

# 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

January 18, 2012

Charles Pagan #272720  
Lee Correctional Inst.  
1204 East Church St.  
Bishopville, SC 29010

Re: Pagan, Charles v. The State

Dear Mr. Pagan:

This responds to your letter of January 16, 2012.

The petition for writ of certiorari filed by your counsel and your *pro se* response to that petition are currently awaiting consideration by the Court. The State is not required to file anything in response to your *pro se* filing.

Due to the volume of pending cases, it is impossible for me provide you with any indication of when the Court may act on this matter.

Very truly yours,

*Daniel E. Shearouse*  
DS

CLERK

DES/jj

cc: Appellate Defender Robert M. Pachak  
Assistant Attorney General David Spencer

Charles Pagan, #272720  
Lee Corr., Inst., Rich., D-147  
990 Wisacky Highway  
Bishopville, SC 29010-1775

January 16, 2012

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

**RECEIVED**

JAN 18 2012

**S.C. SUPREME COURT**

RE: Charles Pagan v. State  
Writ of Certiorari  
Pro Se Brief filed July 13, 2011

Dear Mr. Shearouse:

After you signed an Order for the Court dated June 17, 2011, which permitted Appellate Defender Robert M. Pachak, Esquire to substitute a Johnson Petition, I filed a Pro Se Brief in accordance with Johnson and it was stamped as received by the South Carolina Supreme Court on July 13, 2011 and July 22, 2011.

Sir, I have not received a Reply Brief from the Respondent in this matter and I also have heard nothing from Mr. Pachak.

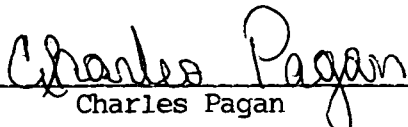
It is my understanding that there is a time limit which the Respondent must comply with in filing a Reply Brief to Mr. Pachak's Brief, as well as to my Pro Se Brief.

In that I have not received any Motions For Enlargement of Time from the Respondent, or Orders from the South Carolina Supreme Court granting the Respondent an Enlargement of Time in which to file its Initial and/or Reply Briefs to the Johnson Petition and Pro Se Brief that I filed, It appears that the Respondent has waived its right to respond to the issues raised in Mr. Pachak's Johnson Petition, as well as the issues that I raised in my Pro Se Brief, by failing to respond in a timely manner.

Please inform me at your earliest possible convenience, as to the status of my case, and if I am correct in assuming that both, the Johnson Petition filed by Mr. Pachak on my behalf and the Pro Se Brief that I filed are currently pending before the Court for a decision on each issue raised in those Petitions/Briefs.

Thank you in advance for any assistance you may be able to prove in this matter.

Sincerely,

  
\_\_\_\_\_  
Charles Pagan

cc: FILE

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JUL 21 2011

S.C. SUPREME COURT

Charles Pagan 272720  
Lee C.I. Richland D-227  
990 Wisacky Highway  
Bishopville, S.C. 29010

Honorable Daniel E. Shearouse  
Clerk of Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

Re: Pagan vs State 2007-CP-21-74

Extra copy matter that was sent to your  
office of Pro-Se brief

Dear Mr. Shearouse,

I am enclosing the  
prepaid postage and envelope to you for your  
office to mail back to me the copy of the  
Pro-Se brief that your office received from  
me on July 13, 2011. Two copies was sent to  
your office, one being the original for your  
filing and the other one for my files on  
July 14, 2011. I received a notice from your  
office that in order for me to receive my  
copy I must enclose S.A.S.E with correct  
postage to South Carolina Supreme Court

of \$ 5.20 to receive all documents back enclosed I am providing the S.A.S.G and would like to receive my copy clocked - stamped at the earliest of your convenience. Please enclose the copy of the Pro-Se brief for the Writ of Certiorari, and all exhibits that was sent to your office on July 13, 2011. This matter will be highly appreciated. I sincerely thank you in advance for your time and cooperation

Respectfully Submitted

Charles Pagan 272720

Rec'd priority mail env.  
w/ \$ 4.95 postage.  
mailed his copy 7/21/11.  
(2)

2

CHARLES PAGAN  
LEECI/RICH./#272720  
990 WISACKY HWY.  
BISHOPVILLE, S.C. 29010

JULY 18 2011

HON DANIEL E. SHEAROUSE  
CLERK OF SUPREME COURT  
PO BOX 11330  
COLUMBIA, SC 29211

RE: PAGAN V STATE 2007-CP-21-074, etc., THE EXTRA COPY MATTERS.  
SEE ENCLOSURES PROVIDED ON 7/13/11 AS FOR RETURN SERVICE  
REQUESTED FROM YOUR RESPECTFUL OFFICE IN PRO SE BRIEF AS  
PREVIOUSLY FILED.

DEAR MR. SHEAROUSE:

PLEASE ALLOW MY CORRESPONDENCE TO SERVE AS MY FORMAL REQUEST FOR YOU TO CORRECT A CRUCIAL MISTAKE THAT WAS COMMITTED BY YOUR OFFICE IN THE MATTER REGARDING MY PRO SE BRIEF THAT WAS SUBMITTED TO YOUR OFFICE ON THE DATE AS INDICATED BY YOUR OFFICE STAMPED DATE AS JULY 13, 2011, I PROVIDED TO YOUR OFFICE TWO (2) COPIES OF MY PRO SE BRIEF THAT I WAS PLACED ON NOTICE TO FILE TO YOUR OFFICE BEFORE THE GRACE PERIODS WAS EXPIRED HERETO THE FACTS THAT I SENT TO YOU TWO (2) COPIES OF MY BRIEF FOR YOU TO RETURN MY COPY BACK TO ME FOR MY FILES, IT IS ALSO MY ADVISEMENTS TO YOU THAT I HAVE FILED SOME ORIGINAL DOCUMENTS IN MY BRIEF TO YOUR OFFICE AND IN MY RETURN COPY I PLACED A COPY FORMS IN IT SO THAT YOU CAN HAVE THE ORIGINALS, WHEREAS YOU HAVE CONSTRUED THAT I WANTED YOU TO MAKE COPIES THAT OF WHICH IS NOT THE CASE, ALL I ASK FOR YOUR OFFICE TO DO IS SEND MY RETURN COPIES BACK TO ME IN THE STAMPED SELF ADDRESSED ENVELOPE TO ME IN DATE STAMPED AND NOTHING MORE, IT IS A MISTAKE THAT THIS OFFICE CONSTRUED MY REQUEST FOR IT TO MAKE COPIES, I DID NOT REQUEST FOR YOUR OFFICE TO MAKE COPIES BUT ONLY DID ASK FOR IT TO BE RETURN TO ME, AS YOU WILL SEE I MAILED TWO (2) COPIES TO YOU, WITH ONE BEING THE ORIGINAL COPY BECAUSE I DO KNOW HOW YOU IS ABOUT THE BRIEFS BEING COPIES INSTEAD OF THE ORIGINALS AND I DID NOT COMMITTED THIS MISTAKE, I PROVIDED TO YOU MY COPY WITH POSTAGES PREPAID AND I ASK THAT YOUR OFFICE PLEASE CORRECT THIS ERROR SOON AS POSSIBLE SO THAT MY FILES CAN BE CORRECTLY PROCURED AND AFFIXED BY THE ACTIVITIES OF MY FILING AGAIN PLEASE PROVIDE ME WITH THE COPY THAT I SENT TO YOUR OFFICE ON JULY 13, 2011, I APPRECIATE THAT YOU EXAMINE THIS FILED MATTER SO THE MATTER ARE CLEARED UP BEFORE YOU COMPLETELY SUBMIT MY CASE TO THE COURT FOR ITS CONSIDERATIONS I LOOK FORWARD IN HEARING FROM YOU IN THIS VERY NEAR FUTURE AGAIN.

JULY 18, 2011

CP/eb

RESPECTFULLY SUBMITTED,

/s/ *Charles Pagan-272720*

/CHARLES PAGAN

LEECI/RICH./272720

990 WISACKY HWY.

BISHOPVILLE SC 29010

PETITIONER, pro se

cc: HON DE SHEAROUSE  
FILES/CP

P.S. Please be advised that I am indigent, and I have no funds in my account to pay for pre-paid postage of \$5.20...

RECEIVED

JUL 20 2011

S.C. SUPREME COURT

RECEIVED

JUL 18 2011

CHARLES PAGAN  
180 15/30/272720  
990 WISACKY HWY.  
BISHOPVILLE, SC 29010

JULY 18, 2011

S.C. SUPREME COURT

HON: DANIEL E. SHEAROUSE  
CLERK OF SUPREME CT.  
PO BOX 11330  
COLUMBIA, SC 29211

RE: PAGAN V. THE STATE, 2007-CP-21-074, ENCLOSED:  
PETITIONER'S PRO SE BRIEF PER SE NOTICE BY CLERK'S OFFICE.

DEAR MR. SHEAROUSE:

PLEASE SEE ENCLOSED MY PRO SE BRIEF FOR YOUR RESPECTFUL FILING SO MY CASE CAN BE SUBMITTED FOR APPELLATE REVIEW, ALSO ENCLOSED RESPECTFULLY IS MY EXTRA COPY OF MY BRIEF FOR YOU TO PLACE YOUR OFFICE SEALS ON THEM AND RETURN THEM SOON AS PRACTICAL IN THE SAME AS I HAVE PROVIDED TO YOU. I APPRECIATE YOUR ASSISTANCE AND TIME GIVEN TO ME IN THIS CRUCIAL MATTER AND I LOOK FORWARD TO HEARING FROM YOU IN THIS VERY NEAR FUTURE. PLEASE DO NOT HESITATE TO CONTACT ME IF YOU HAVE ANY FURTHER INSTRUCTIONS AND QUESTIONS. AGAIN THANK YOU.

JULY 18, 2011

RESPECTFULLY SUBMITTED,

ENCLOSURES

cc: CLERK/DBS  
FILES/CP

s/ Charles Pagan-272720  
CHARLES PAGAN  
PRO SE PETITIONER  
990 WISACKY HWY.  
BISHOPVILLE, SC 29010  
PETITIONER

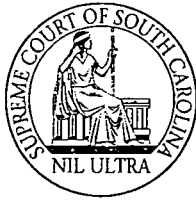
RECEIVED

JUL 20 2011

S.C. SUPREME COURT

Send 3ASE  
with correct  
postage to  
SC Supreme Ct.

