



ALAN WILSON
ATTORNEY GENERAL

June 30, 2011

RECEIVED

JUN 30 2011

S.C. Supreme Court

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

Re: Reginald Clea v. State of South Carolina
2008-CP-43-1858

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above case.

Sincerely,

Mary S. Williams
Assistant Attorney General

MSW/lm
Enclosures

cc: James B. Richardson, Jr., Esquire
Trisha Allen, Victim Services

The Supreme Court of South Carolina

Reginald Clea,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable G. Thomas Cooper, Jr.
Sumter County
Trial Court Case No. 2008-CP-43-01858

ORDER

For good cause shown, the request for an extension until July 6, 2011 to serve and file the Return to the Petition for Writ of Certiorari in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY 

Clerk

Columbia, South Carolina

June 7, 2011

cc: James B. Richardson, Jr, Esquire
Assistant Attorney General Mary S. Williams



ALAN WILSON
ATTORNEY GENERAL

June 6, 2011

RECEIVED

JUN - 6 2011

S.C. Supreme Court

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

(3)

Re: Reginald Clea v. State of South Carolina
2008-CP-43-1858

Dear Mr. Shearouse:

The Return to Petition for Writ of Certiorari in the above appeal is due to be served and filed on today's date. However, this is to respectfully request a 30-day extension to serve and file this Return. By his signature below, James Richardson, indicates that he consents to this extension.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a workload.

Sincerely,

Mary S. Williams
Assistant Attorney General

MSW/lm

cc: James B. Richardson, Jr., Esquire

In compliance with:

In Re: Extensions in Criminal and Post-Conviction Relief Cases, (S.C. Sup. Ct. order dated March 18, 2009) (Davis Adv. Sh. No. 13 at 1).

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JAMES B. RICHARDSON, JR.
Esquire



ALAN WILSON
ATTORNEY GENERAL

June 6, 2011

RECEIVED

JUN - 6 2011

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

S.C. Supreme Court

Re: Reginald Clea v. State of South Carolina
2008-CP-43-1858

Dear Mr. Shearouse:

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Sincerely,

Mary S. Williams
Assistant Attorney General

MSW/lm

cc: James B. Richardson, Jr., Esquire

In compliance with:

In Re: Extensions in Criminal and Post-Conviction Relief Cases, (S.C. Sup. Ct. order dated March 18, 2009) (Davis Adv. Sh. No. 13 at 1).

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

James B. Richardson, Jr.

JAMES B. RICHARDSON, JR.,
Esquire

The Supreme Court of South Carolina

Reginald Clea,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable G. Thomas Cooper, Jr.
Sumter County
Trial Court Case No. 2008-CP-43-01858

ORDER

For good cause shown, the request for an extension until June 6, 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 and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

May 11, 2011

cc: James B. Richardson, Jr, Esquire
Assistant Attorney General Mary S. Williams



ALAN WILSON
ATTORNEY GENERAL

May 6, 2011

RECEIVED

MAY - 6 2011

S.C. Supreme Court

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

Re: Reginald Clea v. State of South Carolina
2008-CP-43-1858

(2)

Dear Mr. Shearouse:

The Return to Petition for Writ of Certiorari in the above appeal is due to be served and filed on today's date. However, this is to respectfully request a 30-day extension to serve and file this Return.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a workload.

Sincerely,

Mary S. Williams
Assistant Attorney General

MSW/lm

cc: James B. Richardson, Jr., Esquire

The Supreme Court of South Carolina

Reginald Clea,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable G. Thomas Cooper, Jr.
Sumter County
Trial Court Case No. 2008-CP-43-01858

ORDER

The request for an extension until May 6, 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

April 11, 2011

cc: James B. Richardson, Jr, Esquire
Assistant Attorney General Mary S. Williams



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

APR -7 2011

S.C. Supreme Court

April 6, 2011

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

RECEIVED

APR 06 2011

SC Court of Appeals

Re: Reginald Clea v. State of South Carolina
2008-CP-43-1858

Dear Mr. Shearouse:

The Return to Petition for Writ of Certiorari in the above appeal is due to be served and filed on today's date. However, this is to respectfully request a 30-day extension to serve and file this Return.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a workload.

Sincerely,

Mary S. Williams
Assistant Attorney General

MSW/lm

cc: James B. Richardson, Jr., Esquire

**Law Office of
James B. Richardson, Jr.**

1229 LINCOLN STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE 803/799-9412
FAX 803/799-9628

March 7, 2011

RECEIVED

MAR 07 2011

S.C. Supreme Court

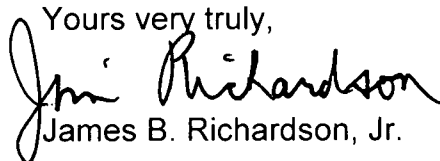
Hon. Daniel E. Shearouse
Clerk of the S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Reginald Tyrell Clea, #309063 v. State of South Carolina
On Petition for Writ of Certiorari from Denial of PCR
Case No. 2008-CP-43-1858

Dear Mr. Shearouse:

Delivered for filing is a petition for a writ of certiorari from the denial of post-conviction relief in the above-captioned case.

