

RECEIVED

APR 18 2012

S.G. SUPREME COURT

To whom it may concern:

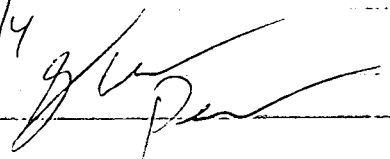
I filed this pro-se response to the petition filed by my counsel concerning the Petition for Writ of Certiorari to my Marlboro County case # 2009-CP-34-0034.

I never recieved anything from the Supreme Court or the respondent letting me know that my pro-se response was recieved. My response was notarized and mailed by the dead line that was given.

Could you please look in my files and see if my pro-se response has been filed along with the Johnson Petition that my counsel filed. And if it's not could you please file it.

Could you please contact me and let me know the status of my pro-se response and the status of my appeal. Thank you for your time and I'll be waiting to ~~to~~ hear from you.

Sincerely



Glenn Pernell #26. 71

Perry Corr. Inst / Q2-A-209

430 DaKlawn Road

Pelzer, S.C 29669

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APR 10 2012

PCL MAILROOM

The Supreme Court of South Carolina

Daniel E. Shearouse, Clerk of Court

Post Office Box 11330

Columbia, South Carolina 29211

I filed a pro se response to the Petition filed by my counsel, in the first copy I sent it was stapled. I was reading over the letter I got from the Supreme Court and it was stating that the copy should not be stapled. So I am sending this copy unstapled because this is what was asked for.

Thank you

*Glen
Perrell*

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OCT 06 2011

S.C. SUPREME COURT

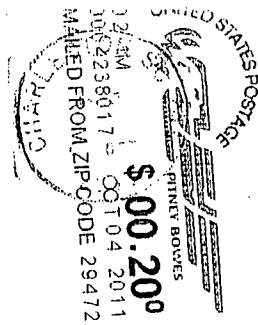
Oct 3, 2011

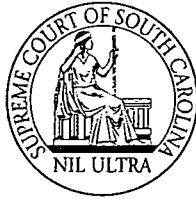
Glenn Pernell #263271
Lieber Correctional Institution
P.O. Box 205
Ridgeville, S.C. 29472

RECEIVED

OCT 03 2011
MAIL ROOM
LIEBER C.I.

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





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

September 9, 2011

Glenn Quanta Pernell #263271
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: Pernell, Glenn Quanta v. The State

Dear Mr. Pernell:

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 September 8, 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,

Daniel E. Shearouse
35

CLERK

DES/jj

cc: Appellate Defender Breen R. Stevens
Assistant Attorney General Karen Ratigan

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Marlboro County
Thomas A. Russo, Circuit Court Judge

GLENN QUANTA PERNELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

Counsel for Glenn Quanta Pernell respectfully requests an extension of thirty (30) days in which to file the petition for writ of certiorari and appendix in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a **final request for an extension**. In support of this request, counsel shows:

1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today, August 10, 2011.
2. Counsel for Mr. Pernell respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.

ORIGINAL

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AUG 10 2011

S.C. Supreme Court

(3)


3. On August 8, 2011, counsel filed the petition for writ of certiorari and appendix in the case of Felipe Trujillo in this Court. On August 5, 2011, counsel filed the petition for writ of certiorari and appendix in the case of Christopher O'Donald v. State in this Court. On July 22, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Devone Frazier in the Court of Appeals. On July 7, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Rodney Simmons in the Court of Appeals. On June 3, 2011, counsel filed the initial brief of appellant and designation of matter in the cases of State v. Timothy Chandler and State v. Harris McConnell in the Court of Appeals. On May 20, 2011, counsel filed the brief of appellant in the case of State v. Shawn A. Miller in the Court of Appeals. On May 3, 2011, counsel had an oral argument in the case of State v. Willie Gilmore in the Court of Appeals.

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

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

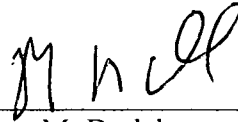
WHEREFORE, the undersigned counsel would respectfully request **a final thirty day extension**, in which to file the petition for writ of certiorari and appendix in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the petition be held in abeyance pending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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breen R. Stevens", written over a horizontal line.

Breen R. Stevens
Appellate Defender

Attorney for Petitioner



Robert M. Dudek
Chief Appellate Defender

This 10th day of August, 2011.

I Consent:



Karen Ratigan, Esquire

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marlboro County

Thomas A. Russo, Circuit Court Judge

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JUL 11 2011

S.C. Supreme Court

GLENN QUANTA PERNELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

(2)

Counsel for Glenn Quanta Pernell respectfully requests an extension of thirty (30) days in which to file the petition for writ of certiorari and appendix in this case. This motion 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 appendix is due to be served and filed with the Court today, July 11, 2011.
2. Counsel for Mr. Pernell respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.