\$5.00 = cost  
to mail all  
documents back.



# 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

June 22, 2011

Charles Pagan #272720  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, SC 29010

Re: Pagan, Charles v. The State

Dear Mr. Pagan:

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 & Appendix on June 21, 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.

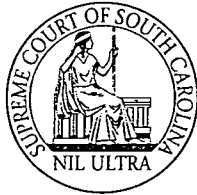
If you do decide to file a pro se response, the response must be either typewritten or legibly hand printed, and must have at least a one inch margin on all sides. Further, you will need to only submit one copy of your response, and this copy **should not** be stapled or bound in any manner.

Very truly yours,

CLERK

DES/jj

cc: Appellate Defender Robert M. Pachak  
Assistant Attorney General David Spencer



# 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

June 17, 2011

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

Re: Pagan, Charles v. The State

Dear Counsel:

The following Order has been endorsed on your request to substitute a Johnson petition in the above entitled case on appeal.

“Granted and counsel shall serve and file an amended petition within fifteen (15) days.

Jean H. Toal C.J.  
For the Court

By s/ Daniel E. Shearouse  
Clerk

June 17, 2011.”

Very truly yours,



CLERK

DES/jj

cc: Charles Pagan #272720  
Assistant Attorney General David Spencer



ALAN WILSON  
ATTORNEY GENERAL

June 13, 2011

RECEIVED

JUN 13 2011

S.C. Supreme Court

**VIA HAND DELIVERY**

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

**RE: Charles Pagan, #272720 v. State of South Carolina**  
**2007-CP-21-74**

Dear Mr. Shearouse:

I am in receipt of opposing counsel's letter requesting the previously submitted Petition for Writ of Certiorari in the above-captioned case be subjected to the procedure set forth in Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). Please accept this letter in lieu of a formal return. Respondent has no objection to the Petition of Robert M. Pachak, Esquire to be relieved as counsel. Further, Respondent interprets this request as an acknowledgment by opposing counsel that no meritorious issues exist and concurs with this assessment.

If a formal return is required, the Respondent requests an opportunity to brief the issues as requested by the Court.

If there are any questions or comments, please feel free to contact me.

Sincerely,

David Spencer  
Senior Assistant Attorney General

cc: Robert M. Pachak, Esquire  
Trisha Allen, Victim Services

Charles Pagan -272720  
Lee C.I. / Richland D-227  
990 Wisacky Highway  
Bishopville, SC, 29010

June 5, 2011

Robert M. Pachak  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, SC 29201  
Post Office Box 11589  
Columbia, SC 29211-1589

Re: Filing Motion To Convert Petition Of Writ of Certiorari To A Johnson  
Petition.

Mr. Pachak;

I am writing this letter because I would definitely appreciate if the  
Petition for Writ of Ceriorari that you done on February 4th of 2011, be  
changed as you instructed on April 8th of 2011 to a Johnson Petition in order  
for me to file my Pro-Se Brief. Attached is a Order from the Supreme Court  
Justices' that was done on May 27th of 2011 allowing, if you may, to convert  
the Petition in order for me to file my own Brief. Mr. Pachak, I beg you to  
"please" file this brief at the earliest of your convenience, and I will send  
you my Brief for filing at the instructed time. I'm also sending an attached  
copy of your letter where you told me to let you know in writing if I desired  
for my Brief to be changed in order for me to raise and preserve my issues.  
Let this letter be my request that I did desire for it to be changed.

This matter will be highly appreciated. I sincerely thank-you in advance  
for your time and cooperation...

Sincerely

**RECEIVED**

JUN 08 2011

**S.C. SUPREME COURT**

*Charles Pagan-272720*  
Charles Pagan -272720

cc: Personal File

Daniel Shearouse / SC

Robert Pachak / Appellate Defense

Charles Pagan-272720  
Lee C.I. Richland D-227  
990 Wisacky Hwy.  
Bishopville, South Carolina 29010

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

Mr. Shearouse,

I am sending you this letter (copy) to file in your records as proof that I have asked Mr. Pachak to change his brief to a Johnson brief in order for me to raise my own issues. I sent Mr. Pachak the original copy along with the Order from the Supreme Court, and a copy of the letter where he once said he would change his brief.

This matter will be highly appreciated. I sincerely thank-you in advance for your time and cooperation.

RECEIVED

JUN 08 2011

S.C. SUPREME COURT

Sincerely,  
Charles Pagan-272720



ORIGINAL

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

June 3, 2011

RECEIVED

JUN 3 2011

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

S.C. Supreme Court

Re: Pagan, Charles v. State

Dear Mr. Shearouse:

In reference to this Court's order in this matter dated May 27, 2011, counsel for petitioner would move that the petition in this case be submitted as a Johnson petition (Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988)) so that petitioner may raise additional issues to be considered by the Court.

Sincerely,

*Robert M. Pachak*

Robert M. Pachak  
Appellate Defender

RMP/fkb

cc: Charles Pagan  
Assistant Attorney General David Spencer

GRANTED AND  
COUNSEL SHALL  
SERVE AND FILE  
AN AMENDED  
PETITION WITHIN  
FIFTEEN (15) DAYS C.J.  
For the Court

June 17, 2011

By *[Signature]*  
Clerk



# 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

May 27, 2011

Charles Pagan #272720  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, SC 29010

Re: Pagan, Charles v. The State

Dear Mr. Pagan:

Enclosed is the order issued in the above entitled matter.

By copy of this letter and order, we are advising all interested parties of the action by the Court.

The State is advised that they have thirty (30) days from the date of this order in which to serve and file their Return to the Petition for Writ of Certiorari.

Very truly yours,



CLERK

DES/jj

cc: Appellate Defender Robert M. Pachak  
Assistant Attorney General David Spencer



# The Supreme Court of South Carolina

Charles Pagan,

Petitioner,

v.

State of South Carolina,

Respondent.

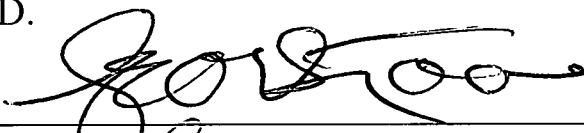
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## ORDER


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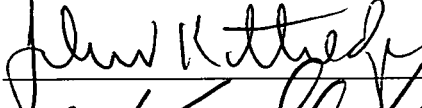
Petitioner moves to relieve counsel and have substitute counsel appointed. The motion is denied. Richardson v. State, 377 S.C. 103, 659 S.E.2d 493 (2008). However, counsel for petitioner may, as previously indicated in a letter to petitioner, file a motion to convert the petition for a writ of certiorari to a Johnson petition to which petitioner will be allowed an opportunity to file a pro se response.


IT IS SO ORDERED.

  
\_\_\_\_\_  
C. J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

Columbia, South Carolina

May 27, 2011

State of South Carolina  
In The Supreme Court of South Carolina

Charles Pagan-272720	)	
Appellant,	)	MOTION TO DISMISS
	)	APPOINTED COUNSEL
Vs.	)	
	)	
State of South Carolina	)	
Respondent,	)	(WRIT OF CERTIORARI)
_____	)	

The Petitioner comes before this Honorable Court begging this Court to dismiss appointed counsel, **Robert M. Pachak** of the South Carolina Commission on Indigent Defense. This Court is the responsible vehicle of my due process rights being protected, and I humbly ask for your assistance in this matter.

In January of 2010 Appellant argued five (5) meritorious issues in the Court of Common Pleas of Florence County in the State of South Carolina. On March 9<sup>th</sup> of 2010 the Honorable Thomas A. Russo (Circuit Court Judge) dismissed my Post Conviction Relief application with prejudice. An appeal to this Honorable Court was requested immediately. I was then appointed Mr. Joseph Savitz III (Chief Appellate Defender) of the S.C. Commission on Indigent Defense. Unfortunately, Mr. Savitz retired and my case was given to Mr. Robert Pachak. After receiving a brief and appendix of my case on February 4, 2010 in which I then found out that Mr. Pachak was representing me and that Mr. Savitz retired, I immediately tried consistently to get in contact with Mr. Pachak. I consistently wrote, and my family members called the office, but a response was given.

Mr. Pachak under rule 407, SCAR and Rule 3.2 is failing to make reasonable efforts to expedite litigation consistent with the interest of his client. In this brief to this that was submitted to this Honorable Court only one (1) issue was preserved for Appellate Review and that was "Abuse of Discretion by the Trial Judge." All my other issues which are meritorious and supported by case law was abandoned...

These are the issues and the case law that supports them: these are just limited examples.

(1) Unconstitutional Line-Up: if you read said record you will clearly see that the prosecution "only" eyewitness testimony could not be proven by any forensics. My trial was only relied by the prosecution on identification. Here investigators gave Monique Cookes (eyewitness) 3 line-ups to see each containing 6 pictures. Allegedly eyewitness was to pick out a Hispanic male. Out of 3 line-ups which

total 18 pictures I was the only Hispanic. (See **State V. Moore**, 540 S.E. 2d 445,343 S.C. 282). An eyewitness identification which is unreliable because on suggestiveness procedures is constitutional inadmissible. It also violates my 14<sup>th</sup> constitutional right of equal protection of law. This witness was drinking alcohol and smoking marijuana (see page 498 to 502 of trial transcript) the night she so-called witness a murder and even went as far to say that investigators were the one to tell her it was a Puerto Rican. On page 530 of trial transcript eyewitness was asked how many Puerto Ricans she sees in all 3 arrays of line-ups besides me she stated none. (See **U.S. V. Jones**, 907 F2d 459) (4<sup>th</sup> Cir.1990). Also see **U.S. V. Wiseman**, 172 F3d 1209-1210 (1999) and landmark case **Neil V. Biggers**...

