

# 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  
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COLUMBIA, SOUTH CAROLINA 29201  
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[www.sccourts.org](http://www.sccourts.org)

May 31, 2012

The Honorable Jeanette W. McBride  
Clerk of Court  
PO Box 2766  
Columbia SC 29202-2766

## REMITTITUR

Re: Jenkins, Ronald v. The State  
Lower Court Case No. 2009CP4002452  
Appellate Case No. 2010-171147

Dear Ms. McBride:

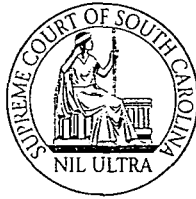
The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

Enclosure

cc: Wanda H. Carter, Esquire  
Brian T. Petrano, 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

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April 18, 2012

Deputy Chief Appellate Defender Wanda H. Carter  
South Carolina Commission on Indigent Defense  
P O Box 11589  
Columbia, SC 29211

Re: Jenkins, Ronald v. The State

Dear Counsel:

The Court has issued the following Order on your Petition for a Writ of Certiorari in the above entitled matter:

“Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.  
For the Court

April 18, 2012.”

The remittitur will be sent to the lower court as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,  
*Daniel E. Shearouse*  
CLERK

DES/jj

cc: Assistant Attorney General Brian T. Petrano (Robert Corney)

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Richland County

Clifton Newman, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

MAR 25 2011

**S.C. Supreme Court**

RONALD JENKINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_  
PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

*Petition for Writ of Certiorari Denied*  
*FOR THE COURT.*

*April 18, 2012*

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## ISSUE PRESENTED

Trial counsel erred in failing to develop a mental illness defense in the case because it was clear that petitioner, who had lost his house, car, income, and inheritance, and had suffered imprisonment per his unfavorable divorce settlement, became so mentally incompetent that he burned down his ex-wife's lawyer's legal office without being cognizant of his actions.

## STATEMENT

Petitioner Ronald Jenkins pled guilty to stalking, second degree burglary, and second degree arson during the February 9, 2009 term of the Richland County General Sessions Court before the Honorable G. Thomas Cooper, Judge. Petitioner was sentenced to imprisonment for an aggregate period of twenty years. App. 1-50. Petitioner did not appeal his convictions and/or sentences in the case.

On April 3, 2009, petitioner filed a post-conviction relief application with the Richland County Office of the Clerk of Court. App. 52-66. The respondent filed a return requesting that a hearing be held in the case. App. 67-83.

A hearing was convened on April 15, 2010, at the Richland County General Sessions Court before the Honorable Clifton Newman, Judge. App. 85-111. On July 19, 2010, Judge Newman issued an order of dismissal in the case. App. 113-133.

Petitioner appealed. This petition follows.

## ARGUMENT

Trial counsel erred in failing to develop a mental illness defense in the case because it was clear that petitioner, who had lost his house, car, income, and inheritance, and had suffered imprisonment per his unfavorable divorce settlement, became so mentally incompetent that he burned down his ex-wife's lawyer's legal office without being cognizant of his actions.

After the state alleged that petitioner broke into and burned down his ex-wife's attorney's law office, petitioner pled guilty to second degree arson and second degree burglary. App. 1-50. However, petitioner testified at the PCR hearing that he did not know who burned down the law office. App. 98, lines 24-25. Also during the post-conviction relief hearing, petitioner explained in effect that the anger and stress he experienced per his divorce warranted a mental evaluation and would have established the basis of a mental illness defense in his case. Petitioner testified that his ex-wife's divorce lawyer was responsible for "throwing [him] out of [his] home" among numerous other indignations, and thus resulted in the formation of "[his] state of mind at the time the offense[s]" were committed in the case. App. 91, lines 2-15. Petitioner stated that due to the stress he suffered from the divorce action, counsel should have re-scheduled his initial mental evaluation appointment, which was cancelled prior to his plea. Petitioner testified in effect that he was open to the presentation of a mental illness defense in his case. App. 91, line 21 – p. 92, line 2; App. 97, lines 11-12.

Trial counsel admitted that petitioner's scheduled mental evaluation was cancelled and added that since petitioner's stress was so high [that] he wanted to burn down an attorney's office, then this "would be grounds for an insanity defense." App. 103, line 13 – p. 104, line 9.

The facts of the case supported petitioner's need for a mental evaluation. During the plea proceeding, the solicitor apprised the court of petitioner's dismay over his ex-wife's attorney's settlement in their divorce proceeding that finally which ended in July 2007. Apparently, petitioner interpreted the settlement to be a total loss for him, i.e. the loss of his home, car, income, and inheritance. Petitioner responded to this perceived defeat as insurmountable and reacted by calling his ex-wife's lawyer's law firm twenty-eight times leaving threatening messages, and by appearing at the law firm and threatening the attorneys who worked there. Petitioner's behavior continued and then culminated on August 31, 2007, when he doused the law firm in question with gasoline and set the office on fire. App 8, line 17 – p. 16, line 18.

During the plea proceeding, petitioner explained himself as follows:

Petitioner: [The ex wife's attorney had me] signing a Quit claim deed, signing over my interest in the property to my wife...that meant that my name was taken off the deed but I remained responsible for the mortgage and all on the home...I would have no ownership interest in the property, but yet still that mortgage loan would still be in my name if she defaulted on that loan –

... and [there has been] a lien against my mother's estate ...[and] over 20 some thousand dollars in spousal support occurred, and over – this is just an estimate – over \$20, 000 in attorney's fees she was not awarded but had accrued upon the divorce; [and counsel has] taken out liens against my mother's estate. [and] ...paid off liens for two cars that were repossessed. One car which was only in my name...so now [attorney] got \$7,000 attorneys fees, \$20,000 in spousal support; plus, them two cars come out of that \$65,000 in liens on my mother's estate. Those are some of the things that drove me to anger that he did, with all this stuff, just knowing what he's done. ...they were just out of anger...I was fighting mad at the attorney... I was making \$25,000 a year working on cars and stuff. There is no way I can pay this, no 700 or \$800 a month for the rest of my life. There was no way. There was no way I could afford to do that, plus live myself.

App. 37, line 12 – p. 42, line 2.

During the post-conviction relief hearing, petitioner explained his mental state as follows:

Petitioner: [His ex-wife's attorney] took my name off my house without me refinancing it. He – there were car liens on my house in Columbia that were over \$27,000...and he's got those liens placed against my mother's estate to get them paid off. He's – he had my wife alimony put in that \$27,000, he had his attorney fees put in that \$27,000. So now there's a lump sum of \$65,000 in liens on my mother's estate and all the money is coming to him.

App. 98, lines 10-25.

Regarding the mental illness defense issue, the post-conviction relief judge ruled that the petitioner did “not present any evidence of a current evaluation to show that he was or is affected by any mental issues” and thus denied relief on that allegation and all other allegations of ineffective assistance of counsel. App. 130.

A defendant is guilty, but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong; and a defendant is insane if at the time of the offense, the defendant, due to mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong. State v. Hartfield, 300 S.C. 469, 388 S.E.2d 802 (1990). In Hartfield, the court found error where the trial judge did not allow the defendant to present an insanity or guilty but mentally ill defense where the defendant desired to present evidence that his drug use caused permanent and irreversible brain damage which manifested itself in a mental illness.

As a rule, counsel has a duty to conduct adequate and appropriate investigations in a case. Strickland v. Washington, 466 U.S. 668 (1984). Also, with respect to cases where mental issues abound, counsel has a duty to investigate, prepare, and present evidence of mental illness on behalf of the defense. See Von Dohlen v. State, 360 S.C. 598, 601 S.E.2d 738 (2005), where the Court

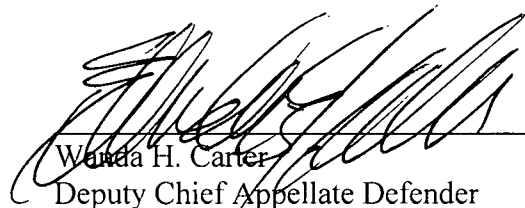
found that counsel was ineffective in failing to provide the psychiatrist who testified at trial with all the defendant's extensive medical records and information, so that the defendant's true mental diagnosis of major episodes of depression with severe symptoms of anxiety and psychosis could have been presented during the penalty phase and a death sentence avoided. Also, compare Wiggins v. Smith, 539 U.S. 510 (2003), where trial counsel was found ineffective in failing to expand their investigate into the defendant's background with sufficiency in order to learn of the defendant's diminished mental capacity and childhood abuse, rape, and molestation in order to show his impaired mental and psychological state. Compare further, Davenport v. State, 301 S.C. 39, 389 S.E.2d 649 (1990), where the Court held that counsel was ineffective in failing to develop an insanity defense when the state's psychiatrist diagnosed the defendant as legal insane. In the federal court cases of People v. Coroma, 80 Cal. App. 3d 684, 145 Cal. Rptr. 899 (1<sup>st</sup> Dist. 1978); Ramseyer v. Glodgett, 853 F. Supp. 1239( WD.Wash. 1994), and Hull v. Hyler, 190 F.3d 88 (C.A. 3PA, 1999), the courts found counsel ineffective in failing to investigate into evidence establishing client's mental incompetence.

