, Op. No. 2004-UP-552 (S.C. Ct. App. filed November 1, 2004). The Remittitur was issued on November 17, 2004.

The Applicant filed his first post-conviction relief application on May 26, 2005. An evidentiary hearing was convened on June 1, 2007 at the Charleston County Courthouse. William L. Runyon, Esquire, represented Applicant on his first PCR application. By Order dated October 3, 2008, the Honorable J. Derham Cole denied and dismissed the application with prejudice. Applicant filed a pro se appeal on his first PCR application. By Order dated January 22, 2009, the Supreme Court of South Carolina dismissed the appeal based on Applicant's failure to provide a proof of service showing that the notice of appeal had been timely served on opposing counsel.

Before this Court are the records of the Charleston County Clerk of Court regarding the subject convictions, the records of the South Carolina Department of Corrections, the Record on Appeal, Final Brief of Appellant, Final Brief of Respondent, the Court of Appeals' Opinion affirming the conviction and sentence, the Remittitur dated November 17, 2004, the prior PCR application and Return thereto, Judge Cole's Order of Dismissal, the first PCR transcript, the Supreme Court Order dismissing the first PCR appeal, the current application, and the State's Return thereto.

ALLEGATIONS

In his current application, the Applicant alleges the following grounds for relief:

1. Ineffective assistance of trial counsel in that counsel a) failed to object to indictments which were not stamped filed by the circuit court clerk and b) failed to present expert witness testimony concerning the victim's delayed reporting of the alleged sexual abuse.
2. Ineffective assistance of appellate counsel in that counsel failed to raise on appeal the trial court's error in allowing hearsay evidence in violation of the rules of evidence.

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a series of loops and a long horizontal stroke extending to the right.

3. Ineffective assistance of PCR counsel in that prior PCR counsel failed to properly file a notice of appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration, the Applicant has informed his counsel of his intent to proceed only on his claim that he is entitled to an appeal on his first PCR application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). The Applicant's other allegations are successive to his prior PCR application, and he understands that he waives the right to pursue any other PCR claims. The State consents to allow Applicant a belated PCR appeal of the dismissal of his first PCR application. This Court finds that Applicant did not knowingly and voluntarily waive his right to appeal his first PCR application. Accordingly, this Court grants Applicant a belated PCR appeal pursuant to Austin, in which he may raise on appeal any issues that were raised and ruled upon in his prior application. In order to secure this review, however, the Applicant must appeal from this Order.

CONCLUSION

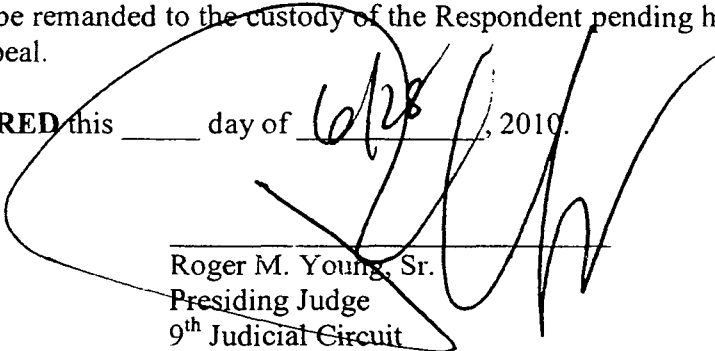
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243 of the South Carolina Appellate Court Rules for the appropriate procedures for filing a belated appeal.



IT IS THEREFORE ORDERED:

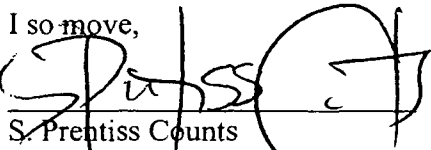
1. That the Applicant be granted a belated appeal of the denial of his first PCR application pursuant to Austin v. State.
2. All other PCR allegations are waived and dismissed with prejudice.
3. Applicant shall be remanded to the custody of the Respondent pending his belated PCR appeal.

AND IT IS SO ORDERED this 6/28 day of June, 2010.



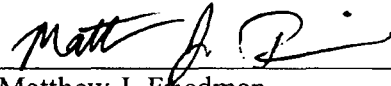
Roger M. Young, Sr.
Presiding Judge
9th Judicial Circuit

I so move,



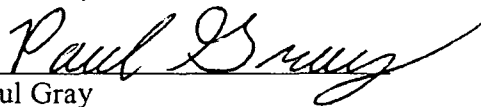
S. Prentiss Counts
Attorney for the Applicant

I consent,



Matthew J. Friedman
Assistant Attorney General

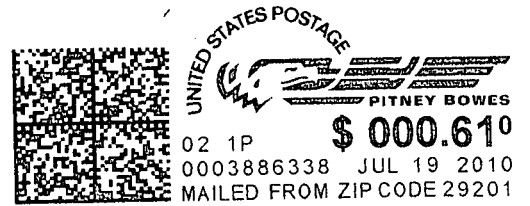
I consent,



Paul Gray
Applicant for Post-Conviction Relief

MASELLA LAW FIRM, P.A.
917 CALHOUN STREET
COLUMBIA, S C 29201

00011126Z



Paul Gray

THE HONORABLE DANIEL E SHEARHOUSE
SC SUPREME COURT
PO BOX 11330
COLUMBIA, SC 29211