(2) Abuse of Prosecutor Misconduct: Here repeatedly the prosecutor vouches for credibility of eyewitness in opening and closing arguments. In opening arguments on all of pg. 24 of trial transcript the prosecutor states you'll see the condition of the victim, you'll hear it so much that it will sicken you. Then he vouches for so-called witness. (See **U.S. V. Sandra**, 845 F2d 945 (11<sup>th</sup> Cir. 1998). On page 180 (1-23) prosecution stops direct examination of lead investigator points out the victim's family to members of the jury further inflaming the minds of the jury and eliciting sympathy for the victim. (See **State V. Mann**, 518 S.E. 2d 60 and **State V. Guthrie**, 518 S.E. 2d 83 (1998). The prosecution on pg. 1124 of trial transcript even goes as far as stating that to his knowledge I'm the only murderer that Monique Cookes is going to testify against. It is error for government to vouch for its own witness. Impermissible vouching occurs when prosecution action are such that jury could reasonably believe the prosecutor in indication personal belief in credibility of witness. (See **U.S. V. Lewis**, 10 F3d 1086 (4<sup>th</sup> Cir. 1993). These are just some examples that were preserved for Appellate review. If you would read carefully said record you would see that there were many more violations, and they are meritorious issues.

(3) Inconsistent Statements: here the so-called eyewitness gives 3 totally different statements that she even admits lying about. She went on 1<sup>st</sup> statement stating that she saw nothing and wasn't even there. To stating on 2<sup>nd</sup> statement that it was a bunch of Puerto Ricans to finally stating on 3<sup>rd</sup> statement a month and a half later after being arrested for some crime saying she lied in the first 2 statements, and saying it was me who committed the crime. In **State V. Marvin Bottoms**, if a witness admits unequivocally that a prior inconsistent statement has been made by him/her, they have thereby impeached themselves and further evidence thereof is unnecessary and inadmissible. Mr. Pachak the list continues and there are so many case laws to show this is a meritorious issue...

I have repeatedly sent counsel letters requesting that he at least does a Supplemental Brief to bring these matters to this Honorable court for review or allow me to send him the Supplemental Brief to be submitted thru him. I have even sent the Clerk of these Court copies of the letters I sent Mr. Pachak for it can at least be on file. The letters are dated February 10<sup>th</sup> of 2011, March 16<sup>th</sup> of 2011, and March 31<sup>st</sup> of 2011.

I am humbly requesting that said counsel Mr. Robert Pachak of the S.C. Commission on Indigent Defense be relieved as counsel that I Appellant be granted outside counsel due to conflict of interest in S.C. Commission Office. I need my issues to be preserved and I pray that this Honorable Court issues an order relieving my attorney.

Appellant submits this Motion to this Honorable Court on this 10<sup>th</sup> day of April, 2011, and further attest that the foregoing is submitted by Appellant with full knowledge of the contents thereof, and sworn to as being true and correct to the best of Appellant's ability and belief.

For the Grant of This Motion does the Appellant ever pray?

Respectfully submitted,

cc: Supreme Court  
Robert Pachak  
Personal File

S/ Charles Pagan-272720  
Charles Pagan 272720  
Lee C.I. Richland D.  
990 Wisacky Hwy.  
Bishopville S.C. 29010

P.S. Attached please see a letter that I received today 4-12-11 from Mr. Pachak. As my attorney why would he want to change a brief already submitted to the Supreme Court and change it to a Anders Brief instead of doing a Supplemental Brief to the Supreme Court adding the issues. This Counsel is truly not in my best interest.

Charles Pagan

Exhibit



# 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

April 8, 2011

Mr. Charles Pagan, #272720  
Lee Correctional Institution  
990 Wisacky Hwy.  
Bishopville, SC 29010

Re: Your case

Dear Mr. Pagan:

If you want I will try to change my brief to an Anders brief so you can raise your other issues yourself. Let me know in writing.

Sincerely,

A handwritten signature in black ink that reads "R M P".

Robert M. Pachak  
Appellate Defender

RMP/fkb

ALAN WILSON  
ATTORNEY GENERAL



April 21, 2011

RECEIVED

APR 22 2011

S.C. SUPREME COURT

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

**RE: Charles Pagan, #272720 v. State of South Carolina**  
**2007-CP-21-74**

Dear Mr. Shearouse:

I am in receipt of a letter from this Court, dated April 15, 2011, requesting a Return to applicant's Motion to Relieve and Appoint Outside Counsel in the above captioned case. Please accept this letter in lieu of a formal Return. The Respondent takes no position on whether or not the Court should grant the Motion, but rather submits that this is a matter for the sound discretion of this Court.

If there are any questions or comments, please do not hesitate to contact me at any time.

Sincerely,

David Spencer  
Senior Assistant Attorney General

DS/nb

cc: Appellate Defender Robert M. Pachak  
Charles Pagan, #272720



**RECEIVED**

APR 19 2011

ALAN WILSON  
ATTORNEY GENERAL

April 19, 2011

S.C. Supreme Court

*Done, The pro se  
Motion to dismiss  
Pachak holds your  
time in abeyance.  
I'll let you know  
when there is a  
ruling. Janet  
4-10-11*

**VIA HAND DELIVERY**

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

**Re: Charles Pagan v. State of South Carolina  
2007-CP-21-0074**

Dear Mr. Shearouse:

The Return to Petition for a Writ of Certiorari in the above appeal is due to be served and filed on April 20, 2011. I would respectfully request a 30-day extension in which to serve and file this Return.

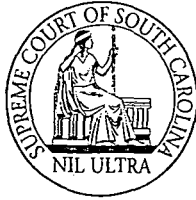
This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

David Spencer  
Senior Assistant Attorney General

DS/nb

cc: Robert M. Pachak, Esquire



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 15, 2011

Charles Pagan #272720  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, SC 29010

Re: Pagan, Charles v. The State

Dear Mr. Pagan:

This will acknowledge receipt of your Motion to Relieve and Appoint Outside Counsel in the above entitled matter.

By copy of this letter, opposing counsel and Mr. Pachak are requested to file an original and six (6) copies of a return to this motion no later than April 25, 2011, pursuant to Rule 240(e). Upon receipt of the return, the matter will be taken under consideration and you will be notified as soon as action has been taken.

The time limits for perfecting the appeal will be held in abeyance pending the Court's decision.

Very truly yours,

CLERK

DES/jj

cc: Appellate Defender Robert M. Pachak  
Assistant Attorney General David Spencer

RECEIVED  
RECEIVED

APR 14 2011  
APR 14 2011

S.C. SUPREME COURT  
S.C. SUPREME COURT

Charles Pagan-272720  
Lee C.I. Richland D-227  
990 Wisacky Highway  
Bishopville, S.C. 29010

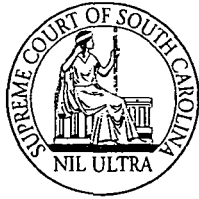
Daniel Shearhouse  
Post Office Box 11330  
Columbia, South Carolina 29211

Mr. Shearhouse,

I am writing this letter because enclosed is a Motion to Dismiss Appointed Counsel of the J.C. Commission of Indigent Defense. I need this Motion presented to the Honorable Chief Justice Jean Toal at the earliest of your convenience. I'm also requesting a "Checked Stamped Copy" for my records that this Motion was received by your office.

Mr. Shearhouse, I sincerely thank-you in advance for your time and cooperation in this matter. I pray that God blesses you in all your endeavors.

Sincerely,  
Charles Pagan-272720



# 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 11, 2011

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

Re: Pagan, Charles v. The State

Dear Counsel:

Enclosed is a copy of correspondence received from your client dated March 31, 2011. Since he believes that other issues need to be raised in this matter, I am forwarding his correspondence to you. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002) (“Counsel is best able to use professional judgment to determine which arguments are relevant and should be presented for appellate review. While counsel may choose to submit arguments urged by his client, counsel has an obligation to review those arguments for possible relevance and merit before submitting them.”).

Very truly yours,



CLERK

DES/jj

cc: Charles Pagan #272720  
Assistant Attorney General David Spencer

Charles Pagan-272720  
Lee C.I. Richland D-227  
990 Wisacky Hwy  
Bishopville, S.C. 29010

March 31, 2011

The Supreme Court of South Carolina  
Daniel E. Shearhouse, Clerk of Court  
Post Office Box 11330  
Columbia, S.C. 29211

Mr. Shearhouse,

I am writing your office this letter respectfully because I desperately need you to file a copy of attached letter in your files and respectfully request that you send me a clock-stamped copy of proof of receipt for my records. Mr. Shearhouse I am presently arguing my case before the Supreme Court on a Writ of Certiorari. I am being represented by Robert Pachak of the S.C. Commission on Indigent Defense. I have various meritorious issues that he is denying me to represent to the Supreme Court to prove my innocence. Sir, these issues were preserved for Appellate Review and I desperately need them preserved. I need proof for my records of filing because I need to prove to the Chief Supreme Court Justice Ms. Jean Toal of his negligence to proper representation in order to relieve him as counsel if he continues to fail to represent me adequately. Sir I have suffered for over 12 years for a crime that I am factually innocent of, and all I ask for is for the scales of justice to be balanced according to the law. I pray that you can "please" send me a stamped copy proving that I have attempted multiple times to have my issues heard.

This matter will be highly appreciated, I sincerely thank-you in advance for your time and cooperation. If you have any questions concerning this matter, please contact me at the above address.