Clearly, a mental evaluation for petitioner should have been re-scheduled by counsel and a mental illness defense pursued in the case. Here, counsel's failure to investigate into and develop a mental illness defense constituted deficient legal representation that was below the range of competence demanded of criminal attorneys. Hill v. Lockhart, 484 U.S. 52 (1985). But for counsel's error in this regard, there was a reasonable likelihood that petitioner would not have pled guilty and opted for a trial by jury. In this instance, petitioner was denied effective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

CONCLUSION

Based on the foregoing argument, petitioner's writ of certiorari should be granted in order to allow full briefing on the issue.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 25<sup>th</sup> day of March, 2011.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Richland County  
Clifton Newman, Circuit Court Judge  
\_\_\_\_\_

RONALD JENKINS,

PETITIONER,

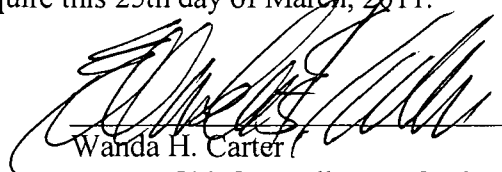
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_


I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Brian Petrano, Esquire this 25th day of March, 2011.

  
\_\_\_\_\_  
Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 25th day  
of March, 2011.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY  
Court of Common Pleas

RECEIVED

JUL - 5 2011

The Honorable Clifton Newman, Circuit Court Judge

S.C. Supreme Court

ORIGINAL

Case No. 2009-CP-40-02452

Ronald Jenkins, ..... Petitioner,

v.

State of South Carolina, ..... Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY ELLIOTT  
Assistant Deputy Attorney General

BRIAN T. PETRANO  
Assistant Attorney General

P.O. Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina  
Commission on Indigent  
Defense  
PO BOX 11589  
Columbia, SC 29211  
803-734-1343

ATTORNEYS FOR PETITIONER

**STATEMENT OF ISSUES ON APPEAL** ..... 1  
**STATEMENT OF THE CASE**..... 2  
**STANDARD OF REVIEW** ..... 3  
**ARGUMENT**..... 5  
    **THE PCR COURT CORRECTLY DENIED RELIEF WHEN TRIAL COUNSEL DID NOT ERR IN FAILING TO DEVELOP A MENTAL ILLNESS DEFENSE IN THE CASE** ..... 5  
**CONCLUSION** ..... 7

**STATEMENT OF ISSUES ON APPEAL**

**WHETHER THE PCR COURT CORRECTLY DENIED RELIEF WHEN  
TRIAL COUNSEL DID NOT ERR IN FAILING TO DEVELOP A  
MENTAL ILLNESS DEFENSE IN THE CASE?**

## STATEMENT OF THE CASE

The Respondent agrees with Petitioner's statement of the case for purposes of this Return.

Petitioner Ronald Jenkins pled guilty to stalking, second degree burglary, and second degree arson during the February 9, 2009 term of the Richland County General Sessions Court before the Honorable G. Thomas Cooper. Petitioner was sentenced to imprisonment for an aggregate period of twenty years. App. 1-50. Petitioner did not appeal his convictions and/or sentences in the case.

On April 3, 2009, Petitioner filed a post-conviction relief application with the Richland County Office of the Clerk of Court. App. 52-66. The respondent filed a return requesting that a hearing be held in the case. App. 67-83.

A hearing was convened on April 15, 2010, at the Richland County General Sessions Court before the Honorable Clifton Newman. App. 85-111. On July 19, 2010, Judge Newman issued an order of dismissal in the case. App. 113-133.

The Petitioner filed a Petition for Writ of Certiorari on March 25, 2011. This return follows.

## STANDARD OF REVIEW

The proper standard of review of a post conviction relief evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry v. State,

300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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." Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). Even with respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

## ARGUMENT

### THE PCR COURT CORRECTLY DENIED RELIEF WHEN TRIAL COUNSEL DID NOT ERR IN FAILING TO DEVELOP A MENTAL ILLNESS DEFENSE IN THE CASE

The PCR court correctly denied relief as to the Petitioner's claim that counsel was ineffective for failing to develop a mental illness defense in the case. The PCR court found that plea counsel's testimony at the PCR hearing was credible and that the Petitioner's testimony was not. (App. p. 128). At the PCR hearing, plea counsel testified that he "didn't think [they] had grounds for" an insanity defense. (App. p. 102, l. 16 – 18). Plea counsel further testified that he scheduled a mental evaluation for the Petitioner but then canceled it due to the Petitioner not wanting to get evaluated. (App. p. 103, l. 17 – 20).

As the PCR court explained in the Order of Dismissal, the Petitioner did not present "any evidence of a current evaluation to show that he was or is effected by any mental issues." (App. p. 130). The PCR court correctly held that the Petitioner, in order to establish prejudice from the trial counsel's failure to have a mental evaluation of the Petitioner, must bring forth a favorable witness or testimony at the PCR hearing. "The [Petitioner's] mere speculation as to what a mental evaluation would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995)." (App. p. 130).

The Petitioner has not met his burden and has failed to provide any evidence of probative value that would require a reversal of the PCR court's findings; accordingly, the Petition for Writ of Certiorari should be denied.

## CONCLUSION

For the reasons stated above, this Court should affirm the PCR Court's Order and deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY ELLIOTT  
Assistant Deputy Attorney General

BRIAN T. PETRANO  
Assistant Attorney General

P.O. Box 11549  
Columbia, SC 29211  
(803) 734-3737

By: 

ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina  
July 1, 2011

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal From Richland County  
Honorable Clifton Newman, Circuit Court Judge

Ronald Jenkins, 333126,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

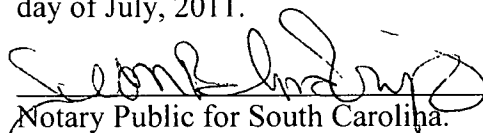
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari has been served upon opposing counsel, Wanda H. Carter by mailing two (2) copies addressed to: South Carolina Office of Appellate Defense; 1330 Lady Street, Suite 401; Columbia, SC 29211; with postage prepaid, this 5<sup>th</sup> day of July, 2011.



BRIAN T. PETRANO  
ATTORNEY FOR RESPONDENT

SWORN to before me this 5<sup>th</sup>  
day of July, 2011.

 (L.S.)  
Notary Public for South Carolina.

My Commission Expires: ~~My Commission Expires~~  
January 30, 2013

# The Supreme Court of South Carolina

Ronald Jenkins,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Clifton Newman  
Richland County  
Trial Court Case No. 2009-CP-40-02452


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## ORDER

---

Petitioner moves to relieve his counsel and have new counsel appointed. The motion is denied.

IT IS SO ORDERED.

  
C.J.  
FOR THE COURT

Columbia, South Carolina

September 1, 2011

cc: Assistant Attorney General Brian T. Petrano  
Deputy Chief Appellate Defender Wanda H. Carter  
Mr. Ronald Jenkins, #333126

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
In The Court of Common Pleas

Clifton Newman, Circuit Court Judge

DOCKET NUMBER - 09-CP-40-2452

Ronald L. Jenkins, #333126                      PETITIONER

-VS-

State of South Carolina                      RESPONDENT

MOTION FOR RELIEF OF COUNSEL

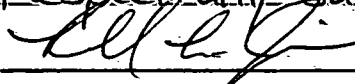
Petitioner wrote Mrs. Carter a detailed letter in May 2011 alleging fraud and providing her with a copy of the pending lawsuit (Case No. 2010-CP-40-04168) and petitioner's counterclaim clearly outlining this crime. Petitioner has consistently raised these allegations at both his Plea hearing and his PCR hearing and Judge Newman addresses my allegations of "fraud" extensively throughout his order of dismissal. Petitioner now seeks to have counsel relieved for ineffectiveness and new counsel appointed to present this line of argument.