Thanking you, I remain

Yours very truly,

James B. Richardson, Jr.

cc: Assistant Attorney General Mary S. Williams

The Supreme Court of South Carolina

Reginald Clea,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable G. Thomas Cooper, Jr.
Sumter County
Trial Court Case No. 2008-CP-43-01858

ORDER

The request for an extension until March 7, 2011 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Arenda J. Stealy*
Clerk

Columbia, South Carolina *Chief Deputy*

February 2, 2011

cc: James B. Richardson, Jr, Esquire
Assistant Attorney General Mary S. Williams

**Law Office of
James B. Richardson, Jr.**

1229 LINCOLN STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE 803/799-9412
FAX 803/799-9628

February 1, 2011

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

ATTN: Ms. Janet Johnson

Re: Reginald Clea v. State of South Carolina

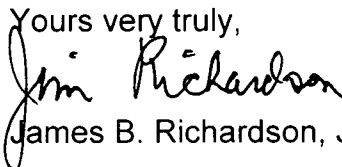
Dear Mr. Shearouse:

The petition for a writ of certiorari is presently due in this matter on February 3rd.

I have been unable to complete the petition in the allotted time because of other appellate and trial work, most notably a brief in the James Brown Estate litigation. I find that I must request a 30-day extension of time in which to serve and file the petition and appendix.

Your consideration of this request is, as always, genuinely appreciated.

Thanking you, I remain

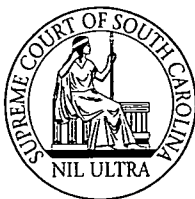
Yours very truly,

James B. Richardson, Jr.

cc: Mary S. Williams, Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211-1549

RECEIVED

FEB 01 2011

S.C. Supreme Court



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 4, 2011

Ernest Adolphus Finney, III, Esquire
110 S. Sumter St.
Sumter, SC 29151-0836

Re: Clea, Reginald v. The State


Dear Mr. Finney:

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.

Mr. Richardson is advised that the Petition for Writ of Certiorari and Appendix are due to be served and filed within thirty (30) days of the date of this order.

Very truly yours,



CLERK

DES/jj

cc: James B. Richardson, Jr, Esquire
Assistant Attorney General Mary S. Williams

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Reginald Tyrell Clea, Petitioner,

v.

State of South Carolina, Respondent.

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2008-CP-43-1858

AFFIDAVIT OF COUNSEL

ORIGINAL

RECEIVED
DEC 20 2010
S.C. Supreme Court

PERSONALLY appeared before me Ernest A. Finney, III, who, being duly sworn, deposes and says:

1. Until now, I have represented the petitioner above-named in connection with his application for post-conviction relief. In that capacity I served and filed a notice of appeal from the denial of petitioner's application. I ordered a copy of the post-conviction hearing transcript from Court Reporter Jenny H. Williams by letter of April 1, 2010. A copy of my letter is attached as Exhibit A. My request for the hearing transcript was out of time, but this was excused by Order of this Court dated April 9, 2010.

2. By letter of April 6, 2010, a copy of which is attached as Exhibit B, Ms. Williams informed me that payment in advance of \$197.75 for the hearing transcript would be required. As explained in my Motion dated November 12, 2010, I overlooked Ms. Williams' request for advance payment.

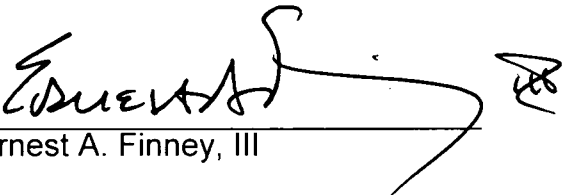
3. By Order dated November 29, 2010, the Court granted me permission to make arrangements with the court reporter by December 9, 2010 to procure the

necessary transcript. This was done by me on November 30, 2010, when I mailed to the court reporter, Ms. Williams, my check no. 2741 in the amount of \$197.75. My bank statement shows that check no. 2741 has been paid and has duly cleared the bank.

4. The hearing transcript was received in the mail from Ms. Williams today, December 16, 2010.

5. Also pursuant to the Court's Order of November 29, 2010, James B. Richardson, Jr., of the Richland County Bar, has agreed to assume the representation of the petitioner in my place, with petitioner's approval.

FURTHER DEPONENT SAYETH NAUGHT.


Ernest A. Finney, III

SWORN to before me this
16th day of December, 2010.


NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 4/6/2014

April 1, 2010

Jenny Haven, Court Reporter
123 Summer Haven Drive
Chapin, South Carolina 29036

RE: Request for Transcript

Dear Ms. Haven:

I am hereby requesting the full transcript of the PCR hearing held at the Richland County Courthouse on November 4, 2009. I have today filed a Consent Motion to Request Transcript Out of Time. Upon receipt of this request, please contact me a.s.a.p. so we can discuss the cost of and payment for this transcript.

Thank you so much for your speedy reply.

Very truly yours,

By: 

Ernest A. Finney, III
Post Office Box 836
Sumter, South Carolina 29151

EAF,III/msp

cc: Mary S. Williams, AAG

Daniel Shearouse, Clerk of S. C. Supreme Ct.
Office of Court Administration

EXHIBIT A

EXHIBIT A

Jenny H. Williams
Court Reporter
Fifth Judicial Circuit

April 6, 2010

Mr. Ernest A. Finney, III
Attorney at Law
P.O. Box 836
Sumter, SC 29151

In Re: Reginald Clea v. State

Dear Mr. Finney:

I have received your letter dated April 1, 2010, wherein you request the Transcript of Record in the above-referenced case. The cost per page is \$3.25. The transcript will be 60 pages long, for a cost of \$195.00. Postage will be approximately \$2.75, for a total cost of \$197.75.