**RECEIVED**  
APR 06 2011  
S.C. SUPREME COURT

Sincerely,  
S/ Charles Pagan-272720  
Charles Pagan- 272720

Charles Pagan-272720  
Lee C.I. Richland D-227  
990 Wisacky Hwy  
Bishopville, S.C. 29010

March 31, 2011

Robert Pachak  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post office Box 11589  
Columbia, S.C. 29211

RE: Pagan V. State of South Carolina  
Petition for Writ of Certiorari

Mr. Pachak,

I am in receipt of your reply to the letters I wrote you in February 10, 2011 and March 16, 2011. You allege that the following arguments (claims) do not have merit and you only raising the one issue of "Abuse of Discretion of Trial Judge. Sir, with all due respect, the claims I raised in my Post Conviction Relief that were preserved for Appellate Review are State and Federal Law, and are substantiated with multiple case law. Here's an example below:

(1) Unconstitutional Line-Up: If you read said record you will clearly see that the prosecution's "only" eyewitness testimony could not be proven by any forensics. My trial was only relied by the prosecution on identification. Here investigators gave Monique Cookes (eyewitness) 3 line-ups to see each containing 6 pictures. Allegedly eyewitness was to pick out a Hispanic male. Out of 3 line-ups which totaled 18 pictures I was the only Hispanic. [**SEE, State V. Moore**, 540 S.E.2d 445,343 S.C. 282]. An eyewitness identification which is unreliable because on suggestiveness procedures is constitutionally inadmissible. It also violates my 14<sup>th</sup> Constitutional Right of Equal Protection of Law. This witness was drinking alcohol and smoking marijuana [**SEE** page 498 to 502 of trial transcript] the night she so-called witness a murder and even went as far to say that investigators were the one to tell her in was a Puerto-Rican. On page 530 of trial transcript eyewitness was asked how many Puerto-Ricans she saw in all 3 arrays of Line-ups besides me she stated none. [**SEE U.S. V. Jones**, 907 F.2d 459] (4<sup>th</sup> Circ.1990). **SEE ALSO U.S. V. Wiseman**, 172 F.3d 1209-1210 (1999) and landmark case **Neil V. Biggers...**

(2) Abuse of Prosecution Misconduct: Here repeatedly the prosecutor vouches for credibility of eyewitness in opening and closing arguments. In opening arguments on all of **Pg.24** of trial transcript the prosecutor states you'll see the condition of the victim, you'll hear it so much that it will sicken you. Then he couches for so-called eyewitness. **SEE U.S. V. Soranda**, 845 F.2d 945 (11<sup>th</sup> Cir. 1998). On page 180 (1-23) Prosecution stops direct examination of lead investigator points out the victims family to members of the jury further inflaming the minds of the jury and eliciting sympathy for the victim. **SEE State V. Mann**, 518 S.E. 2d 60 and **State V. Guthrie**, 518 S.E. 2d 83 (1998). The prosecution on **pg.1124** of trial transcript even goes as far as stating that to his knowledge I'm the only murder that Monique Cookes is going to testify against. It is error for government to vouch for its own witness. Impermissible vouching occurs when prosecution action are such that jury could reasonably believe the prosecutor is indication personal belief in credibility of witness. **SEE U.S. V Lewis**, 10 F.3d 1086 (4<sup>th</sup> Cir. 1993). These are just some examples that were preserved for Appellate Review. If you would read carefully said record you would see that there were many more violations, and they are meritorious issues.

(3) Inconsistent Statements: Here the so-called eyewitness gives 3 totally different statements that she even admits lying about. She went of 1<sup>st</sup> statement stating she saw nothing and wasn't even there. To stating on 2<sup>nd</sup> statement that it was a bunch of Puerto-Ricans to finally stating on 3<sup>rd</sup> statement a month and a half later after being arrested for some crime saying she lied in the first 2 statements, and saying it was me who committed the crime. In **State V. Marvin Bottoms** if a witness admits unequivocally that a pair of inconsistent statements have been made by he/she, they have thereby impeached themselves and further evidence thereof unnecessary and inadmissible. Mr. Pachak the list continues and there are so many case laws to show this is a meritorious issue...

Mr. Pachak the law is the law, and I don't understand why you are hindering my proper representation. Your opinion in not above the law, and once again I'm begging you to please do a supplemental brief adding my meritorious issues that were preserved for Appellate review so I can preserve them for further review. I am requesting that if you still "**refuse**" to add my issues that were preserved that you respectfully request to relieve yourself as counsel. Sir, I am factually innocent of this crime, and I have suffered tremendously for something I did not due. You stated in your letter that a good Appellate attorney is respected for being able to figure out which issues may have merit. A good Appellate attorney most importantly has the best interest of their client and will protect their rights. Mr. Pachak with all due respect, all I ask is for your best representation and for you to please uphold the law. Once again, if you don't want to address my meritorious

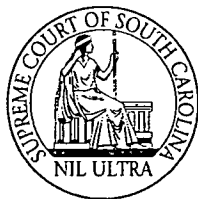
issues, "please" don't hinder my life and stop me from receiving the justice I deserve and request to be relieved as counsel...

This matter will be highly appreciated, I pray that you review my case file and address a supplemental brief adding these issues to the Supreme Court. I sincerely thank-you in advance for your time and cooperation...

Sincerely,

S/ Charles Pagan-272720

Charles Pagan- 272720



# 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

March 24, 2011

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

Re: Pagan, Charles v. The State

Dear Counsel:

Enclosed is a copy of correspondence received from your client dated March 16, 2011 and February 10, 2011. Since he believes that other issues need to be raised in this matter, I am forwarding his correspondence to you. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002) ("Counsel is best able to use professional judgment to determine which arguments are relevant and should be presented for appellate review. While counsel may choose to submit arguments urged by his client, counsel has an obligation to review those arguments for possible relevance and merit before submitting them.").

Very truly yours,



CLERK

cc: Assistant Attorney General David Spencer  
Mr. Charles Pagan, #272720 (with copy of letters)

Charles Pagan -272720  
Lee County C.I. Rich D-227  
990 Wisacky Hwy  
Bishopville, S.C. 29010

March 16, 2011

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

Mr. Shearhouse,

I am writing you this letter because I have not received a response from you from the letter that I wrote you on February 10, 2011. This matter is concerning my attorney Robert Pachak of the S.C. Commission on Indigent Defense who is representing me on a Petition of Writ Of Certiorari. Sir, I am once again sending you a copy of the letter I wrote Mr. Pachak and the one I sent you to file in your records, and I'm requesting a stamped copy to be returned to me, please advise me and I will make the proper arrangements to pay for this copy...

Mr. Shearhouse, this matter is really grave to me, because the State of South Carolina (County of Florence) is hiding a major conspiracy of prosecuting me. I am factually innocent and I need "all" my issues that were argued in Post Conviction to be preserved not only for the Supreme Court of South Carolina, but if need be to the Federal Courts. All five (5) issues I presented have merit and are automatic reversal.

I pray that I can count on you to at least file my letters in your office, and I plead with you to at least send me a copy stamped of the letter I written you on February 10, 2011 and this one that I'm sending on March 16, 2011...

This matter will be highly appreciated. I sincerely Thank-you in advance for your time and cooperation. If you have any questions concerning this matter please contact me at the address above...

**RECEIVED**

MAR 22 2011

S.C. SUPREME COURT

S/ Charles Pagan -272720  
Charles Pagan -272720

CC: Personal File

Charles Pagan-272720  
Lee County C.I. Richland D-227  
990 Wisacky Highway  
Bishopville, S.C. 29010

February 10, 2011

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

Mr. Shearouse,

I am writing you because enclosed is a letter (copy) that I sent to my attorney Robert Pachak of the S.C. Commission on Indigent Defense who is representing me on a Petition of Writ of Certiorari that I need filed in your records. Sir, I need this filed because I feel like he's abandoning my issues for review by the Supreme Court or for further review if needed. I am completely and factually innocent, and I'm not trying to suffer the rest of my life in prison, because someone doesn't want to protect my constitutional rights...

Mr. Shearouse I will be in great appreciation if you can put attached letter to Mr. Pachak in my file to at least prove that I am trying to get my said attorney to file "all" my issues instead of just one (1) in the Supreme Court. I sincerely thank you in advance for your time and cooperation.

Respectfully Submitted  
S/ Charles Pagan  
Charles, Pagan

CC: C.P./Personal File

P.S. Will you please send me a stamped copy by your office of the enclosed letter that was received and filed by your office.

Charles Pagan-272720  
Lee County C.I. Richland D-227  
990 Wisacky Highway  
Bishopville, S.C. 29010

February 10, 2011

Robert Pachak  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, South Carolina 29211

RE: Charles Pagan V. State of South Carolina  
Petition for Writ Certiorari

**RECEIVED**

MAR 22 2011

S.C. SUPREME COURT

Mr. Pachak,

I am writing this letter because I just received a copy of the Petition for Writ Certiorari that you filed with the South Carolina Supreme Court in my behalf. Sir, in my PCR there were five (5) arguments that were argued and decided upon that were preserved for Appellate Review. You are denying me to exercise my right to Appellate Review under Rule 243 SCACR to proceed for further review by not articulating all arguments and law that is effective to my issues. I am asking you as my attorney to **"please"** file a supplemental brief including all issues preserved for Appellate Review and if need be for further review to the Federal Courts. These are the issues that you excluded that I need added to my brief:

- (1). Unconstitutional line-up
- (2). Inconsistent Statements
- (3). Abuse of Prosecutor Misconduct
- (4). Indictment Issue(s)

\*\* (5). The Abuse of Discretion of Trial Judge is the only argument you filed and I want to keep this added with the above four (4) arguments when you add the aforementioned.

Mr. Pachak, I understand that you maybe overworked with 100(s) of cases and you may not be receiving the proper pay by the state for your workload. However, this is my life and I am factually innocent of this crime. I am begging you to safeguard my constitutional rights as you have a sworn duty to protect my

rights as an advocate for me. I'm not waving my right to your assistance. If you are overworked or feel you cannot have a Supplemental Brief done in time with every specific finding of fact of every issue and specific conclusion of law given to every issue as the law states in 17-27-100, I will submit to you a Supplemental Brief to submit to the Supreme Court through you. If for instance you still feel that this is too much work for you, I am asking that you forward my case to one of your colleagues. Mr. Pachak, this matter is very grave to me, and I pray that as my advocate you protect my rights for review.

I sincerely thank-you for your time and cooperation and I hope to hear from you soon. May you have a blessed day.

Sincerely,  
S/ Charles Pagan-272720  
Charles, Pagan-272720

P.S. I am forwarding a copy of this letter to the Clerk of the Supreme Court (Daniel E. Shearouse) to put in my file as a safeguard for further review. I also tried to call your office but for some reason you have it restricted now.