Wanda H. Carter  
Deputy Chief Appellate Defender  
South Carolina Commission  
on Indigent Defense  
PO BOX 11589  
Columbia, S.C. 29211-1589  
Attorney for Petitioner

Other Counsel of Record:

Brian T. Petrano  
Assistant Attorney General  
The State of South Carolina  
Office of The Attorney General  
PO BOX 11549  
Columbia, S.C. 29211-1549  
Attorney for Respondent

29 August 2011

Respectfully submitted,  


Ronald L. Jenkins, #333126  
McCormick Correctional Ins.  
386 Redemption Way  
McCormick, S.C. 29899

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
In The Court of Common Pleas

Clifton Newman, Circuit Court Judge

Ronald L. Jenkins, #333126

PETITIONER

- VS -

State of South Carolina

RESPONDENT

### CERTIFICATE OF SERVICE

I certify that a true copy of the Motion for Relief  
of Counsel in this case has been served to attorney's  
Wanda Carter and Brian T. Petrano this 29<sup>th</sup> day  
of August     , 2011.

*Ronald L. Jenkins*

Ronald L. Jenkins, #333126

Petitioner

SWORN TO BEFORE ME this 29 day  
of August     , 2011.

*Lenny G. Morten*

Notary Public for South Carolina

My Commission Expires: Feb 28, 2019



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

May 24, 2011

Mr. Ronald Jenkins #333126  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899

Re: Your recent letter

Dear Mr. Jenkins:

Thank you for your letter regarding your extraneous legal action. I can't understand how these matters would affect your pending appeal.

Sincerely,

Wanda Carter  
Appellate Defender

WHC/kam

**RECEIVED**

AUG 30 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

August 17, 2011

Deputy Chief Appellate Defender Wanda H. Carter  
South Carolina Commission on Indigent Defense  
P O Box 11589  
Columbia, SC 29211

Re: Jenkins, Ronald v. The State, 2009-CP-40-02452


Dear Counsel:

Enclosed are copies of correspondence filed by Mr. Jenkins. Since you represent him in this matter, no action will be taken by this Court this *pro se* filings. Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

To the extent he may be asserting that he has good cause to have you relieved as counsel, then that is a matter that he will need to raise by appropriate motion to this Court. That motion will need to comply with the requirements of Rule 240, SCACR, to include providing a proof of service showing that the motion has been served on you and the counsel for the State.

Of course, if he needs assistance in 2010-CP-40-04168 or 2008-CP-40-09130, he should contact an attorney to assist him in those matters.

Very truly yours,



CLERK

Enclosures

cc: Assistant Attorney General Brian T. Petrano  
Mr. Ronald L. Jenkins, #333126

Daniel E. Shearouse  
Clerk of Court

29 August 2011

The Supreme Court of South Carolina  
PO Box 11330  
Columbia, S.C. 29211

Dan -  
Ack. motion &  
request returns?  
TK  
(yes)

Dear Mr. Shearouse,

I'm sorry for writing  
draft of my motion, but this is all I have available  
to me at this moment. SCDC policy is not to  
make copies of hand written motions unless they have  
already been stamped and filed per Mrs. Morton. Would  
you please accept these two hand written copies in  
place of the six copies that I am required to file by  
statute 240. Please send me back a filed copy.

Thank you,  
Kelli

**RECEIVED**

AUG 30 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

RICHLAND

Neuman, Circuit Court Judge

Case No. 2009-CP-40-02452

Ronald L. Jenkins, # 333126

Petitioner,

State of South Carolina, v.

Respondent,

MOTION FOR RELIEF OF COUNSEL

Wanda H. Carter  
Deputy Chief Appellate Defender  
South Carolina Co. on Ind. De  
PO Box 11589  
Columbia SC. 29211

Other Counsel of Record:

Brian T. Petrano

Assistant Attorney General

PO Box

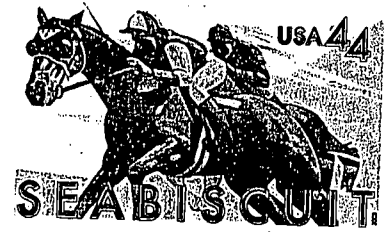
Columbia SC. 29000

803-060-0000

Attorney for Respondent

Ronald L. Jenkins #333126  
McCormick Correctional Ins.  
386 Redemption Way  
McCormick, S.C. 29899

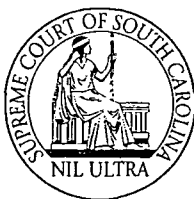
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MAILED FROM ZIP CODE 29835  
UNITED STATES POSTAGE  
PRIME BOOKS  
\$ 00.200



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

29211#1330





# 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

August 17, 2011

Deputy Chief Appellate Defender Wanda H. Carter  
South Carolina Commission on Indigent Defense  
P O Box 11589  
Columbia, SC 29211

Re: Jenkins, Ronald v. The State, 2009-CP-40-02452

Dear Counsel:

Enclosed are copies of correspondence filed by Mr. Jenkins. Since you represent him in this matter, no action will be taken by this Court this *pro se* filings. Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

To the extent he may be asserting that he has good cause to have you relieved as counsel, then that is a matter that he will need to raise by appropriate motion to this Court. That motion will need to comply with the requirements of Rule 240, SCACR, to include providing a proof of service showing that the motion has been served on you and the counsel for the State.

Of course, if he needs assistance in 2010-CP-40-04168 or 2008-CP-40-09130, he should contact an attorney to assist him in those matters.

Very truly yours,

CLERK

Enclosures

cc: Assistant Attorney General Brian T. Petrano  
Mr. Ronald L. Jenkins, #333126

Supreme Court of South Carolina  
The Honorable Jean Toal  
Post Office Box 11330  
Columbia, South Carolina 29211

August 13, 2011

S.C. SUPREME COURT  
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OFFICE OF  
CHIEF JUSTICE

Dear Judge Toal,

Your honor, I am writing you to notify you of the pending cases in the Court of Common Pleas; (Case NO. 2008-CP-40-009130) and (Case NO. 2010-CP-40-4168), and how I believe they effect my case (Case NO. 2009-CP-40-2452) that is soon to be heard before the Supreme Court. In both of these lesser cases, I am maintaining my allegations of fraud against Mr. Masella and in my counter-claim in the most recent case I attempt to present the evidence that I was denied the opportunity to present at both my Plea Hearing and my Post-Conviction Relief Hearing. There is a clear conflict of interest in this case (Case NO. 2010-CP-40-4168) because the original judge, Judge Goolsbe, recused himself after he allowed my counter-claim to be filed and the judge who presided over my PCR, Judge Newman, threw out my counter-claim which would have validated my arguments in the PCR hearing.

Your honor, Mr. Masella represented my ex-wife,

Ms. Maria Jenkins, in our divorce proceeding back on October 25, 2004, in which he read the agreement into the court record. He made several changes to the agreement outside of court when he wrote the decree which the judge signed on December 5, 2004.

The biggest change was that in court he said that I would sign over the title to the marital home once my ex-wife refinanced. Your honor, what he wrote in the decree was that I would sign over my share of the equity in the house 30 days after Judge Mobley signed the order. I knew from having worked years in the mortgage industry that he intended for me to sign a quit-claim deed and I refused to make any payments towards the alimony or his attorney fees.

Your honor, I hired a new attorney, Mrs. Wendy Pauling Levine, and with the transcripts from the hearing she was able to show the changes and Judge Mobley declared a mistrial. Mr. Masella challenged that decision with a letter from my old attorney, Mr. Kenneth Davis, stating that the decree matched his notes and about 5 months later the judge reinstated the divorce. At this point, Mrs. Levine filed an appeal with the Court of Appeals which took over a year for them to rule on. The court ruled in his favor which placed me years in arrearages on both

the alimony and the attorney fees. The Appeals Court decision also meant that he would be able to throw me in jail over and over again for not following the terms of an agreement he had altered.

To back track a little bit your honor, my mother, Mrs. Elizabeth G. Jenkins, died about 3 months after the divorce which left over 100 acres of land, at 1840 Poultry Lane Gadsden, S.C. 29052, to be divided among my seven siblings and me. Mr. Masella, once the Court of Appeals had ruled against me and I was in jail awaiting trial for arson, filed a motion in Probate Court against my share of the inheritance to try and collect his money. He took me back to Family Court your honor, where I had to represent myself, and tried to have Judge Anne Gue' Jones force me to sign a quit-claim deed which I refused to do. Judge Jones then sentenced me to 6 months in jail and ordered that Mr. Masella prepare a new deed removing off the title to my house located at 2 East Lake Court Columbia, S.C. 29209. Mr. Masella also asked the judge to grant him liens on my mother's estate for the alimony, attorney fees, and for 2 cars that had been repossessed and liens had already been placed on my house in Columbia.