It is necessary that I receive payment before mailing the transcript in the form of a check **made payable to Jenny H. Williams** from your law firm. Upon receipt of the funds I will type the transcript. I have 60 days to complete the transcript before an extension may, if necessary, be requested of Court Administration.

Thank you.

Sincerely,

Jenny H. Williams

Jenny H. Williams
Fifth Circuit Court Reporter

*Paid 11-30-10
Check 2741*

123 Summer Haven Road
Chapin, SC 29036-8842

Office: 803-576-1743
Fax: 803-576-1741
Email: JWilliams@sccourts.org

EXHIBIT B

The Supreme Court of South Carolina

Reginald Clea,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER

By order dated November 29, 2010, this Court granted an extension of time for petitioner to obtain substitute counsel. The order directed counsel for petitioner to notify this Court, within thirty days of the order, who will be substituted as counsel for petitioner. Counsel has now informed the Court that James B. Richardson, Jr. has agreed to represent petitioner. Mr. Richardson has confirmed this information by way of letter in which he states petitioner approves of the substitution of counsel. Accordingly, Ernest A. Finney, III, is hereby relieved as counsel for petitioner in this matter and Mr. Richardson will be substituted as counsel of record.

IT IS SO ORDERED


C. J.
FOR THE COURT

Columbia, South Carolina

January 4, 2011

**Law Office of
James B. Richardson, Jr.**

1229 LINCOLN STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE 803/799-9412
FAX 803/799-9628

December 16, 2010

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

RECEIVED

DEC 20 2010

ATTN: Ms. Janet Johnson

S.C. Supreme Court

Re: Reginald Clea v. State of South Carolina

Dear Mr. Shearouse:

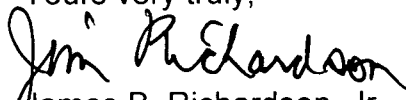
In this post-conviction relief matter, the petitioner has until now been represented by Ernest A. Finney, III, Esq. Because of his recent election to public office, Mr. Finney was permitted by Order of November 29, 2010 to withdraw. With the petitioner's approval, I have agreed to undertake Mr. Clea's representation. With a copy of this letter to Ms. Williams, I am telling her of my entry into the case and I look forward to working with her in this matter.

The Order of November 29th required Mr. Finney to confirm that arrangements were made to obtain the necessary transcript from the court reporter. Delivered herewith is Mr. Finney's affidavit with that information.

Mr. Finney told me this morning that the necessary transcript arrived in the mail today. Therefore, as I understand it, the petition for a writ of certiorari and appendix will be due in thirty days, resulting in a due-date of January 17, 2011, the thirtieth day being a Saturday. If my calculation is inaccurate, kindly advise.

Thanking you, I remain

Yours very truly,


James B. Richardson, Jr.

cc: Mary S. Williams, Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211-1549

Ernest A. Finney, III, Esq.
Attorney at Law
P. O. Box 836
Sumter, SC 29151-0836

The Supreme Court of South Carolina

Reginald Clea,

Petitioner,

v.

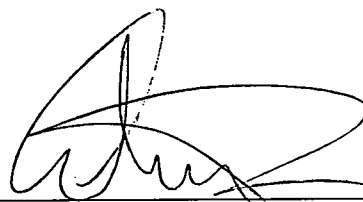
State of South Carolina,

Respondent.

ORDER

Counsel for petitioner moves, for a second time, for permission to order the transcript out of time. Counsel also moves for a thirty day extension of time in which to substitute counsel for petitioner in this matter. Counsel for respondent consents to the request. Both motions are granted. Counsel for petitioner shall, within ten days of the date of this order, make arrangements with the court reporter to procure the necessary transcript(s). Within thirty days of the date of this order, counsel for petitioner shall notify this Court who will be substituted as counsel of record for petitioner.

IT IS SO ORDERED.



J.

FOR THE COURT

Columbia, South Carolina

November 29, 2010

cc: Ernest Adolphus Finney, III, Esquire
Assistant Attorney General Mary S. Williams

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Reginald Tyrell Clea, #309063

Appellant

V.

State of South Carolina,

Respondent

The Honorable G. Thomas Cooper, Jr.
Sumter County
Trial Court Case No. 2008-CP-43-01858

**MOTION TO REQUEST TRANSCRIPT
OUT OF TIME**

Appellant, moves this Court to request out of time the transcript of the PCR evidentiary hearing in the above-captioned matter. The basis of this motion is that Appellant initially filed his Notice of Appeal on February 22, 2010 in the South Carolina Court of Appeals who, upon receipt, issued an Order transferring this appeal to the Supreme Court of South Carolina. The court reporter was contacted in April 2010, and due to a misunderstanding concerning payment the transcript was not prepared. In addition, Counsel for the Appellant has recently won election to public office and will need to substitute counsel to handle the appeal for the Appellant. Counsel for the Appellant respectfully moves for an extension of time to receive the transcript from the court reporter, and for a thirty (30) days extension in which to substitute counsel.