CC: CP/Personal File  
Daniel E. Shearouse

# The Supreme Court of South Carolina

Charles Pagan,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Thomas A. Russo  
Florence County  
Trial Court Case No. 2007-CP-21-00074

---

## ORDER


---

The request for an extension until April 20, 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

March 18, 2011

cc: Appellate Defender Robert M. Pachak  
Assistant Attorney General David Spencer



ALAN WILSON  
ATTORNEY GENERAL

March 17, 2011

**VIA HAND DELIVERY**

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

**RECEIVED**

MAR 17 2011

**S.C. Supreme Court**

**Re: Charles Pagan v. State of South Carolina**  
**2007-CP-21-74**

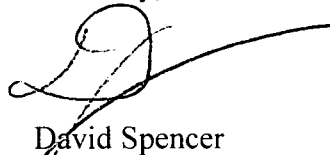
(1)

Dear Mr. Shearouse:

The Return to Petition for a Writ of Certiorari in the above appeal is due to be served and filed March 21, 2011. 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,



David Spencer  
Assistant Attorney General

DS/nb

cc: Robert M. Pachak, Esquire

Charles Pagan-272720  
Lee County C.I. Richland D-227  
990 Wisacky Highway  
Bishopville, S.C. 29010

February 10, 2011

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

Mr. Shearouse,

I am writing you because enclosed is a letter (copy) that I sent to my attorney Robert Pachak of the S.C. Commission on Indigent Defense who is representing me on a Petition of Writ of Certiorari that I need filed in your records. Sir, I need this filed because I feel like he's abandoning my issues for review by the Supreme Court or for further review if needed. I am completely and factually innocent, and I'm not trying to suffer the rest of my life in prison, because someone doesn't want to protect my constitutional rights...

Mr. Shearouse I will be in great appreciation if you can put attached letter to Mr. Pachak in my file to at least prove that I am trying to get my said attorney to file "all" my issues instead of just one (1) in the Supreme Court. I sincerely thank you in advance for your time and cooperation.

Respectfully Submitted

S/ Charles Pagan  
Charles, Pagan

CC: C.P./Personal File

P.S. Will you please send me a stamped copy by your office of the enclosed letter that was received and filed by your office.

RECEIVED

FEB 14 2011

S.C. SUPREME COURT

Charles Pagan-272720  
Lee County C.I. Richland D-227  
990 Wisacky Highway  
Bishopville, S.C. 29010

February 10, 2011

Robert Pachak  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, South Carolina 29211

RE: Charles Pagan V. State of South Carolina  
Petition for Writ Certiorari

Mr. Pachak,

I am writing this letter because I just received a copy of the Petition for Writ Certiorari that you filed with the South Carolina Supreme Court in my behalf. Sir, in my PCR there were five (5) arguments that were argued and decided upon that were preserved for Appellate Review. You are denying me to exercise my right to Appellate Review under Rule 243 SCACR to proceed for further review by not articulating all arguments and law that is effective to my issues. I am asking you as my attorney to **“please”** file a supplemental brief including all issues preserved for Appellate Review and if need be for further review to the Federal Courts. These are the issues that you excluded that I need added to my brief:

- (1). Unconstitutional line-up
- (2). Inconsistent Statements
- (3). Abuse of Prosecutor Misconduct
- (4). Indictment Issue(s)

\*\* (5). The Abuse of Discretion of Trial Judge is the only argument you filed and I want to keep this added with the above four (4) arguments when you add the aforementioned.

Mr. Pachak, I understand that you maybe overworked with 100(s) of cases and you may not be receiving the proper pay by the state for your workload. However, this is my life and I am factually innocent of this crime. I am begging you to safeguard my constitutional rights as you have a sworn duty to protect my

rights as an advocate for me. I'm not waving my right to your assistance. If you are overworked or feel you cannot have a Supplemental Brief done in time with every specific finding of fact of every issue and specific conclusion of law given to every issue as the law states in 17-27-100, I will submit to you a Supplemental Brief to submit to the Supreme Court through you. If for instance you still feel that this is too much work for you, I am asking that you forward my case to one of your colleagues. Mr. Pachak, this matter is very grave to me, and I pray that as my advocate you protect my rights for review.

I sincerely thank-you for your time and coöperation and I hope to hear from you soon. May you have a blessed day.

Sincerely,  
S/ Charles Pagan-272720  
Charles, Pagan-272720

P.S. I am forwarding a copy of this letter to the Clerk of the Supreme Court (Daniel E. Shearouse) to put in my file as a safeguard for further review. I also tried to call your office but for some reason you have it restricted now.

CC: CP/Personal File  
Daniel E. Shearouse

# The Supreme Court of South Carolina

Charles Pagan,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Thomas A. Russo  
Florence County  
Trial Court Case No. 2007-CP-21-00074


---

## ORDER

---

Petitioner seeks an extension until February 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.

  
\_\_\_\_\_  
C.J.  
For the Court

Columbia, South Carolina

February 1, 2011

cc: Appellate Defender Robert M. Pachak  
Assistant Attorney General David Spencer

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Original

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

CHARLES PAGAN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

RECEIVED

JAN 28 2011

S.C. Supreme Court

PETITION FOR EXTENSION OF TIME  
IN WHICH TO FILE THE PETITION FOR WRIT OF CERTIORARI  
AND ACCOMPANYING APPENDIX

(4)

Counsel for Charles Pagan respectfully requests a **final** extension of thirty days, in which to file the Petition for Writ of Certiorari and Appendix in this case. This petition is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a forth request for an extension. In support of this request, counsel shows:

1. The petition for writ of certiorari and accompanying appendix is due to be filed with the Court on today. The Court has granted counsel three previous extension.
2. **This case was originally assigned to Joseph L. Savitz, III, and has been reassigned.** Counsel for Mr. Pagan, respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time.
3. Counsel is diligently working to keep up with his heavy case load. On December 31, 2010 counsel filed the petitions for writ of certiorari and appendices in Edward Robinson v. State, Reginald G. Foster v. State, and Andrew Fruster v. State; On January 4, 2011 counsel filed the petitions for writ of certiorari and appendices in Raymond Stegall v. State, Lamar Graves v. State, Terry L. Smith v. State, Quincy Nash v. State, Joshua Jeter v. State and Duston Lenier Rogers v. State; On January 7, 2011 counsel filed the petition for writ of certiorari and appendix in Quincy Jennings v. State; On January 13, 2011 counsel filed the petition for writ of certiorari and appendix in John Carmen Mandujano v.

State; On January 18, 2011 counsel filed the petition for writ of certiorari and appendix in Davon William Reed v. State and the initial brief of appellant and designation of matter in State v. Joshua Cooper.

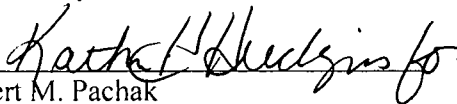
4. Counsel has not had time to complete the petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

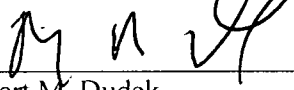
5. Counsel makes this request in good faith and not for purpose of delay.

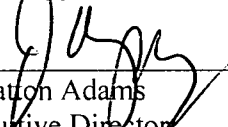
6. Counsel for the Attorney General's office consents to this request shown by signature below.

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

Respectfully submitted,

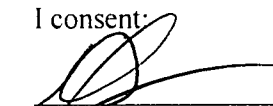
  
\_\_\_\_\_  
Robert M. Pachak  
Appellate Defender

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender

  
\_\_\_\_\_  
T. Patton Adams  
Executive Director  
J. Hugh Ryan, III  
General Counsel

January 28, 2011

I consent:

  
\_\_\_\_\_  
David Spencer, Esquire

# The Supreme Court of South Carolina

Charles Pagan,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Thomas A. Russo  
Florence County  
Trial Court Case No. 2007-CP-21-00074

---

## ORDER

---

For good cause shown, the request for an extension until January 28, 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 *Brenda J. Shealy*  
Clerk

Columbia, South Carolina *Chief Deputy*

December 30, 2010

cc: Senior Appellate Defender Joseph L. Savitz III  
Assistant Attorney General David Spencer

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

 ORIGINAL

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

---

RECEIVED

DEC 29 2010

CHARLES PAGAN,

S.C. Supreme Court

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION FOR EXTENSION OF TIME  
IN WHICH TO FILE THE PETITION FOR WRIT OF CERTIORARI  
AND ACCOMPANYING APPENDIX

---

(3)

Counsel for Charles Pagan respectfully requests an additional extension of thirty days, in which to file the Petition for Writ of Certiorari and Appendix in this case. This petition is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a third request for an extension. In support of this request, counsel shows:

1. The petition for writ of certiorari and accompanying appendix are due to be filed with the Court December 29, 2010. The Court has granted counsel one previous extension.
2. This case is currently assigned to Joseph L. Savitz, III. However, this case is in the process of being reassigned. Counsel for Mr. Pagan, respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time.
3. On December 21, 2010, counsel filed the petition for rehearing in the case of *State v. Andres Torres*. On December 20, 2010, counsel filed the initial brief of appellant and designation of matter in the case of *State v. Derrick Harriott*. On December 14, 2010, counsel filed the petition for writ of

certiorari and appendix in the case of *Nolan Grant v. State*. ON December 8, 2010, counsel filed the initial brief of appellant and designation of matter in the case of *State v. Oran Smith*. On December 1, 2010, counsel filed the initial brief of appellant and designation of matter in the case of *State v. Larry Brown*.


4. Counsel has not had time to complete the petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. Counsel makes this request in good faith and not for purpose of delay.


6. Counsel for the Attorney General's office consents to this request shown by signature below.

WHEREFORE, the undersigned counsel would respectfully request an extension of thirty days until January 28, 2010, in which to file the petition for writ of certiorari and appendix in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the brief be held in abeyance pending a ruling on this motion.

Respectfully submitted,

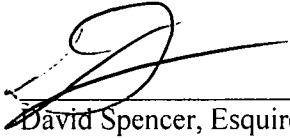
  
\_\_\_\_\_  
Joseph L. Savitz, III  
Senior Appellate Defender

Attorney for Appellant

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender

December 29, 2010.

I consent:

A handwritten signature in black ink, appearing to be 'D. Spencer', is written over a horizontal line. The signature is stylized with a large loop at the beginning.