3. On July 8, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Rodney Simmons in the Court of Appeals. On June 24, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Timmy Rogers in this Court. On June 3, 2011, counsel filed the initial brief of appellant and designation of matter in the cases of State v. Timothy Chandler and State v. Harris McConnell in this Court. On May 20, 2011, counsel filed the brief of appellant in the case of State v. Shawn A. Miller in this Court. On May 3, 2011, counsel had an oral argument in the case of State v. Willie Gilmore in this Court. On April 29, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Samuel McNeil in this Court. On April 27, 2011 counsel filed the initial brief of appellant and designation of matter in the case of State v. Eric Mitchell in this Court.

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

5. Counsel for the Attorney General's office has been informed of this request.

WHEREFORE, the undersigned counsel would respectfully request a thirty day extension, in which to file the petition for writ of certiorari and appendix in this case 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,



Breen R. Stevens
Appellate Defender

Attorney for Petitioner

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Marlboro County

Thomas A. Russo, Circuit Court Judge

GLENN QUANTA PERNELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the motion for an extension of time in which to file the petition for writ of certiorari and appendix in the above case has been served upon Karen Ratigan, Esquire, this 11th day of July, 2011.



Breen R. Stevens
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 11th day
of July, 2011.



(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.



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 9, 2011

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JUN 10 2011

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

S.C. Supreme Court

Re: Glenn Quanta Pernell 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 today, June 10, 2011. 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 Karen Ratigan, of the Attorney General's Office, of my request.

Sincerely,

Breen R. Stevens
Appellate Defender

BRS:pds

cc: Karen Ratigan, 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

RECEIVED

April 12, 2011

APR 12 2011

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

S.C. Supreme Court

Dear Mr. Shearouse:

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

Glenn Quanta Pernell v. State of South Carolina (*Marlboro*) 4/11/2011

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Sharon A. Graham
Administrative Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 17, 2011

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FEB 18 2011

S.C. Supreme Court

Tynika A. Claxton, Esquire
Claxton Law Firm
PO Box 50
Blythewood, SC 29016

Re: Glenn Quanta Pernell v. State of South Carolina

Dear Ms. Claxton:

The Chief Appellate Defender has reviewed the Affidavit of Indigency for the above case and has approved for this Office to perfect the appeal for Mr. Pernell.

Please contact me if you should have any questions concerning this matter.

Sincerely,

Sharon A. Graham
Administrative Coordinator

cc: S.C. Supreme Court



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

February 17, 2011

RECEIVED

FEB 18 2011

Ms. Rema Gantt Thomas
Circuit Court Reporter
806 Yacht Club Pointe
Chapin, SC 29036-9998

S.C. Supreme Court

Dear Ms. Thomas:

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

Glenn Quanta Pernell v. State of South Carolina Case #: 09-CP-34-00034

County: Marlboro Date of Trial: September 14, 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.

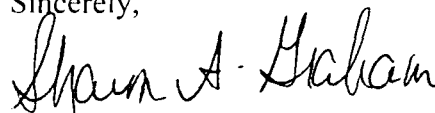
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Rema Gantt Thomas
February 17, 2011
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Sharon A. Graham".

Sharon A. Graham
Administrative Coordinator

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

THE CLAXTON LAW FIRM
P.O. BOX 50
BLYTHEWOOD, SC 29016
803-400-1195 (P)
803-675-0259 (F)

January 24, 2011

Clerk of Court
Supreme Court
1231 Gervais Street
Post Office Box 11330
Columbia, SC 29211

Re: **Glenn Quanta Pernell vs. The State of South Carolina**
Case No: 2009-CP-34-0034

Dear Sir/Madam:

This letter is to request an extension of time for 30 days to order the transcript in the above matter. The additional time is needed so that the proper documents can be forwarded to appellate defense so that they can assume the representation of the above applicant.

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JAN 25 2011

S.C. SUPREME COURT

Sincerely,



Tynika Adams Claxton

PCR

THE CLAXTON LAW FIRM
P.O. BOX 50
BLYTHEWOOD, SC 29016
803-400-1195 (P)
803-675-0259 (F)

December 14, 2010

Clerk of Court
Supreme Court
1231 Gervais Street
Post Office Box 11330
Columbia, SC 29211

Re: **Glenn Quanta Pernell vs. The State of South Carolina**
Case No: 2009-CP-34-0034

Dear Sir/Madam:


Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken from. Thank you for your help and if you should have any questions please feel free to call me.

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DEC 15 2010

S.C. SUPREME COURT

THE CLAXTON LAW FIRM, L.L.C.