Your honor, The problem Mr. Masella had is that

my ex-wife could not afford to refinance the mortgage that is with First Citizens Mortgage, so he took me off the title without her refinancing it and without paying off over \$28,000.00 in car liens on the title. So now we have Mr. Masella with a lien on my mother's estate for over \$65,000.00 that includes the amounts for 2 cars that he did not payoff when he transferred me off the title to my house in Columbia. One of the cars, a Ford Mustang, was in my name only and he had no reason whatsoever to either payoff or to include in his lien on my mother's estate. The attorney for the Kia Sportage, Mr. B. Ray Woodard of Waltersboro, once he found out that I was taken off the title without his lien being paid off, took out a new lien on my house and added over \$6,000.00 in interest that had accrued since the lien was first placed on the home in February 2004.

Your honor, Mr. Masella has not been paid by me since I agreed to pay his attorney fees and my ex-wife only works a part-time job on Fort Jackson. I filed for divorce in the fall of 2003 and since that time we have been through countless motions, rules to show cause, an intervention in Probate Court, the Appellate Court process, and now 2 matters pending in the Court of Common Pleas.

Your honor, many of his legal fees were not granted when Mrs. Levine was able to show with the transcripts that Mr. Masella had changed the agreement. In fact, in February 2006, he filed a rule to show cause in which he requested over \$11,000.00 in attorney fees and this was 4 months prior to Mrs. Levine filing before the Court of Appeals for which she charged me \$5,000.00. To date, your honor, including fees granted by the Family Court and the Court of Appeals, Mr. Masella has only been awarded a little over \$7,000.00 for his work for Ms. Jenkins. He recently, however, was awarded over \$759,000.00 from Judge Newman in the civil suit, for the arson committed on his office, in February of this year. That matter is pending until his attorneys from Harrison + Radeker, P.A. draft an order as to how they intend to collect.

In my opinion, your honor, not only has Mr. Masella defrauded me, he has cheated the lienholders out of money owed them as well. I believe that he has gotten favorable rulings because he is a former City of Columbia Magistrate Judge, a former Richland County Solicitor, and he clerked at the South Carolina Court of Appeals for the Honorable Kaye Hearn, the Chief Justice on the Court of Appeals at the time my case was heard and the newly appointed South Carolina Supreme Court

386 Redemption Way  
McCormick, S.C. 29899

Supreme Court of South Carolina

August 13, 2011

The Honorable Jean Toal

Post Office Box 11330

Columbia, South Carolina 29211

Dear Judge Toal,

Your honor, here are two case laws that I feel show Mr. Leddy, my public defender, Mr. Jeffries, my PCR attorney, and Mrs. Wanda Carter, my appellate defender, are all ineffective for not presenting my evidence of fraud:

Trial counsel's failure to investigate backgrounds of victims and witnesses to determine if they had criminal records or were involved in illegal activities did not prejudice defendant, and thus, counsel was not ineffective; even if eyewitnesses or victims had criminal record, no evidence was presented to show crime was one of moral turpitude which could be used for impeachment purposes. Jackson v. State, 495 S.E. 2d 768 (1998)

In Eddings, the Court found no distinction under Lockett between a statutory provision precluding a judge or jury from considering mitigating evidence

and a trial judge's refusal to do so: "Just as the State may not by statute preclude the sentencer from considering any mitigating factor, neither may the sentencer refuse to consider, as a matter of law, any relevant mitigating evidence." Eddings v. Oklahoma, 455 U.S. 104 (1982)

Judge Cooper allowed me to talk about what I considered fraud at my plea hearing, but did not allow me to enter any Family Documents into the record.

Your honor, here are two South Carolina Code of Laws which tell me Mr. Masella's pending law suit will never come back up on the docket:

§ 40-5-360 Splitting fees with lay persons unlawful  
It is unlawful for a person, partnership, corporation, or association to divide with or receive from, or to agree to divide with or receive from, an attorney or group of attorneys, whether practicing in this State or elsewhere, any portion of a fee or compensation charged or received by an attorney or any valuable consideration or reward as an inducement for placing or in consideration of having placed

in the hands of an attorney, or in the hands of another person a claim or demand of any kind for the purpose of collecting the claim or bringing an action on the claim or of representing the claimant in the pursuit of any civil remedy for the recovery of the claim. This section does not apply to an agreement between attorneys to divide between themselves the compensation to be received. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

§ 34-3-110 Crimes against a federally chartered or insured financial institution.

(A) A person knowingly may not execute, or attempt to execute, a scheme or artifice to:

(1) defraud a federally chartered or insured financial institution; or

(2) obtain monies, funds, credits, assets, securities, or other property owned by or under the custody or control of a federally chartered or insured financial institution by means of false or fraudulent pretenses, representations, or promises.

Your honor, due to the case law I just mentioned and the laws of the State of South Carolina, I don't see how Mr. Masella can collect any of the liens he has been awarded. Mr. Masella cannot have my name added back onto my mother's estate because he has broken the law when he commingled his attorney fee's with my ex-wife's alimony, not to mention the car liens, and without that he cannot collect on either of his liens because I do not have any other property in Richland County. He illegally took my name off of my home in Columbia so placing a lien there is not an option either.

Your honor, from the very beginning, all I wanted was a regular divorce and to go on and lead the most productive life possible. That was taken away from me by the actions of Mr. Masella and now at the minimum I am trying to save the property that was left to me and my siblings by our parents whose memory we cherish so dearly. It is not so much the value of the property, your honor, but the attachment to the land we grew up on is why we will to lengths of contacting law schools, the Justice Department, or any government agency that could possibly help us save it.

Sincerely,  
Ronell L. Jones #333126

State of South Carolina

County of Richland

Robert M.P. Masella, Masella Law Firm,  
PA, and M Fox, Inc.,

Plaintiffs,

vs.

Ronald L. Jenkins,

Defendant,

In the Court of Common Pleas

Case NO. 2010-CP-40-4168

ANSWER

Check One:

A.  I do not live in this county. I want this case transferred to my home county if possible.

B.  I admit everything in the complaint and do not want a trial.

C.  I admit that I am responsible, but not for the total amount claimed by the plaintiffs.

D.  I deny that I am responsible at all.

The Defendant, answering the Plaintiffs, states:

1. The Defendant is a resident of McCormick County and not Richland County as stated by the Plaintiffs.

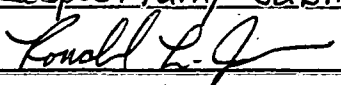
2. Plaintiff Robert M.P. Masella is also aware that an appeal is pending in this Court of Common Pleas (Case NO. 2008-CP-40-009130) of the Probate Court's (Case NO. 2008-ES-40-349) decision adding Defendant back onto the title to Defendant's deceased mother's estate.

3. Pending the outcome of the appeal, the Defendant may not have any real property in Richland County to attach a lien to.

4. Accordingly, Defendant believes that this lawsuit (Case NO. 2010-CP-40-4168) and pending lawsuit (Case NO. 2008-CP-40-009130) come down to essentially the same issues, whether or not Defendant Ronald L. Jenkins has an interest in the estate of Defendant's deceased mother.

5. Respectfully, Defendant asks that this lawsuit be dismissed because it is illegal to have two cases between the same parties for basically the same issues in the same court concurrently.

Dated: July 20, 2010

Respectfully submitted,  
 # 333126  
386 Redemption Way  
McCormick, South Carolina 29899

State of South Carolina

County of Richland

Robert M.P. Masella, Masella Law Firm,  
PA, MFox, Inc., and Maria Jenkins, et. al.  
Plaintiffs,

vs

Ronald L. Jenkins,

Defendant,

In The Court of Common Pleas

Case NO. 2010-CP-40-4168

COUNTERCLAIM

The Defendant, complaining of the Plaintiffs herein, allege:

1. The Plaintiffs, Robert M.P. Masella and Maria Jenkins, are actively committing fraud against the Defendant and the car companies which placed two car liens on the Defendant's home that went unpaid when the Plaintiff, Robert M.P. Masella, removed the Defendant's name off the title to the Defendant's home and then included the money owed for the cars in his lien on the Defendant's mother's estate made payable to Plaintiffs Robert M.P. Masella and Maria Jenkins.

2. The Plaintiff's, Robert M.P. Masella, malicious prosecution of the Defendant's divorce proceeding, where Plaintiff intentionally misled the court by falsely representing the terms of the agreement and repeatedly attempted to have the Defendant thrown in jail for contempt for not following the terms of a divorce that the Plaintiff had

altered, led to the Defendant's unlawful act.

3. In The Transcript of Record From The Family Court (Case NO. 03-DR-40-3517) starting on page 3 line 22 through page 4 line 1, Plaintiff Robert M.P. Masella states "THAT THE PARTIES HAD A HOME TOGETHER. THAT HOME, MR. JENKINS WILL TRANSFER HIS INTEREST IN THE HOME AND ITS CONTENTS TO MRS. JENKINS. WHEN SHE REFINANCES, HE WILL DO WHATEVER PAPERWORK IS NECESSARY TO FACILITATE THAT TRANSFER OF THE DEED."