RECEIVED

NOV 23 2010

S.C. SUPREME COURT

November 12, 2010
Sumter, South Carolina

Respectfully Submitted,


ERNEST A. FINNEY, III

110 South Sumter Street, PO Box 836
Sumter, South Carolina 29151-0836
(803) 773-1415

ATTORNEY FOR APPELLANT

LAW OFFICE OF ERNEST A. FINNEY, III, LLC

I CONSENT:

By: Mary S. Williams

Mary S. Williams

Assistant Attorney General

Office of the Attorney General

Rembert C. Dennis Building

Post Office Box 11549

Columbia, South Carolina 29211-1549

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Trial Case No: 2008-CP-43-01858

Reginald Tyrell Clea, #309063

Appellant

V.

State of South Carolina,

Respondent

PROOF OF SERVICE

I certify that I have served the Motion to Request Transcript Out of Time on the following individual(s) and office(s) by depositing as copy of it to each, in the United States Mail, postage prepared on November 12, 2010, addressed as follows:

**Mary S. Williams, Asst. Attorney General
Office of the Attorney General
Rembert Dennis Building, PO Box 11549
Columbia, South Carolina 29211-11549**



ERNEST A. FINNEY, III
Attorney for Appellant
Post Office Box 836
110 South Sumter Street
Sumter, South Carolina 29150
(803) 773-1415 Telephone
(803) 775-3478 Facsimile

November 12, 2010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County
The Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Trial Case No: 2008-CP-43-01858

REGINALD TYRELL CLEA,#309063

APPELLANT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I, Mechelle S. Potts, an employee of the Law Firm of Ernest A. Finney, III, LLC, certify that I have served the Motion to Request Transcript Out of Time on Respondent by depositing one (1) copy of the same in the United States mail, postage prepaid, addressed to attorney of record, Mary S. Williams, Office of the Attorney General, Rembert C. Dennis Building, Post Office Box 11549, Columbia, South Carolina, 29211-1549.

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



MECHELLE S. POTTS
Paralegal
Law Office of Ernest A. Finney, III, LLC
Post Office Box 836
110 South Sumter Street
Sumter, South Carolina 29151-0836
(803) 773-1415

November 12, 2010

LAW OFFICE
OF
ERNEST A. FINNEY, III
110 SOUTH SUMTER STREET
SUMTER, SOUTH CAROLINA 29150
TELEPHONE (803) 773-1415
FACSIMILE (803) 775-3478
E-MAIL: finneyiii@aol.com

ERNEST A. FINNEY, III

November 18, 2010

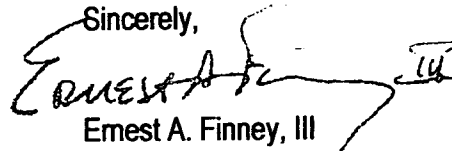
MAILING ADDRESS:
POST OFFICE BOX 836
SUMTER, SC
29151-0836

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

RE: **Reginald Tyrell Clea, 309063 v. State of South Carolina**
2008-CP-43-1858

Dear Mr. Shearhouse:

Enclosed please find the signed original signed Motion to Request Transcript out of Time, along with six (6) copies in the above case, for filing in your office.

Sincerely,

Ernest A. Finney, III

EAF, III/msp
Enclosure

RECEIVED

NOV 23 2010

S.C. SUPREME COURT

LAW OFFICE
OF
ERNEST A. FINNEY, III
110 SOUTH SUMTER STREET
SUMTER, SOUTH CAROLINA 29150
TELEPHONE (803) 773-1415
FACSIMILE (803) 775-3478
E-MAIL: finneyiii@aol.com

COPY

ERNEST A. FINNEY, III

MAILING ADDRESS:
POST OFFICE BOX 836
SUMTER, SC
29151-0836

November 12, 2010

Mary S. Williams
Assistant Attorney General
Office of the Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-1549

RECEIVED

NOV 15 2010

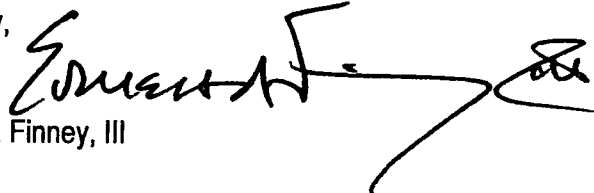
RE: Reginald Tyrell Clea, 309063 v. State of South Carolina
Case No: 2008-CP-43-1858

S.C. SUPREME COURT

Dear Ms. Williams:

I am enclosing the original Motion to Request Transcript out of Time in the above case. Please sign and return it if it meets your approval. I have enclosed a return envelope for your convenience.