Tynika A. Claxton

enclosure

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

HONORABLE THOMAS A. RUSSO, CIRCUIT COURT JUDGE

2009-CP-34-0034

GLENN QUANTA PERNELL, #263271,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

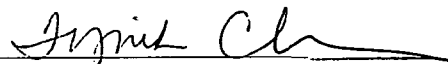
NOTICE OF APPEAL

Glenn Quanta Pernell appeals the denial of his application for Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable, Thomas A. Russo, Circuit Court Judge on November 5, 2010. The Appellant received notice of the judgment on December 14, 2010.

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DEC 15 2010

S.C. SUPREME COURT



Tynika Adams Claxton
Attorney for the Appellant
Post Office Box 50
Blythewood, South Carolina 29016
(803) 400-1195
Attorney for Glenn Quanta Pernell

Other Counsel of Record:
Karen C. Ratigan, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

HONORABLE THOMAS A. RUSSO, CIRCUIT COURT JUDGE

2009- CP-34-0034

GLENN QUANTA PERNELL, #263271,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on December 14, 2010, addressed to their attorney of record, Karen C. Ratigan, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: December 14, 2010

THE CLAXTON LAW FIRM, L.L.C.



Tynika A. Claxton
Attorney for the Appellant
Post Office Box 50
Blythewood, South Carolina 29016
(803) 400-1195
Attorney for Glenn Quanta Pernell

STATE OF SOUTH CAROLINA

COUNTY OF MARLBORO

Glenn Quanta Pernell, 263271

Plaintiff

v.


State Of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2009-CP-34-0034

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Tynika A Claxton, Esquire, Bar No. Address: Post Office Box 50 Blythewood SC 29016 phone: (803) 400-1195 fax: (803) 400-1190 e-mail: tynika@claxtonlawsc.com other:	Defendant's Attorney: Karen C. Ratigan, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">  Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant </div> <div style="text-align: right;"> November 4, 2010 Date submitted </div> </div>	
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Date Filed: _____	
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

A CERTIFIED TRUE COPY

William B. Junderson

CLERK OF COURT
MARLBORO COUNTY, SC

NOV 11 10 11 AM '10

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARLBORO)
)
 Glenn Quanta Pernell,)
 S.C.D.C. No. 263271,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2009-CP-34-0034

ORDER OF DISMISSAL

A CERTIFIED
 TRUE COPY
 William B. Sunderland
 CLERK OF COURT
 MARLBORO COUNTY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 13, 2009. The Respondent made its return on April 23, 2009. An evidentiary hearing into the matter was convened on September 14, 2010 at the Darlington County Courthouse. The Applicant was present at the hearing and represented by Tynika Adams Claxton, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, J.M. Long, III. The Court had before it the transcript of the guilty plea hearing, the records of the Marlboro County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return.

FILED
 NOV 15 12 53
 WILLIAM B. SUNDERS
 CLERK OF COURT
 MARLBORO COUNTY, S.C.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Marlboro County Clerk of Court. The Applicant was indicted at the August 2006 term of the Marlboro County Grand Jury for possession with intent

to distribute (PWID) marijuana (2006-GS-34-0768), at the September 2006 term for failure to stop for a blue light (2006-GS-34-0905), at the July 2007 term for trafficking cocaine, 28-100 grams (2007-GS-34-0384), and at the October 2007 term for trafficking crack cocaine, 28-100 grams (2007-GS-34-1043). He was represented by J.M. Long, III.

On February 13, 2008, the Applicant pled guilty. The Honorable James E. Lockemy sentenced the Applicant to concurrent terms of five (5) years for PWID marijuana, three (3) years for failure to stop for a blue light, thirteen (13) years for trafficking cocaine (28-100 grams), second offense, and thirteen (13) years for trafficking crack cocaine (28-100 grams), second offense.¹ The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of plea counsel:
 - a. "Attorney told client to plead guilty because of the length of term he was already serving."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety, and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

¹ These sentences were to run concurrent to a fifty (50) year sentence the Applicant was already serving.

FILED
2010 NOV 16 PM 12 55
WILLIAM B. FENDERBURN
CLERK OF COURT
MALDEN COUNTY, S.C.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 395 (2001). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Applicant stated he had two (2) meetings with plea counsel but that they never reviewed any of the discovery materials. The Applicant admitted he was not incarcerated before the trial but stated plea counsel only wanted to talk about the charges he had pending in Marion County when they had their meetings. The Applicant stated the weight of the drugs that he pled

FILED
NOV 19 12 53
CLERK OF COURT
MARION COUNTY, S.C.

guilty to were much higher than the weight of the drugs he was arrested for. The Applicant stated plea counsel should have challenged the chain of custody. The Applicant stated plea counsel told him to plead guilty and that he (counsel) would help him in a PCR action. The Applicant testified plea counsel explained he was pleading guilty pursuant to a negotiated thirteen (13) year sentence and that counsel also explained the nature of a negotiated sentence. The Applicant stated he lied during the guilty plea hearing when he admitted the facts recited by the solicitor were true and told the judge he was satisfied with counsel.