4. In The Final Decree of Divorce and Approval of Agreement which Plaintiff Robert M.P. Masella prepared that Judge Berry L. Mobley signed on December 5, 2004, the Plaintiff wrote on page 4 paragraph 4(a) "DEFENDANT IS HEREBY AWARDED SOLE OWNERSHIP AND POSSESSION OF THE MARITAL RESIDENCE AND ITS CONTENTS, AND THE PLAINTIFF SHALL TRANSFER HIS INTEREST IN THE EQUITY OF THE MARITAL RESIDENCE TO THE DEFENDANT WITHIN 30 DAYS FROM THE SIGNING OF THIS ORDER;"

contents of the home;

29. The Defendant was forced to hire an attorney to defend his rights in REM.

30. The Plaintiff's actions were malicious, wanton, and without justification or excuse.

31. Defendant Ronald L. Jenkins is entitled to recover actual and punitive damages for this false representation and deceit.

### FOR A SECOND CAUSE OF ACTION

32. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

33. The Plaintiff's Robert M. P. Masella and Maria T. Jenkins did conspire together to defraud Defendant Ronald L. Jenkins of Defendant's home residence and personal property.

34. Plaintiff Maria T. Jenkins did convert property of Defendant Ronald L. Jenkins to her own use, such manner of conversion including, but not being necessarily limited to, wrongful taking the same and making possession of the same by the Defendant

impossible.

35. The said conversion was without the Defendant's permission.

36. The Plaintiffs had no lawful authority to so convert the Defendant's property.

37. The said conversion was malicious and intentional and was accomplished with conscious indifference to the rights of the Defendant.

38. The Defendant is entitled to recover his home and actual and punitive damages from the Plaintiffs for this conversion.

### FOR A THIRD CAUSE OF ACTION

39. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

40. The Plaintiff Robert M.P. Masella did, through false representation, have Defendant falsely imprisoned in order to obtain a court ordered

quit-claim deed.

41. The said false imprisonment and deprivation of liberty was served during a six month sentence at the Alvin S. Glenn Detention Center which Defendant Ronald L. Jenkins completed at the order of Family Court Judge Anne Guè Jones.

42. The said false imprisonment was malicious and fraudulent in nature and without justification or excuse.

43. The Defendant is entitled to recover actual and punitive damages from the Plaintiff for this false imprisonment.

#### FOR A FOURTH CAUSE OF ACTION

44. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

45. The Plaintiffs Robert M.P. Masella and Maria Jenkins did conspire together to defraud Defendant Ronald L. Jenkins of inherited property renounced and deeded to his siblings which forced Defendant

to hire an attorney to defend his rights in  
PERSONAM.

46. The said fraud was malicious, willful, wanton,  
and without justification or excuse.

47. The Defendant is entitled to recover actual  
and punitive damages from the Plaintiffs for  
this fraud.

WHEREFORE, the Defendant pray:

a) For judgment against the Plaintiffs awarding  
the Defendant sole possession of the marital  
residence;

b) For judgment against the Plaintiffs awarding  
the Defendant actual damages;

c) For judgment against the Plaintiffs awarding  
the Defendant punitive damages;

d) For judgment against the Plaintiffs awarding  
the Defendant the costs of this action; and

e) For such other and further relief as the

Court may deem just and proper.

Dated: July 20, 2010

Respectfully submitted,  
Lonell L. [Signature] #333126  
386 Redemption Way  
McCormick, South Carolina 29899

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Robert M.P. Masella,

Plaintiff(s)

vs.

Ronald L. Jenkins,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 40-

41168

(Please Print)

Submitted By: Andrew S. Radeker

Address: P.O. Box 50143, Columbia, SC 29250

SC Bar #: 73743

Telephone #: (803) 779-2211

Fax #: (803) 779-6700

Other:

E-mail: drew@harrisonfirm.com

FILED 2010 JUN 23 AM 9:58

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20-CP-, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Administrative Law Judge (980), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

[Handwritten Signature]

Date: June 23, 2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Robert M.P. Masella, Masella Law Firm,  
PA, and MFox, Inc.,

Plaintiffs,

vs.

Ronald L. Jenkins,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-40-\_\_\_\_\_

SUMMONS

JEANETTE M. McBRIDE  
C.C.P. & G.S.

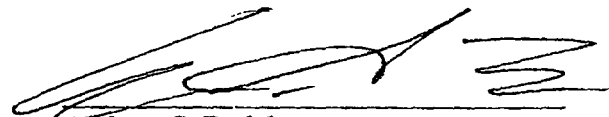
2010 JUN 23 AM 9:58

FILED

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscriber, at his office, P. O. Box 50143, Columbia, South Carolina 29250, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,



Andrew S. Radeker  
HARRISON & RADEKER, P.A.  
Post Office Box 50143  
Columbia, South Carolina 29250  
(803) 779-2211  
(803) 779-6700 (telefax)  
drew@harrisonfirm.com (email)

ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina

June 23, 2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Robert M.P. Masella, Masella Law Firm,  
PA, and MFox, Inc.,

Plaintiffs,

vs.

Ronald L. Jenkins,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-40-\_\_\_\_\_

COMPLAINT

JEANETTE W. McBRIDE  
C.C.P. & G.S.

2010 JUN 23 AM 9:58

FILED

The Plaintiffs, complaining of the Defendant herein, allege:

1. At times material to this action, the Plaintiffs were citizens and residents of the County of Richland, State of South Carolina, and business entities having their principal places of business in such county.
2. The Defendant is a citizen and resident of Richland County, South Carolina, and is in the custody of the South Carolina Department of Corrections.
3. The real property subject of this action is located in Richland County, South Carolina.
4. Acts of the Defendant subject of this action occurred in Richland County, South Carolina.
5. The Defendant broke into a building owned by Plaintiff MFox, Inc., without permission, and intentionally set fire to that building.
6. The building is located at 917 Calhoun Street in Columbia, South Carolina, and was the place of business of Plaintiffs Robert M.P. Masella and Masella Law Firm, P.A., which operated a law practice at that building.

7. In addition, the Defendant repeatedly threatened Plaintiff Robert M.P. Masella with bodily harm and engaged in a pattern of harassment of Plaintiff Robert M.P. Masella and staff of the Masella Law Firm, PA.

8. All of the Defendant's said actions were without any lawful excuse or lawful reason therefor.

9. The Defendant did these acts for the purpose of causing injury, discomfort, and anguish to the Plaintiffs.

10. The Defendant's actions have caused injury to the Plaintiffs, including, but not necessarily limited to:

- a. Loss of use of the building for an extended period of time;
- b. Loss of items of personal property that were contents of the building;
- c. Loss of productivity of the law practice at issue;
- d. Loss of profits of the law practice at issue;
- e. Loss of materials belonging to clients of the law practice;
- f. Replacement of items of personal property that were contents of the building;
- g. Replacement of the damaged portions of the building; and
- h. Anxiety, anguish, and suffering.

11. The Plaintiffs are entitled to judgment against the Defendant for actual and punitive damages.

**FOR A FIRST CAUSE OF ACTION**

12. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

13. Conduct of the Defendant placed Plaintiff Robert M.P. Masella in reasonable fear that the Defendant would inflict bodily harm upon him.

14. The Defendant's conduct that gave rise to this fear of bodily harm was willful, wanton, and without justification or excuse.

15. Plaintiff Robert M.P. Masella is entitled to recover actual and punitive damages from the Defendant for this assault.

**FOR A SECOND CAUSE OF ACTION**

16. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

17. The Defendant did convert property of the Plaintiffs to his own use, such manner of conversion including, but not being necessarily limited to, by destroying the same and by making possession of the same by the Plaintiffs impossible.

18. The said conversion was without the Plaintiffs' permission.

19. The Defendant had no lawful authority to so convert the Plaintiffs' property.

20. The said conversion was willful and intentional and was accomplished with conscious indifference to the rights of the Plaintiffs.

21. The Plaintiffs are entitled to recover actual and punitive damages from the Defendant for this conversion.

**FOR A THIRD CAUSE OF ACTION**

22. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

23. The Defendant intentionally destroyed and damaged real and personal property belonging to the Plaintiffs.

24. The Plaintiffs are entitled to recover actual and punitive damages from the Defendant for this damage and destruction.

**FOR A FOURTH CAUSE OF ACTION**

25. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

26. At all times material hereto, the Plaintiffs were actually or constructively in lawful possession of the building at issue in this action.

27. The Defendant voluntarily and without permission of the Plaintiffs entered the building and damaged the same and the contents thereof.