David Spencer, Esquire

# The Supreme Court of South Carolina

Charles Pagan,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Thomas A. Russo  
Florence County  
Trial Court Case No. 2007-CP-21-00074

---

## ORDER

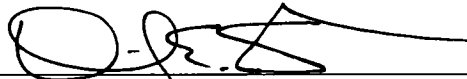
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For good cause shown, the request for an extension until December 29, 2010 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

November 24, 2010

cc: Senior Appellate Defender Joseph L. Savitz III  
Assistant Attorney General David Spencer

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

ORIGINAL

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

---

**RECEIVED**

NOV 24 2010

**S.C. Supreme Court**

CHARLES PAGAN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

(2)

---

PETITION FOR EXTENSION OF TIME  
IN WHICH TO FILE THE PETITION FOR WRIT OF CERTIORARI  
AND ACCOMPANYING APPENDIX

---

Counsel for Charles Pagan respectfully requests an additional extension of thirty days, in which to file the Petition for Writ of Certiorari and Appendix in this case. This petition is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a second request for an extension. In support of this request, counsel shows:

1. The petition for writ of certiorari and accompanying appendix are due to be filed with the Court November 24, 2010. The Court has granted counsel one previous extension.
2. Counsel for Mr. Pagan, respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time.
3. On October 11, 2010, counsel filed the initial brief of appellant and designation of matter in the case of *State v. Jonathan Campbell*. On October 18, 2010, counsel filed the petition for writ of certiorari and appendix in the case of *Stanley Eppenger v. State*. On October 20, 2010, counsel filed the initial brief of appellant and designation of matter in the cases of *State v. Patrick Rick* and *State v. Leon*

*Jones*. On October 25, 2010, counsel filed the petition for writ of certiorari and appendix to the Court of Appeals in the case of *State v. Zachary Fowler* and the petition for writ of certiorari and appendix in the case of *Gregory Mouzon v. State*. On October 27, 2010, counsel filed the petition for writ of certiorari and appendix in the case of *William Grimes v. State*. On November 3, 2010, counsel filed the initial brief of appellant and designation of matter in the case of *State v. Curtis Nealey*. On November 5, 2010, counsel filed the petition for writ of certiorari and appendix in the capital PCR case of *John Woods v. State*. On November 4, 2010, counsel attended and testified in the post-conviction relief hearing in the case of *Charles Shuler v. State* in Richland County. On November 23, 2010, counsel filed the petition for rehearing in the case of *State v. Nathaniel Bradley* and the initial brief of appellant and designation of matter in the case of *State v. David Cauthen*.

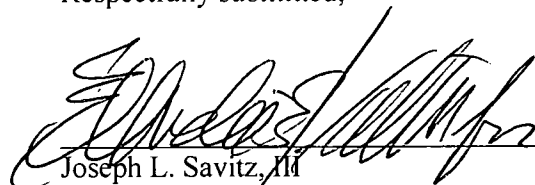
4. Counsel has not had time to complete the petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. Counsel makes this request in good faith and not for purpose of delay.

6. Counsel for the Attorney General's office consents to this request shown by signature below.

WHEREFORE, the undersigned counsel would respectfully request an extension of thirty days until December 24, 2010, in which to file the petition for writ of certiorari and appendix in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the brief be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Joseph L. Savitz, III  
Senior Appellate Defender

Attorney for Appellant

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

CHARLES PAGAN,

PETITIONER,

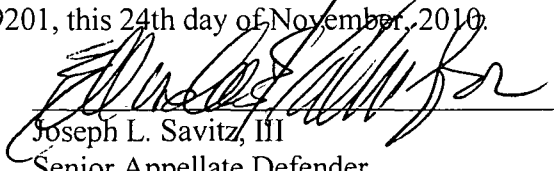
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

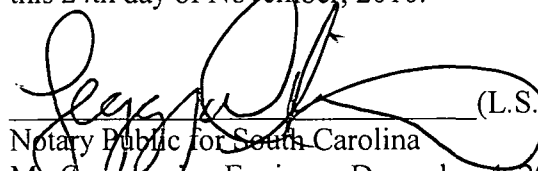
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the petition for writ of certiorari and accompanying appendix in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 24th day of November, 2010.

  
Joseph L. Savitz, III  
Senior Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 24th day of November, 2010.

  
Notary Public for South Carolina (L.S.)  
My Commission Expires: December 4, 2017 .

# The Supreme Court of South Carolina

Charles Pagan,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Thomas A. Russo  
Florence County  
Trial Court Case No. 2007-CP-21-00074

---

## ORDER

---

The request for an extension until November 24, 2010 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 *Brenda I. Shealy*  
Clerk

Columbia, South Carolina *Chief Deputy*

October 26, 2010

cc: Senior Appellate Defender Joseph L. Savitz III  
Assistant Attorney General David Spencer



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

October 25, 2010

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

RECEIVED

OCT 25 2010

S.C. SUPREME COURT

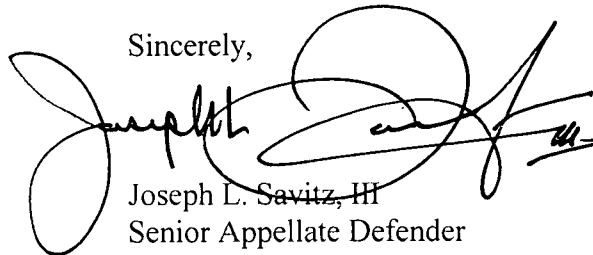
Re: Charles Pagan v. The State

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in this case are due to be served and filed with the Court October 25, 2010. However, because of my heavy workload at this time, I am requesting an extension for 30 days, in which to serve and file the petition.

By copy of this letter, I am informing David Spencer, of the Attorney General's Office, of my request.

Sincerely,



Joseph L. Savitz, III  
Senior Appellate Defender

LCD/pds

cc: David Spencer, Esquire



# 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

August 25, 2010

RECEIVED

AUG 26 2010

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.

Charles Pagan v. State of South Carolina

8/25/2010

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,

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

RECEIVED

APR 15 2010

S.C. SUPREME COURT

April 15, 2010

Ms. Kiesha T. Reed  
Circuit Court Reporter  
P.O. Box 12190  
Florence, SC 29504-2190

Dear Ms. Reed:

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

Charles Pagan v. State of South Carolina                      Case #:                      07-CP-21-00074

County: Florence                                      Date of Trial: January 26, 2010

Presiding Judge: Thomas A. Russo

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.

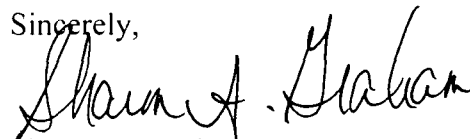
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Kiesha T. Reed  
April 15, 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,

A handwritten signature in black ink, appearing to read "Sharon A. Graham". The signature is written in a cursive style with a large initial "S".

Sharon A. Graham  
Administrative Coordinator

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

# The Brooks Law Offices, LLC

**Charles T. Brooks, III**  
Attorney

309 Broad Street  
Sumter, South Carolina 29150  
Post Office Box 3512, Sumter, SC 29151  
Post Office Box 291226, Columbia, SC 29229  
OFFICE: (803) 418-5708  
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792  
Email: [cbrooks@ctbrooks.com](mailto:cbrooks@ctbrooks.com)

**Irma R. Brooks**  
Attorney

March 9, 2010

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

RE: Charles Pagan v State of South Carolina  
Case No. 2007-CP-21-0074

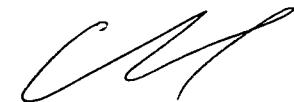
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III  
CTB/jlb

Enclosed as stated

Cc: Julie M. Thames, Office of Attorney's General  
South Carolina Office of Appellate Defense  
Charles Pagan, 272720

**RECEIVED**

MAR 1 2010

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas  
Honorable Thomas A. Russo, Circuit Court Judge

---


Case No: 2007-CP-21-74

Charles Pagan, Appellant  
S.C.D.C. 272720  
v.  
The State . . . . . Respondent

---

NOTICE OF APPEAL

Charles Pagan, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Thomas A. Russo, March 5, 2010, which I, Charles T. Brooks, III, received on March 9, 2010.

  
\_\_\_\_\_  
Charles T. Brooks, III  
309 Broad Street  
Post Office Box 3512  
Sumter, South Carolina, 29151  
(803) 418-5708  
Attorney for Appellant

Other Counsel on Record:  
Julie M. Thames, Esquire  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549  
(803) 734-3970

**RECEIVED**

MAR 1 2010

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM FLORENCE COUNTY

Court of Common Pleas  
Honorable Thomas A. Russo Circuit Court Judge

---

Case No: 2007-CP-21-74

Charles Pagan.....Appellant

S.C.D.C. 272720

v.

The State . . . . . Respondent

---

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 9<sup>th</sup> day of March, 2010 served the foregoing Notice of Appeal, Order of Dismissal , as well as Certificate of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on March 9, 2010, addressed to the following as indicated below:


South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29211-1589

Office of Attorney's General  
Attn: Julie M. Thames, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Charles Pagan, 272720  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, South Carolina, 29010

Dated: March 9, 2010

  
\_\_\_\_\_  
Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
(803) 418-5708

CERTIFIED A TRUE COPY

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
COUNTY OF FLORENCE TWELFTH JUDICIAL CIRCUIT  
CLERK OF COURT C.P. 2009-CP-21-74  
FLORENCE COUNTY, S.C.

Charles Pagan, SCDC No. 272720, )  
)  
Applicant, )  
)  
v. )  
)  
State of South Carolina, )  
)  
Respondent. )

**ORDER OF DISMISSAL**

FILED  
2010 MAR -5 PM 3:51  
CLERK OF COURT  
FLORENCE COUNTY, SC

*Charles T. Brooks, III, Esquire, appearing for the Applicant.*

*Julie M. Thames, Assistant Attorney General, appearing for the Respondent.*

This is a post-conviction relief (PCR) matter. The Applicant filed an application for PCR on January 16, 2007. The Respondent made its Return on August 15, 2007. The Applicant alleges he is being held in custody unlawfully due to ineffective assistance of trial counsel, lack of subject matter jurisdiction, and prosecutorial misconduct. An evidentiary hearing was convened at the Florence County Courthouse on January 26, 2010. The Applicant was present at the hearing.