Plea counsel testified he represented the Applicant on both these charges and the Marion charges. Plea counsel testified the Marion charges were resolved first (the Applicant was found guilty and sentenced to fifty (50) years imprisonment). Plea counsel testified he filed discovery motions in this case and received full discovery (which included SLED reports) prior to the plea hearing. Plea counsel believes he gave copies of those materials to the Applicant. Plea counsel testified that, after the SLED reports came back, the weight of the drugs had increased from what was noted in the incident report. Plea counsel stated he planned to argue this issue at trial through attacking credibility. Plea counsel stated he made a strategic decision not to move for a suppression hearing because the State could simply make a motion to amend and - If the trial judge granted it - the Applicant would face enhanced penalties. Plea counsel stated that, when the co-defendant decided to testify for the State partway through trial, the parties engaged in plea negotiations. Plea counsel stated the offer was for a thirteen (13) year negotiated sentence and that he explained this (and the nature of such a plea offer) to the Applicant. Plea counsel testified the Applicant agreed to plead guilty. Plea counsel testified he never told the Applicant he would help him win a subsequent PCR hearing.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the

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Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge both that he wanted to plead guilty and that the facts recited by the solicitor were true. (Transcript, pp.160-61; p.165). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Transcript, pp.159-60; p.164).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have challenged the drug evidence. Plea counsel testified he chose not to move to suppress the drugs because he was afraid the State would successfully amend the charges and expose the Applicant to enhanced penalties. Plea counsel further stated his plan at trial would have been to challenge the credibility of the State's witnesses on this issue. This Court finds plea counsel's decision not to challenge the drug evidence was a valid strategic decision. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). Regardless, this Court notes the Applicant failed to introduce any documentation to support his contention that the difference in the drugs' weights was because of a defective chain of custody. See, e.g., Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense). Further, even assuming arguendo there was a weak link in the chain of custody, that would not have meant the evidence would have been automatically

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suppressed. Evidence is inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the evidence was not established at least as far as practicable. See State v. Horton, 359 S.C. 555, 567, 598 S.E.2d 279, 286 (Ct. App. 2004). If there is a weak link in the chain of custody, the question is only one of credibility and not admissibility. See id. at 568, 598 S.E.2d at 286.

This Court finds the Applicant failed to meet his burden of proving plea counsel coerced him into entering a guilty plea. Plea counsel testified the decision was made to halt the trial and enter a guilty plea because the Applicant's co-defendant had decided (during the trial itself) that he would testify on behalf of the State. Plea counsel testified he explained the State made an offer for a thirteen (13) year negotiated sentence and that he explained both the offer and the ramifications to the Applicant. This Court finds plea counsel's testimony is credible. As stated supra, the Applicant waived his trial rights and stated both that he was satisfied with counsel and that he had not been coerced. (Transcript, pp.159-61; p.164; p.165). The plea judge informed the Applicant of the minimum and maximum sentences he was facing and it was noted that, while these were true third offenses, the Applicant was pleading guilty to second offenses. (Transcript, p.155; p.159). The plea judge also informed the Applicant that, the negotiated sentence was accepted, the Applicant would receive a thirteen (13) year sentence and the Applicant stated he understood. (Transcript, p.161). This Court finds the Applicant was aware of the consequences of pleading guilty and made a voluntary decision to do so. This Court also finds plea counsel did not coerce the Applicant into pleading guilty and that the record supports the voluntariness of the plea. See Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (finding that, before a defendant can enter a guilty plea, he "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the

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nature of the constitutional rights being waived”).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel’s representation. Furthermore, the Applicant’s guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this application for PCR

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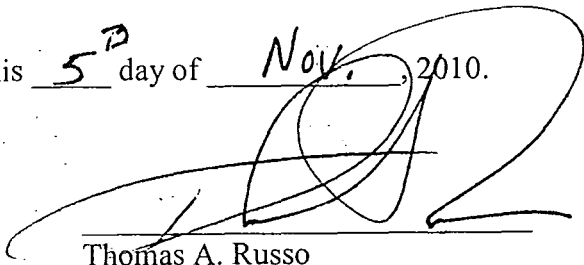
must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 5th day of Nov., 2010.

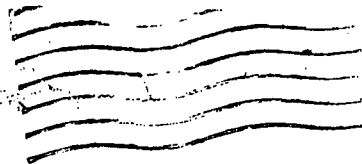
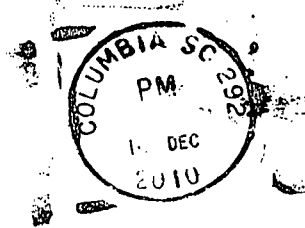


Thomas A. Russo
Presiding Judge
Fourth Judicial Circuit

Florence, South Carolina.

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