28. The Plaintiffs are entitled to recover actual and punitive damages from the Defendant for this trespass.

**FOR A FIFTH CAUSE OF ACTION**

29. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

30. The Defendant's conduct was extreme and outrageous and exceeded all bounds of decency and was atrocious and utterly intolerable in a civilized society.

31. As a result, Plaintiff Robert M.P. Masella suffered extreme emotional distress.

32. As a direct and proximate result, Plaintiff Robert M.P. Masella is entitled to recover actual damages, punitive damages, and the costs of this action.

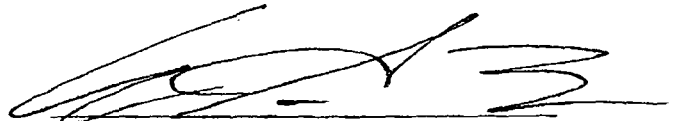
WHEREFORE, the Plaintiffs pray:

- a) For judgment against the Defendant awarding the Plaintiffs actual damages;
- b) For judgment against the Defendant awarding the Plaintiffs punitive damages;
- c) For judgment against the Defendant awarding the Plaintiffs the costs of this action;

and

- d) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Andrew S. Radeker  
HARRISON & RADEKER, P.A.  
Post Office Box 50143  
Columbia, South Carolina 29250  
(803) 779-2211  
(803) 779-6700 (telefax)  
drew@harrisonfirm.com (email)

ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina

June 23, 2010

MASELLA LAW FIRM, P.A.

January 28, 2010

ROBERT M.P. MASELLA  
ALSO LICENSED IN GEORGIA

S. PRENTISS COUNTS

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

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

FACSIMILE  
(803) 748-9948

Jacquelyn Bartley, Esq.  
PO Box 11896  
Columbia, SC 29211

RE: The Estate of Elizabeth Grant Jenkins  
Case No.: 07-ES-40-00349

RECEIVED

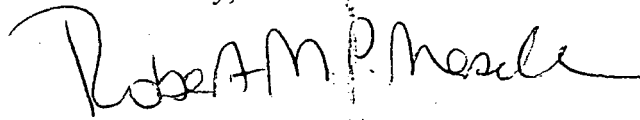
FEB 03 2010

Jabber & Isaac, P.A.

Dear Ms. Bartley:

Enclosed you will find a copy of the Motion and Order Information Form and Cover Sheet and Motion to be Relieved which are hereby served upon you regarding the above-referenced matter. If you should have any questions, please feel free to contact me.

Sincerely,



**ROBERT M. P. MASELLA, ESQ.**  
**MASELLA LAW FIRM, PA**  
917 Calhoun Street  
Columbia, SC 29201

RMPM/ejg

Enclosures as stated

cc: Tameika Isaac Devine, Esq.  
Maria Jenkins

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

FIFTH JUDICIAL CIRCUIT )

COUNTY OF RICHLAND )

CASE NO.: 08-CP-40-9130 )

Jerome Jenkins )

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

Plaintiff, )

vs. )

Maria Jenkins and Masella Law Firm, PA )

Defendant. )

Plaintiff's Attorney:

Jacquelyn Bartley, Bar No. \_\_\_\_\_

Address:

PO Box 11896, Columbia, SC 29211

Phone: 376-1260 Fax 376-1557

E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

Defendant's Attorney:

Robert M. P. Masella, Bar No. 8655

Address:

917 Calhoun Street, Columbia, SC 29201

Phone: 748-9990 Fax 748-9948

E-mail: rmaseella@masellalaw.com Other: \_\_\_\_\_

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: Motion to be Relieved

Estimated Time Needed: 15 minutes

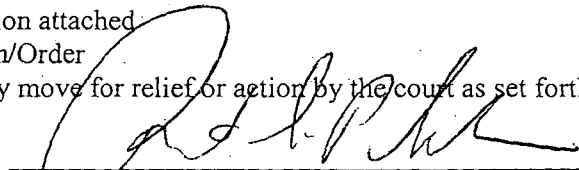
Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for  Plaintiff /  Defendant

January 28, 2010

Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT: \$ 25.00

EXEMPT:

(check reason)

Rule to Show Cause in Child or Spousal Support

Domestic Abuse or Abuse and Neglect

Indigent Status  State Agency v. Indigent Party

Sexually Violent Predator Act  Post-Conviction Relief

Motion for Stay in Bankruptcy

Motion for Publication  Motion for Execution (Rule 69, SCRPC)

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: \_\_\_\_\_

Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE CODE \_\_\_\_\_

Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

MOTION FEE COLLECTED: \$ \_\_\_\_\_

CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Jerome Jenkins,  
Plaintiff,

vs.

Maria Jenkins and Masella Law Firm, PA,  
Defendant.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT  
Case No. 08-CP-40-9130

**MOTION TO  
RELIEVE COUNSEL**

**TO: DEFENDANT MARIA JENKINS, PLAINTIFF JEROME JENKINS, AND HIS ATTORNEY, JACQUELYN L. BARTLEY:**


PLEASE TAKE NOTICE that the counsel for Defendant, Robert M. P. Masella, Esquire, individually will move before the presiding Circuit Court Judge for the County of Richland, at 1701 Main Street, Columbia, South Carolina 29201, at \_\_\_\_\_ o'clock in the \_\_\_\_ m. on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, for an Order Relieving Counsel of Record. Counsel for Defendant Maria Jenkins makes this Motion on the following grounds:

1. The Attorney Code of Ethics will no longer allow counsel to continue representation of Defendant Maria Jenkins.

Accordingly, the undersigned counsel of record, Robert M. P. Masella, prays for an Order allowing him to be relieved as counsel of record.

YOU WILL PLEASE TAKE FURTHER NOTICE that this Motion may also be based upon the South Carolina Rules of Court, case law, and any other evidence or testimony that may be allowed at the time of the hearing of this matter.

MASELLA LAW FIRM, PA

A handwritten signature in black ink, appearing to read "R. M. P. Masella", is written over a horizontal line.

Robert M. P. Masella, Esq.  
917 Calhoun Street  
Columbia, South Carolina 29201  
(803) 748-9990 [Telephone]  
(803) 748-9948 [Fax]

Columbia, South Carolina

January 27, 2010

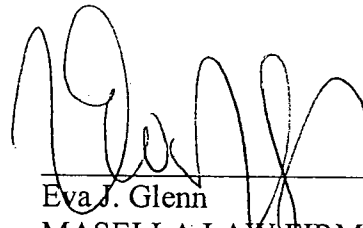
**CERTIFICATE OF SERVICE**

I, Eva J. Glenn, Paralegal for Masella Law Firm, PA, do hereby certify that a copy of the Motion to be Relieved was served upon the parties listed below by depositing said paper(s) in the United States Mail, Columbia, South Carolina on this 28<sup>th</sup> day of January, 2010, with the first class postage duly affixed thereto and addressed as follows:

Jacquelyn Bartley, Esq.  
PO Box 11896  
Columbia, SC 29211

Tameika Devine, Esq.  
PO Box 50343  
Columbia, SC 29250

Maria Jenkins  
2 East Lake Ct.  
Columbia, SC 29209



---

Eva J. Glenn  
MASELLA LAW FIRM, P.A.  
917 Calhoun Street  
Columbia, SC 29201

Ronald L. Jenkins #333126

McCormick Correctional Inst

386 Redemption Way

McCormick, S.C. 29899



7007 2680 0000 6131 0571

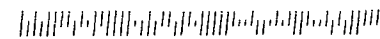


Supreme Court of South Carolina

The Honorable Jean Toal

Post Office Box 11330

Columbia, South Carolina 29211



ALAN WILSON  
ATTORNEY GENERAL



July 5, 2011

RECEIVED

JUL - 5 2011

S.C. Supreme Court

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

Re: **Ronald Jenkins, 333126 v. State of South Carolina**  
**2009-CP-40-2452**

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above matter for filing in your office. By copy of this letter we are serving opposing counsel with this Return today.

Sincerely,

Brian T. Petrano  
Assistant Attorney General

Enclosures

cc: Wanda H. Carter, Esquire





ALAN WILSON  
ATTORNEY GENERAL

June 8, 2011

RECEIVED

JUN - 8 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: Ronald Jenkins, 333126 v. State of South Carolina  
2009-CP-400-2452

(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. However, this is to respectfully request a 30-day extension until July 8, 2011 in which 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 heavy workload.

Sincerely,

Brian T. Petrano  
Assistant Attorney General

BTP:jri

cc: Wanda H. Carter; SC Office of Appellate Defense

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Case No. 2009CP4002452

RECEIVED

JUN - 8 2011

S.C. Supreme Court

Ronald Jenkins,.....Petitioner,

v.

State of South Carolina,.....Respondent.