Sincerely,



Ernest A. Finney, III

EAF,III/msp
Enclosure

cc: The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court

LAW OFFICE
 OF
ERNEST A. FINNEY, III
 110 SOUTH SUMTER STREET
 SUMTER, SOUTH CAROLINA 29150
 TELEPHONE (803) 773-1415
 FACSIMILE (803) 775-3478
 E-MAIL: finneyiii@aol.com

ERNEST A. FINNEY, III

November 9, 2010

MAILING ADDRESS:
 POST OFFICE BOX 836
 SUMTER, SC
 29151-0836

VIA FACSIMILE: 803-734-1499

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

RECEIVED

NOV 09 2010

RE: Clea, Reginald v. The State

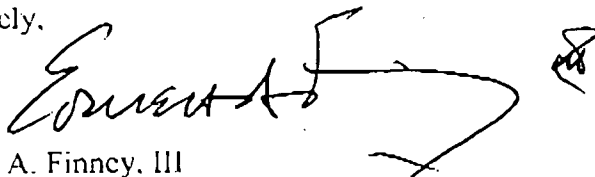
S.C. SUPREME COURT

Dear Mr. Shearouse:

Thank you for your recent letter regarding the transcript on the above referenced case. A review of our file shows that we contacted the court reporter in April 2010 requesting a copy of the transcript. She replied by letter dated April 6, 2010. Her letter requested payment before the transcript would be mailed. Our records do not show that a check for payment was sent to the reporter. During this time period I was involved in a political primary contest that may have lead me to believe that we were waiting on the transcript to be prepared. Instead no action was taken, and we take full responsibility for the delay which resulted.

I would request that I be allowed to file for an extension based on the fact that I was involved in a political campaign, which I now have been successful in winning and will have to substitute a new attorney to represent the interests of the client. This office will prepare the appropriate motion and submit any necessary supporting documentation if this plan meets your approval. Thank you for your cooperation.

Sincerely,

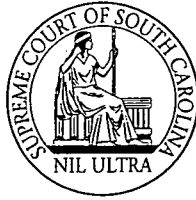


Ernest A. Finney, III

RECEIVED

NOV 09 2010

S.C. SUPREME COURT



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

November 4, 2010

Ernest Adolphus Finney, III, Esquire
110 S. Sumter St.
Sumter, SC 29151-0836


Re: Clea, Reginald v. The State

Dear Mr. Finney:

Please advise this office immediately of the status of your April 1, 2010 request for the transcript from Court Reporter Jenny Haven. Our records indicate that this transcript has been overdue since June 15, 2010 and that no extensions have been requested or granted.

By copy of this letter, we are notifying the Office of Court Administration of our request for information concerning this overdue transcript.

Very truly yours,



CLERK

DES/jj

cc: Assistant Attorney General Mary S. Williams
Office of Court Administration

LAW OFFICE
OF
ERNEST A. FINNEY, III
110 SOUTH SUMTER STREET
SUMTER, SOUTH CAROLINA 29150
TELEPHONE (803) 773-1415
FACSIMILE (803) 775-3478
E-MAIL: finneyiii@aol.com

COPY

ERNEST A. FINNEY, III

MAILING ADDRESS:
POST OFFICE BOX 836
SUMTER, SC
29151-0836

April 1, 2010

RECEIVED
APR 05 2010
S.C. SUPREME COURT

Jenny Haven, Court Reporter
123 Summer Haven Drive
Chapin, South Carolina 29036

RE: Request for Transcript

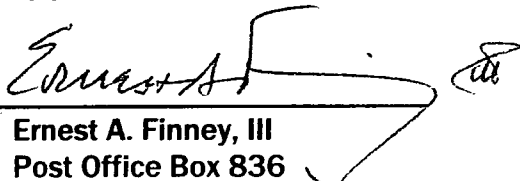
Dear Ms. Haven:

I am hereby requesting the full transcript of the PCR hearing held at the Richland County Courthouse on November 4, 2009. I have today filed a Consent Motion to Request Transcript Out of Time. Upon receipt of this request, please contact me a.s.a.p. so we can discuss the cost of and payment for this transcript.

Thank you so much for your speedy reply.

Very truly yours,

By:


Ernest A. Finney, III
Post Office Box 836
Sumter, South Carolina 29151

EAF,III/msp

cc: Mary S. Williams, AAG
Daniel Shearouse, Clerk of S. C. Supreme Ct.
Office of Court Administration

Re: Reginald Clea



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 9, 2010

Ernest Adolphus Finney, III, Esquire
110 S. Sumter St.
Sumter, SC 29151-0836

Re: Clea, Reginald v. The State

Dear Mr. Finney:

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

“Granted.

Jean H. Toal C.J.
For the Court

By s/ Daniel E. Shearouse
Clerk

April 9, 2010.”

Please notify this office upon receipt of the transcript. The Petition for a Writ of Certiorari and Appendix as provided for in Rule 243(d) of the South Carolina Appellate Court Rules should be served and filed within thirty (30) days of receipt of the transcript.

Ernest Adolphus Finney, III, Esquire

Page Two

April 9, 2010

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

CLERK

DES/dmh

cc: Assistant Attorney General Mary S. Williams

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Reginald Tyrell Clea, #309063

Appellant

V.

State of South Carolina,

Respondent

The Honorable G. Thomas Cooper, Jr.
Sumter County
Trial Court Case No. 2008-CP-43-01858

RECEIVED

APR 07 2010

MOTION TO REQUEST
TRANSCRIPT OUT OF TIME

S.C. SUPREME COURT

Appellant moves this Court to request out of time the transcript of the PCR evidentiary hearing in the above-captioned matter. The basis of this motion is that appellant initially filed his Notice of Appeal on February 22, 2010 in the South Carolina Court of Appeals who, upon receipt, issued an Order transferring this appeal to the Supreme Court of South Carolina. The transfer of the matter caused Appellant to lose track of the deadline for requesting the transcript. The Court Reporter has been contacted by letter requesting the transcript, a copy is attached.