**I. PROCEDURAL BACKGROUND**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Florence County. The Applicant was indicted at the July 1998 term of the Court of General Sessions for Florence County for murder (1998-GS-21-855). He was represented by Kernard Redmond, and James Cox, Jr., Esquires. On February 12, 2001, the Applicant proceeded to trial, pursuant to which he was found guilty as indicted. The Applicant was sentenced by the Honorable L. Casey Manning, to confinement for life.

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. Pagan, 357 S.C. 132, 591 S.E.2d 646 (S.C. Ct. App. 2004). After filing a Petition for Writ of Certiorari to the South Carolina Supreme Court, the conviction and sentence were affirmed as modified. State v. Pagan, 369 S.C. 201, 631 S.E. 262 (S.C. Sup. Ct. 2006).

## **II. APPLICABLE LAW**

### **1. 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 the application alleges ineffective assistance of counsel 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, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies 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, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688). 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." *Id.* at 117-18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 689). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

## **2. Subject Matter Jurisdiction**

Defects in the indictment do not affect subject matter jurisdiction. *See State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *See also U.S. v. Cotton*, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). *See also* S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. *See Gentry*, 363 S.C. 93, 610 S.E.2d 494; *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature

is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

### **III. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING**

At the start of the hearing, PCR counsel informed the Court that he had taken over representation of the Applicant only a couple of weeks prior to the hearing and had only had the file a short time. He indicated that he was fully prepared to go forward and that his client wished to proceed. This Court offered the Applicant a continuance to allow PCR counsel to familiarize himself with the Applicant’s file. The Applicant declined and stated that he wished to proceed. This Court then questioned the Applicant who confirmed that he wished to proceed in spite of the fact that his attorney had not fully reviewed his file. He stated that he had been waiting a long time for his hearing and that he understood that his counsel had only had possession of the file for about a week. He also stated that he understood that he is only entitled to one PCR action and that he

cannot relitigate PCR issues in a subsequent application. The Applicant insisted that he wanted to proceed with a hearing.

The Applicant testified in his own behalf at the PCR evidentiary hearing. He testified that trial counsel did not challenge the unconstitutional photographic line-up. He testified that he was the only Hispanic in the line-up, which made it unconstitutional.

The Applicant testified that trial counsel did not raise any issues with regard to the statements made by the only eyewitness (Monique Cooks). She gave three statements, each one giving more details. Applicant testified that trial counsel should have seen that Cooks was lying and that she was told what to say by law enforcement.

The Applicant testified he hired Donald Girndt to investigate his case and that Girndt had evidence that Applicant could not have committed the murder. He testified that trial counsel were ineffective in failing to subpoena Girndt for trial. Applicant testified that Girndt believed the wheel of a truck was the murder weapon and not a board. The victim's blood and brain matter were on the wheel.

The Applicant testified that trial counsel were ineffective in stipulating to the DNA offered in the trial. Applicant testified trial counsel had him sign the stipulation under false pretenses and that trial counsel told him the DNA testing was done in Tennessee. He also testified that he understood the DNA showed a different individual had sexual intercourse with the victim the night of the murder. Applicant testified that trial counsel had evidence from the trace department indicating that Steven Blathers had sex with the victim and that is why Blathers' DNA was found on victim. Applicant testified that at trial Blathers testified that he saw Applicant running from the scene but that it was really Blathers that murdered the victim and raped her afterwards.

Applicant testified that he wanted trial counsel to insist that the DNA witnesses who were not available for trial testify. He testified that they could have testified at trial that Applicant did not have sex with the victim. This was based on his belief that it is impossible for a man to have sex with a woman and leave no DNA. Applicant testified that the witnesses could have testified that Blathers raped the victim even though the forensic pathologist testified that he could make no determination about whether the sexual intercourse the victim had was consensual or not.

Applicant testified that trial counsel should have objected to Cooks' testimony that Applicant attempted to rape the victim.

Applicant testified that trial counsel did not object to the solicitor's opening statement when the solicitor vouched for Cooks. He testified that the solicitor made inflammatory and highly prejudicial statements in order to inflame the minds of the jury. He testified that he also believed trial counsel should have objected to the solicitor informing the jury that members of the victim's family were in the courtroom.

Applicant testified that trial counsel should have objected to the introduction of a wooden board that was offered to demonstrate the type of instrument that could have killed the victim. He testified that the murder weapon was never identified and that the board was not relevant. He further testified that trial counsel should have objected to the solicitor's closing argument when he talked about crushing somebody's skull with a board when the murder weapon was not identified. The Applicant testified that the solicitor vouched for the credibility of Cooks during the closing argument and that trial counsel should have objected.

Applicant testified that trial counsel should have cross-examined the pathologist who performed the autopsy.

Applicant testified that the investigator did not know where the line-up came from and that trial counsel should have objected to it. He testified that the investigator said Albert Smith told him (the investigator) that the composite drawing looked like Albert Smith's brother-in-law (who was the Applicant) but that Albert Smith never testified. Applicant testified trial counsel should have objected.

Applicant testified that the in-court identification was tainted by the unconstitutional line-up shown to Cooks. He testified that Cooks was told who to pick out in the line-up.

Applicant testified that trial counsel should have made a motion to exclude Cooks' testimony. He further testified that she should not have been allowed to make more than one statement and that the second and third statements should have been excluded. Applicant testified that when a person makes a statement, the first one is the truth and no further statements should be made.

Applicant testified that the trial judge committed error by entering the jury room and that trial counsel should have objected. He testified that it was a very serious matter and his liberty was at stake and the judge should not have engaged in light conversation with the jury.

Applicant testified that the trial court lacked subject matter jurisdiction due to defects in the indictment. Specifically, he testified that the indictment did not adequately set out where the offense occurred. He acknowledged that the indictment said Florence County, but argued that was not sufficient.

Applicant also testified that trial counsel were not prepared for trial. He testified that trial counsel failed to interview witnesses that could have helped at trial. Applicant testified that these witnesses could have testified that other witnesses were not truthful.

Trial counsel both testified at the PCR hearing. Kernard Redmond, Esquire, testified that he was hired to represent the Applicant and that he then associated James Cox, Jr., Esquire, to assist on the case. He testified that they hired Marion Brown to investigate. Redmond testified that he knew Don Girndt and had worked with him previously but he did not recall hiring him to work on Applicant's case. He further testified that even if he had, Girndt could not testify to the things the Applicant said he could.

Redmond testified that Cooks gave three statements and that they tried to attack her credibility. Her statements changed from basically not knowing anything to admitting that she witnessed Applicant kill the victim. On cross-examination, she testified that she was scared of Applicant because he threatened to kill her too.

Redmond testified that he remembered getting angry at Applicant and yelling at him because he had told Applicant since he first took the case to stay out of Florence and then learned that he had not heeded that advice. He testified that he told Applicant to stay out of Florence County because there was a lot of talk about the case. Redmond testified Applicant was arrested on a failure to stop for a blue light and that led to very damaging evidence against him. Applicant picked a girl (Tamika Lambert) up and when blue lights were activated behind him, he took off, eventually crashing the car and running away. Applicant saw Lambert later the same night and told her he ran because he was out on bond for murder. Redmond testified that Lambert testified that the Applicant threatened

her and warned her not to say anything. Redmond testified that Lambert was a surprise witness at trial; that he objected to her testimony and that she was very damaging to the Applicant's case. He testified that he thought that the trial had been going pretty well for the Applicant and that they were winning, but that Lambert's testimony was devastating.

Redmond testified that he objected to the last minute nature of Lambert's testimony and the judge looked at it but allowed her to testify. He testified that he knew the State was not required to give Lambert's statement to the defense until after she testified.

Redmond testified that he was the one who pushed for the DNA testing and that Blathers had given inconsistent statements. The DNA came back as Blathers' and it was not until later when Blathers was in jail that he finally admitted that he had had sex with the victim the night she was murdered. Redmond testified that he did not see a problem with stipulating to the DNA evidence because he thought being able to prove that someone else was with the victim and had sex with her would help Applicant's case.

Redmond also testified that he and co-counsel had a lengthy discussion with Applicant about the stipulation and that they discussed the wording of the stipulation to be sure it was worded properly. He testified that the bottom line with regard to the DNA was that it helped the defense.

Redmond testified that he did not object to the board because the theory of the defense was not the manner of death but who the perpetrator was. There was no question the murder was a brutal one, but Redmond testified that they tried to demonstrate that the eyewitness was not credible and that Applicant was not there at the time the murder was committed. He testified they attacked the credibility of Blathers and Cooks; he thought

they did a good job and thought the jury might acquit Applicant. He further testified that he did not cross-examine the pathologist because the pathologist only had information about the injuries sustained by the victim and he did not want to draw more attention to the graphic nature of those injuries. Redmond testified, again, that the manner of death was not challenged and as the pathologist could not assist the jury with determining *who* inflicted the injuries, he did not feel the need to cross-examine him.

Redmond testified that he did not recall any objectionable comments made during the solicitor's opening statement or closing argument. He testified that he does not typically like to object at those times because he does not want to risk angering or alienating the jury. Redmond testified that he did not recall any personal vouching for the witnesses but that he would have objected had he heard anything improper.

Redmond testified that he saw no problems with the indictment and that there was no question Applicant was on notice of and understood the charge he was facing.

Redmond testified that he worked hard on the case, that he and Mr. Cox went to all the places Applicant said he went that night; they went to all the clubs and tried to find people who could testify to Applicant's whereabouts that night but they were largely unsuccessful. He testified they went to the clubs, to crack houses, to homes of potential witnesses. Redmond testified that he believed he and Mr. Cox did all they could to prepare for Applicant's trial.