MOTION FOR EXTENSION OF TIME TO SERVE AND FILE  
RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

COMES NOW the Respondent above named, by and through the undersigned counsel, making its motion to Relax Rule 227(g), SCACR, would show unto this Court:

I.

An extension request was filed on May 12, 2011, requesting 30 days additional time to file the Return to Petition for Writ of Certiorari. By Order dated May 13, 2011, this Court informed the Respondent that the Respondent's filings were due by June 8, 2011.

The Respondent respectfully requests another extension to file the Return to Petition for Writ of Certiorari. The Respondent has been working diligently to properly handle all (non-capital) PCR matters on behalf of the State for the 5<sup>th</sup>

circuit. The Respondent is currently engaged in a term of PCR court with The Honorable James R. Barber, III presiding.

Accordingly, and not for the purpose of delaying the Petitioner, the Respondent respectfully requests an extension of time to properly research for and prepare the State's Return to the Petition for Writ of Certiorari.

II.

In view of the foregoing, it is respectfully requested that this Court relax Rule 227(g), SCACR, and allow the Respondent another extension of time to file the Return to the Petition for Writ of Certiorari.

WHEREFORE, it is respectfully requested that this Motion be granted.

Respectfully submitted,

ALAN WILSON  
Attorney General.

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY ELLIOTT  
Assistant Deputy Attorney General

BRIAN T. PETRANO  
Assistant Attorney General

P.O. Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

By: \_\_\_\_\_



ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina  
June 7, 2011





ALAN WILSON  
ATTORNEY GENERAL

RECEIVED

MAY 12 2011

S.C. Supreme Court

May 12, 2011

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

RE: Ronald Jenkins, 333126 v. State of South Carolina  
2009-CP-400-2452

Dear Mr. Shearouse:

The Return to Petition for Writ of Certiorari in the above appeal is due to be served and filed on today. However, this is to respectfully request a 30-day extension until June 8, 2011 in which 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 heavy workload.

Sincerely,

Brian T. Petrano  
Assistant Attorney General

BTP:jri

cc: Wanda H. Carter; SC Office of Appellate Defense

# The Supreme Court of South Carolina

Ronald Jenkins,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Clifton Newman  
Richland County  
Trial Court Case No. 2009-CP-40-02452

---

## ORDER

---

For good cause shown, the request for an extension until April 6, 2011 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

March 8, 2011

cc: Assistant Attorney General Brian T. Petrano  
Deputy Chief Appellate Defender Wanda H. Carter

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Richland County  
Clifton Newman, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

MAR 07 2011

S.C. Supreme Court

RONALD JENKINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

(2)

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


1. Petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.
2. Counsel will be filing the petitions for writ of certiorari and accompanying appendices in the cases of Devario Marshatt Simpson v. State, Walter Martez Thomas v. State, Vaughn Williams v. State, Terry J. Hardin v. State, and Darrell Keith Emory v. State today. Counsel filed the petition for writ of certiorari and accompanying appendix

in the case of James Matthews v. State on March 2, 2011. In addition, Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Anne Gordon v. State on February 28, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Timothy Tyrone Murray v. State on February 22, 2011. Counsel filed the initial briefs of appellant and designations of matter in the cases of State v. Robert Upchurch and State v. Johnnie Jones on February 18, 2011. Counsel filed the petition for rehearing in the case of State v. Leroy A. Brown on February 16, 2011. Additionally, Counsel filed the initial brief of appellant and designation of matter in the case of State v. Arnold Ward on February 14, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. George Jones on February 7, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Jennifer Rayanne Dykes on February 4, 2011. Counsel filed the Brief of Petitioner in the case of Brian Gebhard v. State on February 3, 2011.

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

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

Respectfully submitted,

  
Wanda H. Carter  
Deputy Chief Appellate Defender

March 7, 2011

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Richland County  
Clifton Newman, Circuit Court Judge

---

RONALD JENKINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

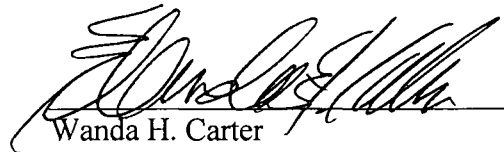
RESPONDENT

---

CERTIFICATE OF SERVICE

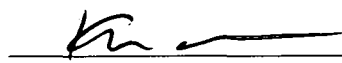
---

The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Brian Petrano, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 7<sup>th</sup> day of March, 2011.

  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 7<sup>th</sup> day of March, 2011.

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

# The Supreme Court of South Carolina

Ronald Jenkins,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Clifton Newman  
Richland County  
Trial Court Case No. 2009-CP-40-02452

---

## 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 Drenda J. Shealy  
Clerk

Columbia, South Carolina *Chief Deputy*

February 7, 2011

cc: Assistant Attorney General Brian T. Petrano  
Deputy Chief Appellate Defender Wanda H. Carter



# 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 4, 2011

RECEIVED

FEB 04 2011

S.C. Supreme Court

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

Re: Ronald Jenkins v. State of South Carolina

Dear Mr. Shearouse:

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

By copy of this letter, I am informing Brian Petrano, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Wanda H. Carter  
Deputy Chief Appellate Defender

WHC/kam

cc: Brian Petrano



# 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

**RECEIVED**

DEC - 6 2010

December 6, 2010

**S.C. Supreme Court**

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

Dear Mr. Shearouse:

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

Ronald Jenkins v. State of South Carolina

12/6/2010

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,

Lorlene French  
Legal Services Coordinator



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

September 16, 2010

RECEIVED

SEP 16 2010

S.C. SUPREME COURT

Ms. Hilda M. Jordan  
Circuit Court Reporter  
PO Box 435  
Lexington, SC 29071

Dear Ms. Jordan:

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

Ronald Jenkins v. State of South Carolina                      Case #:                      09-CP-40-02452.

County: Richland    Date of Trial: April 15, 2010

Presiding Judge: Clifton Newman

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.

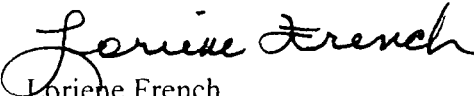
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Hilda M. Jordan  
September 16, 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 cursive script that reads "Lorie French".

Lorie French  
Legal Services Coordinator

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



1250 AMELIA ST.  
COURTHOUSE PLAZA  
ORANGEBURG, SC

PHONE: 803-531-6300  
FAX: 803-536-6001

JEFFRIES LAW FIRM, LLC.

BRYAN S. JEFFRIES  
LAKESHA W. JEFFRIES  
JEFFRIESLAWSC.COM

*per*

1345 GARNER LN. STE 202  
COLUMBIA, SC

PHONE: 803-772-7300  
MAIL: P.O. Box 646  
ORANGEBURG, SC 29116

September 4, 2010

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

RECEIVED  
SEP 07 2010  
S.C. SUPREME COURT

RE: Ronald Jenkins v. State of South Carolina  
09-CP-40-2452

Dear Mr. Shearhouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed is the Proof of Service of the notice of appeal on the respondent.

Should you have further questions regarding this matter, do not hesitate to call.

Sincerely,

Bryan S. Jeffries  
Attorney at Law

Enclosure

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
In The Court of Common Pleas

Clifton Newman, Circuit Court Judge

DOCKET NUMBER - 09-CP-40-2452

STATE OF SOUTH CAROLINA. . . . . RESPONDENTS

-vs-

Ronald L. Jenkins. . . . . APPELLANT

RECEIVED

SEP 07 2010

S.C. SUPREME COURT

NOTICE OF APPEAL

Ronald L. Jenkins appeals the Order of the Honorable Clifton Newman, denying Application for Post Conviction Relief for the Appellant, dated July 19, 2010. The Order was filed on August 25, 2010, and received by counsel on August 27, 2010.

September 5, 2010

Bryan S. Jeffries  
JEFFRIES LAW FIRM, LLC.  
Post Office Box 646  
Orangeburg, SC 29116  
(803)534-4777  
Attorney for Appellant

Other Counsel of Record:  
Brian T. Petrano  
Assistant Attorney General  
The State Of South Carolina  
Office Of The Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent State of South Carolina

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS

Clifton Newman, Presiding Judge  
Case No.: 2009-CP-40-2452

Ronald L. Jenkins, .....Appellant.

vs.

The State, .....Respondent.