DATED: April 1 2010

I SO MOVE:

By: Ernest A. Finney, III

Ernest A. Finney, III
Post Office Box 836
110 S. Sumter Street
Sumter, South Carolina 29150-0836
(803) 773-1415

GRANTED

Jean H. Tolson C.J.
For the Court
Clerk

April 9, 2010

ATTORNEY GENERAL'S OFFICE

RECEIVED 4.5.10

appeal file

ADMINISTRATIVE INSTRUCTIONS
 FILE OPEN END
..... HAVE COPIES MADE
..... ROUTE TO
..... ORDER: TRANSCRIPT
..... PEN RECORDS CLERK RECORDS
 OTHER: *please send*
to sup ct w/ proof of
service to Mr. Finney

I CONSENT:

By: Mary S. Williams 4/8/10

Mary S. Williams

Assistant Attorney General

Office of the Attorney General

Rembert C. Dennis Building

Post Office Box 11549

Columbia, South Carolina 29211-1549

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Trial Case No: 2008-CP-43-01858

Reginald Tyrell Clea, #309063

Appellant

V.

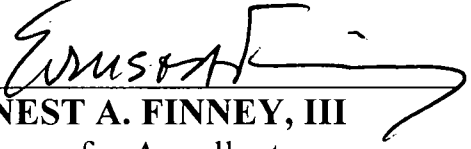
State of South Carolina,

Respondent

PROOF OF SERVICE

I certify that I have served the Motion to Request Transcript Out of Time on the following individual(s) and office(s) by depositing a copy of it to each, in the United States Mail, postage prepaid on April 1st, 2010, addressed as follows:

Mary S. Williams
Assistant Attorney General
Office of the Attorney General
Rembert Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-11549


ERNEST A. FINNEY, III
Attorney for Appellant
Post Office Box 836
110 South Sumter Street
Sumter, South Carolina 29150
(803) 773-1415
(803) 775-3478 (Fax)

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Sumter County
The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

REGINALD TYRELL CLEA,

Petitioner,

v.

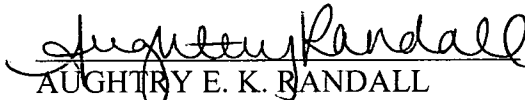
STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

I, Aughtry Randall, certify that I have served the Motion to Request Transcript out of Time on Appellant by depositing one (1) copy of the same in the United States mail, postage prepaid, addressed to his attorney of record, Ernest A. Finney, III, Esquire, Post Office Box 836, Sumter, South Carolina 29150.

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


AUGHTRY E. K. RANDALL
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

April 7, 2010



HENRY McMASTER
ATTORNEY GENERAL

April 7, 2010

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APR 07 2010

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

S.C. SUPREME COURT

**Re: Reginald Tyrell Clea, 309063 v. State of South Carolina
2008-CP-43-1858**

Dear Mr. Shearouse:

I am enclosing the signed original **Motion to Request Transcript out of Time** in the above case, for filing in your office.

Sincerely,

Mary S. Williams
Assistant Attorney General

MSW/aekr
Enclosures

cc: Ernest A. Finney, III, Esquire

The South Carolina Court of Appeals

Reginald Tyrell Clea, #309063

Appellant,

v.

State of South Carolina,

Respondent.

The Honorable G. Thomas Cooper, Jr.
Sumter County
Trial Court Case No. 2008-CP-43-01858

RECEIVED

MAR 01 2010

S.C. SUPREME COURT

ORDER

The appeal in the above captioned matter is transferred to the South Carolina Supreme Court under the filing provisions of Rule 243 of the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For The Court

BY V. Clair Allen, Deputy Clerk
CLERK

Columbia, South Carolina
February 26, 2010

cc: Ernest A. Finney, III, Esq.
Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Mary S. Williams
The Honorable Daniel Shearouse

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

RECEIVED
FEB 23 2010
SC Court of Appeals

**APPEAL FROM SUMTER COUNTY
Court of Common Pleas**

G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED
MAR 01 2010
S.C. SUPREME COURT

Case No. 2008-CP-43-1858

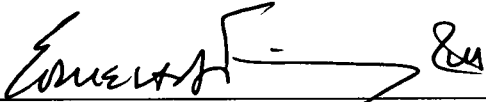
State of South Carolina, Respondent,

V.

Reginald Tyrell Clea Appellant,

NOTICE OF APPEAL

Reginald Tyrell Clea, #309063, appeals the Order Dismissal of the Honorable G. Thomas Cooper, Jr., Presiding Circuit Court Judge of the Third Judicial Circuit, dismissing the Application for Post-Conviction Relief filed on August 7, 2008, and amended March 18, 2009.


ERNEST A. FINNEY, III
110 S. Sumter St., PO Box 836
Sumter, South Carolina 29151-0836
(803) 773-1415
Attorney for Appellant

February 22, 2010
Other Counsel of Record:

Mary S. Williams
Assistant Attorney General
Office of the Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

RECEIVED
FEB 23 2010
SC Court of Appeals

**APPEAL FROM SUMTER COUNTY
Court of Common Pleas**

G. Thomas Cooper, Jr., Circuit Court Judge

Case No: 2008-CP-43-1858

State of South Carolina, Respondent,

V.