James Cox also testified at the PCR hearing. He testified that Redmond was lead counsel on the case but that he assisted. He testified that he and Redmond did a lot of work on the case investigating and preparing for trial. Cox testified that they attempted to recreate the time line of Applicant's activities on the night of the murder and that they

retraced his footsteps. He testified that they could not find anyone who would offer any information helpful to Applicant's case. Cox testified that he cross-examined Cooks and attempted to discredit her testimony and her statements by pointing out the inconsistencies in the three statements. He also testified that he attempted to demonstrate to the jury that the photo line-ups were not credible.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records of the Florence County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, the Applicant's PCR application, the Respondent's Return to the application, the Anders brief on appeal, the opinion of the South Carolina Court of Appeals, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

This Court finds the allegation that trial counsel's representation fell below reasonable professional norms is without merit. This Court finds trial counsel's testimony to be more credible than that of the Applicant. Trial counsel were prepared for trial; they made appropriate objections, vigorously cross-examined witnesses, and presented a defense.

This Court finds no ineffective assistance of counsel with regard to the photographic line-ups. Cox testified, and the transcript reveals, that he and Redmond attempted to demonstrate to the jury that the line-ups were not credible, but there was no

basis to exclude them entirely. This Court finds trial counsel attacked the credibility of the line-ups vigorously during cross-examination. The Applicant has not met his burden of proving that the line-ups would have been suppressed had trial counsel made this specific objection, nor had he proven that Cooks was told who to pick out in the line-ups.

This Court finds no merit to Applicant's allegation that trial counsel was ineffective in failing to suppress Monique Cooks' statements based on their inconsistency. Applicant seemed to be arguing that once Cooks made the first statement, she could not make any further statements that were inconsistent with the first statement and that the first statement had to be the truthful statement. This Court finds no merit to this allegation. Trial counsel attempted to, and did, impeach Cooks with her inconsistent statements. She did indeed make three statements and did not identify Applicant as the perpetrator in the first statement; however, she testified that she was scared for her life after witnessing the murder and was afraid to identify Applicant. Trial counsel cross-examined Cooks extensively about the statements and the inconsistencies therein. This Court finds no legal basis for Applicant's assertion that Cooks could only make one statement and that that statement had to be truthful because it was the first one. This Court finds no ineffective assistance of counsel with regard to Cooks' statements.

This Court finds no merit to the allegation that trial counsel were ineffective in stipulating to the DNA at trial. This Court has difficulty understanding Applicant's argument that trial counsel should not have stipulated when the DNA demonstrated that another man had sexual intercourse with the victim the night she was murdered. The DNA proved that Steven Blathers had sex with the victim. Trial counsel testified that they had a lengthy discussion with the Applicant about this trial strategy and that the

Applicant was involved in the discussion as to the wording of the stipulation. Trial counsel testified, and this Court agrees, that this evidence was beneficial to the Applicant. Trial counsel understandably wanted the jury to hear this evidence in order to demonstrate that perhaps Blathers was the perpetrator. This Court finds credible trial counsels' testimony that stipulating to the DNA was trial strategy; furthermore, this Court finds it was a valid trial strategy. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995) (Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance).

This Court further finds no merit to the Applicant's allegation that experts could have testified that the Applicant did not sexually assault the victim. He seems to be arguing that it would not be possible for a man to have sex with a woman and not leave any DNA evidence, and therefore, the lack of his DNA on the victim proves he did not sexually assault her or murder her. This allegation is patently without merit. The Applicant further testified that the pathologist who performed the autopsy could have testified that the victim engaged in consensual sex only and that she was not sexually assaulted. Again, this Court finds no merit to this allegation. The pathologist actually testified that he could not determine whether the victim's sexual encounter was consensual or not merely based on a lack of physical trauma to her genital area.

This Court finds no merit to the allegation that trial counsel were ineffective in failing to cross-examine the pathologist. Redmond testified that he did not want to focus on the brutality of the attack or the severity of the injuries; rather, the focus of the defense was that they had the wrong guy. Cross-examination would not have aided in this goal. This is valid trial strategy. Roseboro v. State, *supra*.

This Court finds no merit to the allegation that trial counsel were ineffective in failing to object to Cooks' testimony that Applicant attempted to rape the victim. Cooks was an eyewitness, thus, she could testify to what she observed. As noted above, trial counsel cross-examined her extensively.

This Court finds not merit to the allegation that trial counsel should have objected to the solicitor noting that members of the victim's family were in the courtroom. The Applicant has not alleged what basis trial counsel could have had for such an objection and this Court knows of none.

This Court finds no merit to Applicant's allegation that trial counsel were ineffective in failing to call Donald Girndt. This Court finds Applicant's testimony that Girndt was hired by the defense team, and that he would have testified that the wheel of the truck was the murder weapon not credible. Redmond testified that while he knew Girndt and had used him as an investigator previously, he did not recall that Girndt was hired to investigate this case. Further, trial counsel testified that he did not believe Girndt made the conclusions about the murder weapon as alleged by Applicant as that would not have been within Girndt's expertise. Girndt was not present at the PCR hearing, thus any allegations regarding trial counsels' failure to subpoena him for trial have not been proven. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998)(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's failure to testify at trial).

This Court finds no merit to Applicant's subject matter jurisdiction allegation. This Court finds the Applicant was clearly on notice as to the charge he was facing. This

Court further finds no defects in the indictment and that it adequately notified Applicant of what he was charged with. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (Defects in the indictment do not affect subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document).

This Court finds no merit to the Applicant's allegation of prosecutorial misconduct. The Applicant offered no proof that the prosecutor acted in bad faith in prosecuting Applicant. The allegations of improper argument by the solicitor are likewise without merit as the comments complained of were argument, were not improper, and did not improperly bolster the State's case. Further, this Court finds no merit to the Applicant's allegation that the solicitor improperly vouched for Cooks in his opening statement. This Court finds no personal assurances were given by the solicitor, it was opening statement, and trial counsel were not ineffective for failing to object.

This Court finds no merit to the allegation that trial counsel were ineffective in failing to object to the introduction of the board. The board was not the murder weapon and Applicant alleges trial counsel should have objected on this ground. This Court finds very credible Redmond's testimony that the defense did not dispute the manner of death, but that the defense was focused on the identity of the perpetrator. The board was used as a demonstrative aid by the prosecution and there was evidence to suggest the victim was beaten to death with a similar type of board. Trial counsels' focus was on impeaching the witnesses who placed Applicant at or near the scene to demonstrate that while the victim was indeed brutally murdered, it was not by the Applicant. This Court finds this to be valid trial strategy and denies this allegation. Roseboro v. State, *supra*.

This Court finds Applicant's allegation that trial counsel should have objected to the trial judge having casual conversation with the jury and entering the jury room is without merit. The transcript reveals that the trial judge was determining scheduling issues and that the fact that he was nice is not prejudicial to the Applicant.

This Court further finds no merit to Applicant's allegation that trial counsel were unprepared for trial. To the contrary, this Court finds trial counsel were extremely prepared for trial and that they demonstrated reasonable professional skill at trial. Trial counsel both testified that they investigated the case thoroughly, that they traced the Applicant's movements the night of the murder, they visited all of the places Applicant went to, and they interviewed several people at those locations. Trial counsel could not find witnesses to testify favorably to the Applicant. Trial counsel extensively cross-examined Cooks about the inconsistencies in her various statements and were very effective in bringing out the inconsistencies to the jury. Trial counsel also attempted to impeach Blathers and again demonstrate to the jury inconsistencies in his testimony. They made appropriate objections and presented several witnesses on Applicant's behalf to establish that he could not have committed the murder.

This Court finds no merit to the Applicant's allegation that trial counsel was ineffective in failing to subpoena several witnesses for trial, specifically Francine Bostic, Maurice Gregg, Albert Smith, and Randolph Hines. These witnesses were not at the PCR hearing and no testimony from them was offered, thus, no prejudice has been established. See Bannister v. State, supra.

Lastly, this Court finds no merit to the Applicant's allegation that trial counsel should have made a motion to impeach Blathers. This Court knows of no such vehicle

for impeachment and finds that trial counsel impeached Blathers on cross-examination through testimony. Moreover, this Court finds no merit to Applicant's allegation that trial counsel should have excluded Cooks from testifying. As above, this Court knows of no method for excluding the testimony of the eyewitness to the crime. Further, as noted above, trial counsel vigorously cross-examined Cooks about the inconsistencies in her various statements and brought these to the attention of the jury.

## V. CONCLUSION

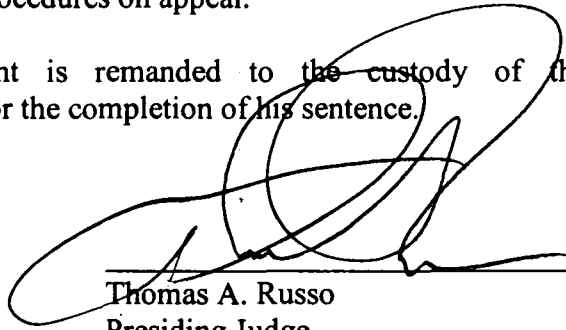
This Court concludes that the Applicant failed to carry his burden of proof to show that trial counsel's representation fell below reasonable professional norms or that he was prejudiced by the alleged deficient representation. The Applicant's former trial counsel rendered reasonably effective assistance under prevailing professional norms and demonstrated a normal degree of skill, knowledge, and professional judgment that is expected of an attorney in a criminal case. Strickland v. Washington, supra; Cherry v. State, supra. Additionally, the Applicant did not carry his burden to show a reasonable probability that the result at trial would have been different had trial counsel done what the Applicant alleges they should or should not have done. Cherry v. State, supra.

As to any and all allegations, which were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds that the Applicant failed to present any probative evidence regarding such allegations. These allegations are not supported by any law and were not addressed at the hearing. Accordingly, this Court finds that the Applicant waived the allegations and failed to meet his burden of proof regarding them. Accordingly, they are denied and dismissed with prejudice.

**IT IS THEREFORE ORDERED THAT:**

1. The post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**;
2. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 243<sup>1</sup> for appropriate procedures on appeal.
3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

**AND IT IS SO ORDERED.**



Thomas A. Russo  
Presiding Judge  
Twelfth Judicial Circuit

Florence, South Carolina  
3-5, 2010.

FILED  
2010 MAR -5 PM 3:51  
COMPTROLLER & CLERK  
FLORENCE COUNTY, SC

<sup>1</sup> 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.

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