Reginald Tyrell Clea, Appellant,

PROOF OF SERVICE

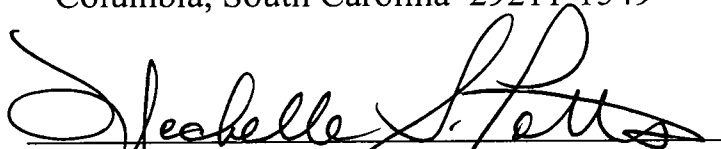
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MAR 01 2010

S.C. SUPREME COURT

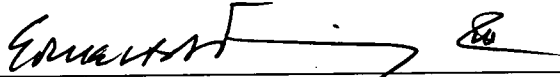
I certify that I have served a copy of the Appellant's Notice of Appeal on counsel for the Respondent by depositing a copy of it in the United States Mail, certified mail, postage prepaid on February 22 , 2010, to:

Mary S. Williams
Assistant Attorney General
Office of the Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-1549



Mechelle S. Potts, Paralegal
LAW OFFICE OF ERNEST A. FINNEY, III, LLC

SWORN to and subscribed before
me on this 22nd day of February 2010

A handwritten signature in black ink, appearing to read "Ernest F. [unclear]", written over a horizontal line. To the right of the signature is a small, stylized mark that looks like the number "80".

Notary Public for South Carolina
My Commission Expires: July 15, 2018

Mary S. Williams
Assistant Attorney General
Office of the Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
IN THE COURT OF COMMON PLEAS
2010 FEB 16 PM 2:40

Reginald Clea, #309063,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2008-CP-43-1858

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Shirley L. Jeff
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 7, 2008, and amended March 18, 2009. The Respondent made its Return and Motion to Dismiss on February 3, 2009, and an amended Return on March 24, 2009.¹ An evidentiary hearing into the matter was convened on November 4, 2009, at the Richland County Courthouse.² The Applicant was present at the hearing and was represented by Ernest A. Finney, III, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Joseph Savitz, Esquire. This Court had before it the records of the Sumter County Clerk of Court, the trial transcript, the appellate records and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South

¹ Respondent initially moved for summary dismissal of the application on the basis that Applicant had failed to set forth grounds cognizable at PCR. S.C. Code §17-27-20. Following the amendment to the application to allege ineffective assistance of appellate counsel, the matter was scheduled for an evidentiary hearing.

² The case was originally scheduled for the week of October 26, 2009, in the Third Circuit. By consent of both parties, the

Carolina Department of Corrections pursuant to orders of the Sumter County Clerk of Court. Applicant was indicted for two (2) counts of Murder and one (1) count of Possession of a Weapon During Commission of a Crime of Violence (2004-GS-43-0956). John D. Clark, Esquire, represented him. On May 2-5, 2005, Applicant proceeded to a jury trial before the Honorable Clifton Newman. Applicant was acquitted of one (1) count of Murder (Count One, victim John C. Jackson) but was convicted of the other count of Murder (Count Two, victim James Pollard) and Possession of a Weapon During Commission of a Crime of Violence (Count Three). Applicant was sentenced to thirty (30) years imprisonment for Murder and to a concurrent term of five (5) years imprisonment for Possession of a Weapon During Commission of a Crime of Violence.

A notice of appeal was filed and an appeal perfected. Applicant's conviction and sentence were affirmed. State v. Clea, Op. No. 2007-UP-552 (S.C. Ct. App. filed December 14, 2007). The remittitur was sent on January 2, 2008.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of appellate counsel.
 - a. "Trial counsel objected to and preserved in the record the trial court's jury instructions on the issue of 'permissive inference' of malice where there is use of a deadly weapon by the defendant. Appellate counsel was deficient in failing to raise this preserved issue on appeal directly, thereby prejudicing the appellant from having the appellate court consider a potentially reversible issue."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe

case was rescheduled in Richland County on November 3, 2009.



the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). To show ineffective assistance of appellate counsel, a PCR applicant must show that (1) "counsel's performance was deficient as measured by the standard of reasonableness under prevailing professional norms" and (2) he or she was prejudiced by such deficiency to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant argues that appellate counsel failed to raise the issue of the trial court's jury charge on inferred malice from the use of a weapon. The trial court charged:

...Malice aforethought may be express or implied. These terms, express and inferred or implied, do not mean different kinds of malice but merely the manner in which the malice can be shown to exist. This is merely the manner in which malice may be shown to exist. ...
...Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. ... Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case.

 ±3

(Tr. p. 728, line 22 - p. 729, line 12.) Trial counsel made the following objection:

...The Defendant objects to the Court's charge on inferred malice and use of a deadly weapon. *We believe that's the appropriate charge, Your Honor, but we believe also when that charge is given the Court should charge that inferred malice can be rebutted by competent evidence. And we would ask the court to recharge the jury, include a charge that inferred malice from the use of a deadly weapon can be rebutted and also if the Court's going to give the jury written jury instructions, that that be added to the written instructions, your Honor.*

[Emphasis supplied.] (Tr. p. 737, lines 12-22.) Trial counsel added, "the charge as stated impermissibly shifts the burden to the Defendant, unlawfully, unconstitutionally shifts the burden."

(Tr. p. 737, line 25 - p. 738, line 3.) The trial court denied the request for the additional instruction, finding that the jury had been charged that the State had to prove beyond a reasonable doubt that the defendant killed with malice aforethought and that the inferred malice charge given was correct. (Tr. p. 738, lines 4-13.)

On appeal, appellate counsel (hereinafter "Counsel") raised the following issue:

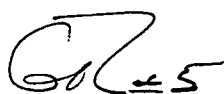
The trial judge committed reversible error by refusing to instruct the jury on the lesser-included offense of voluntary manslaughter.

(Brief of Appellant, p. 3.) At PCR hearing, Counsel testified that based on his review of the transcript, he believed this issue to be the strongest issue. Counsel fully explained his reasoning for asserting the issue.

Counsel testified that he did not raise the issue of the implied malice charge for several reasons. First, Counsel testified that the portion of the charge allowing a permissive inference of malice from the use of a gun was the charge that was routinely given in South Carolina until the recent decision of State v. Belcher, Op. No. 26729 (S.C. Sup. Ct. filed October 12, 2009) (Shearouse

Adv. Sh. No. 44 at 14). Counsel further explained that because trial counsel had stated in his objection that the charge was an appropriate one, any challenge on that basis would not be preserved under South Carolina's strict issue preservation rules. Counsel also explained that he did not feel that trial counsel's request for an additional charge was a stronger issue on appeal. Counsel testified that, based on the law at the time, he did not feel that the charge given by the trial court was reversible error nor did he feel that the court's failure to supplement the charge with the additional language requested constituted reversible error. Counsel based his opinion on authorities valid at the time such as State v. Mattison, 276 S.C. 235, 237-238, 277 S.E.2d 598, 599 - 600 (1981) (overruled by State v. Belcher, supra.)

With regard to Applicant's assertion that Counsel should have challenged the portion of the charge permitting the inference of malice from the use of a deadly weapon, this Court finds that the claim is without merit. Trial counsel's objection requested additional language that the presumption was a rebuttable one, but the objection conceded that the charge was correct that an inference from a weapon may be drawn. Therefore the issue was not preserved for appeal. Counsel will not be deemed ineffective for failing to raise an issue not preserved for appeal. Legge v. State, 349 S.C. 222, 562 S.E.2d 618 (2002). Further, this Court finds that even if the issue were preserved, Counsel's decision not to pursue such a claim would not have been unreasonable under professional norms at the time of the appeal. In Belcher v. State, supra., the court noted that "[i]t has long been the practice for trial courts in South Carolina, as sanctioned by this court, to charge juries in any murder prosecution that the jury may infer malice from the use of a deadly weapon." Belcher expressly overruled extensive South Carolina authority approving of the charge. Therefore, at the time of the appeal, Counsel could not have foreseen the change in the law, and his reasoning was sound under the law at the time. See

 5

for example Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999) (counsel not required to anticipate change in the law which were not in existence at the time of trial). Moreover, Belcher expressly states that its ruling “will not apply to convictions challenged on post-conviction relief.” (citing Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989)).

This Court further finds Applicant’s claim that Counsel should have raised the trial court’s denial of his request for additional language that the inference of malice may be rebutted is without merit. “[A]ppellate counsel is not required to raise every nonfrivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Here, Counsel explained that the charge as given was correct law at the time, and Counsel further felt that the requested charge was not a correct statement of the law at the time of the trial. State v. Mattison, supra. Counsel explained that the issue he chose, in his opinion, was more likely to constitute a reversible error. This Court finds that Counsel articulated a reasonable for his decision to pursue the issue raised, and Applicant failed to satisfy his burden of proof to demonstrate otherwise. This court further finds that based on the law at the time of the trial and appeal, Applicant has failed to demonstrate that the outcome of the proceeding would have been different had Counsel asserted that the trial court erred in refusing to charge additional language that the use of a weapon could be rebutted. Moreover, the facts adduced at trial indicated that Applicant first shot at Charles Jackson (“Jackson”). Applicant testified that he believed Jackson was about to draw a gun from a box in his truck when he fired. Applicant was acquitted of the murder of Jackson. However, the evidence at trial was that Applicant then fired upon James Pollard (“Pollard”). No evidence at trial indicated that Pollard was armed other than Applicant’s testimony that Pollard reached toward his waist; Applicant never saw Pollard’s hands before firing. Pollard was shot nine (9) times. The appellate court found

that the trial court correctly denied Applicant's request for a charge on voluntary manslaughter. Given the evidence, even if the additional charge was appropriate, the outcome of the proceeding would have been no different.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION


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

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR,³ for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 9 day of FEBRUARY, 2010.



G. THOMAS COOPER, JR.
Presiding Judge

COLUMBIA, South Carolina.

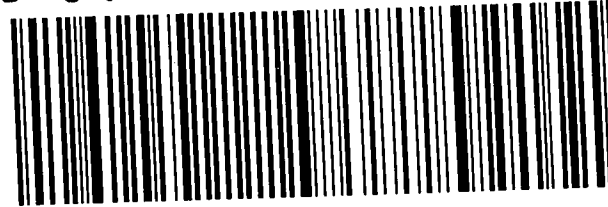
³ Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

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City Columbia, State SC ZIP 29201
Reginald Speer



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