RECEIVED  
SEP 07 2010

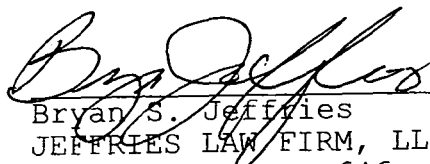
PROOF OF SERVICE

S.C. SUPREME COURT

I certify that I have served the Notice of Appeal on The State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on September 5, 2010 addressed to the Attorney of record;

Brian T. Petrano  
Assistant Attorney General  
The State of South Carolina  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

September 5, 2010

  
Bryan S. Jeffries  
JEFFRIES LAW FIRM, LLC  
Post Office Box 646  
Orangeburg, SC 29116

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Ronald Jenkins, # 333126, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2009CP4002452

ORDER OF **RECEIVED**

SEP 07 2010

S.C. SUPREME COURT

2009 AUG 25 AM 10:09  
 JEFFETTE W. McBRIDE  
 C.C.P. & G.S.

RICHLAND COUNTY  
 FILED

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 3, 2009. The Respondent made its Return on July 8, 2009. The Applicant filed a *pro se* amended application for PCR on July 27, 2009. An evidentiary hearing into the matter was convened on April 15, 2010 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Bryan Jeffries, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Micah Leddy, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Micah Leddy, Deputy Public Defender. On February 9, 2009, the Applicant pled guilty and was sentenced by The Honorable G. Thomas Cooper, Jr. to the following:

Grand Jury Term	Indictment Number	GDR S.C. Code S	Charged Offense Potential Sentence * Offense Description	Sentence Received	Sentenced to Lesser Offense
12-07	2007GS408419	2551 16-11-0110(B)	* 25 * Arson / Arson - Second degree	20	No
12-07	2007GS408426	0086 16-11-0312(B)	* 15 * Burglary / Burglary (Violent) (After 06/20/85) - Second degree	15	No
12-07	2007GS408428	2406 16-03-1730(A)	* 5 * Aggravated Stalking	5	No
<b>NOTES:</b> Plea was without negotiations, sentences are concurrent.				<b>TOTAL</b>	<b>POSSIBLE</b>
				20	45

The Applicant did not appeal his guilty plea or sentence.

Apart from any overlapping issues that were otherwise presented at the hearing, this Court cannot consider any allegations made solely in the Applicant's *pro se* amendment, filed June 30, 2009. Rule 11, SCRPC, requires every pleading, motion, or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion, or other paper is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Rule 11, SCRPC. South Carolina does not recognize any right to hybrid

representation at trial or on appeal. See, e.g., Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).<sup>1</sup>

In his PCR application the Applicant makes the following allegations:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective assistance of counsel
- (b) Subject Matter Jurisdiction
- (c) Involuntary Guilty Plea

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) CONFLICT OF INTEREST / counsel failed to conduct a PRETRIAL investigation.
- (b) INSUFFICIENT indictment FOR burglary 2d / Denial of Discovery
- (c) Plea was not knowing and Voluntary / Plea was Coerced / advised by a CONFLICT of INTEREST.  
See attached memorandum of law in support

See attached memorandum of law in support

2

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) ineffective assistance of counsel / Subject matter Jurisdiction
- (b) Involuntary Guilty plea / CONFLICT of INTEREST
- (c) was not presented because counsel was ineffective and failed to file a appeal OR review by writ of CERTIORARI.

18. State clearly the relief you seek in filing this application.

a new Trial that is conflict free / OR a plea that is properly presented that includes a lesser included plea and a lesser sentence.

<sup>1</sup> This Court is fully aware of our Court's recent ruling that "Rule 11 of the South Carolina Rules of Civil Procedure does not apply to PCR proceedings." Hiott v. State, 381 S.C. 622, 674 S.E.2d 491 (2009). However, this Court interprets the Hiott decision to be narrowly tailored to the issue(s) presented in Hiott [sanctions] and not to negate any and all applicability of Rule 11(a) for PCR proceedings. This Court, respectfully, does not interpret Hiott to implicitly abrogate Jones v. State, 348 S.C. 13, 558 S.E.2d 517, (2002), or Foster v. State, 298 S.C. 306, 379 S.E.2d 907, (1989).

1.

STATE of South Carolina County of Richland

Ronald L. Jenkins #333126

PETITIONER

Applicant,

VS.

The State,

Respondent.

In The COURT of Common Pleas  
Case No.

MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR RELIEF PURSUANT TO THE  
UNIFORM POST-CONVICTION PROCEDURE  
ACT S.C. Code ANN. 17-27-10, ET SEQ.

AS a MATTER OF INTRODUCTION, THE PETITIONER/APPLICANT RESPECTFULLY SUBMITS THAT THE EVENTS WHICH TRANSPIRED IN THE INSTANT CASE CONSTITUTE a denial of THE PETITIONER'S RIGHTS TO DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND TO THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION. THESE ERRORS WAS NOT MERELY PROCEDURAL, BUT SUBSTANTIALLY INFRINGED UPON THE PETITIONER'S RIGHT TO DUE PROCESS OF LAW.

#### Statement of The Issues

- (1) Did petitioner receive ineffective assistance of counsel when Trial Counsel failed to conduct a proper pre-trial investigation?
- (2) Was petitioner denied due process and equal protection of the law when the petitioner was forced to proceed to trial in violation of a fair trial due to his plea and conviction being unlawful due to a conflict of interest?

2.

- (3) Did The TRIAL COURT Lacked Subject MATTER JURISDICTION due To The INSUFFICIENCY of The indictment FOR BURGLARY 2d ?
- (4) WAS PETITIONERS plea KNOWINGLY and VOLUNTARY due To COUNSEL'S UNPREPAREDNESS and FAILURE To PRESENT CLIENT WITH DISCOVERY ?

### Statement of Jurisdiction

South Carolina Law provides an avenue for those whose convictions have been obtained in violation of The Constitution of The United States. The uniform post-conviction procedure act; S.C. Code Ann. 17-27-10, et. Seq., provides an avenue for redress of federal constitutional violations by a South Carolina court. A prisoner in custody under sentence by a South Carolina court may challenge his conviction and sentence IF such were obtained in violation of The Constitution of The United States OR The Constitution OR Laws of South Carolina". S.C. Code Ann. 17-27-20 (a)(1). The petitioner feels that his best opportunity to obtain fair and substantial justice regarding his conviction is through this petition, as the procedural remedy utilized herein has historically served as a safety net for those who have had their constitutional rights violated.

### ARGUMENT

In order to ~~prove~~ succeed in a post-conviction proceeding, the petitioner must show that the adjudication of a claim in a South

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CAROLINA COURT RESULTED IN A CONVICTION OR SENTENCE THAT WAS IMPOSED IN VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES. S.C. Code ANN. 17-27-20(6)(i). THE CONSTITUTION, AS THE FRAMEWORK FROM WHICH ALL SOUTH CAROLINA LAWS SPRING, MUST NOT BE VIOLATED AS APPLIED TO THE PETITIONER.

(1) Did the petitioner receive ineffective assistance of counsel when trial counsel failed to conduct a proper pre-trial investigation?

THE PETITIONER SUBMITS THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL PRIOR TO AND DURING HIS TRIAL. THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION GUARANTEES THAT EVERY CRIMINAL DEFENDANT IS ENTITLED TO THE EFFECTIVE ASSISTANCE OF COUNSEL IN PRESENTING THEIR DEFENSE. SEE ALSO, S.C. CONST. ART. 1, SECTION 14. THE SUPREME COURT HAS STATED, "THE RIGHT TO COUNSEL IS A FUNDAMENTAL RIGHT OF CRIMINAL DEFENDANTS; IT ASSURES THE FAIRNESS, AND THUS THE LEGITIMACY, OF OUR ADVERSARY PROCESS." KIMMELMAN V. MORRISON, 477 U.S. 365 (1986). FURTHERMORE, THE SUPREME COURT HAS RECOGNIZED THAT "THE RIGHT TO COUNSEL IS THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL." McMANN V. RICHARDSON, 397 U.S. 759 (1970). TO SEE WHETHER COUNSEL HAS FALLEN BELOW THE MINIMUM STANDARD NEEDED FOR EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT TO THE CONSTITUTION, A TWO PRONG TEST MUST BE MET. IN STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984), THE SUPREME COURT HELD THAT A DETERMINATION OF INEFFECTIVE ASSISTANCE OF COUNSEL WOULD BE CONDITIONED ON TWO FACTORS:

(1) COUNSEL'S PERFORMANCE MUST HAVE FALLEN BELOW AN OBJECTIVE STANDARD OF REASONABLENESS; AND

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(2, There must be a Reasonable probability That, but for counsel's errors, the Results of the proceedings would probably have been different.

South Carolina has adopted the Strickland Standard, see, e.g., *Cherry v. State*, 386 S.E.2d 624 (1989). The Right to effective assistance of Counsel may be violated by even an isolated error of Counsel if the error is sufficiently egregious and prejudicial. See also, *Murray v. Carrier*, 477 U.S. 478 (1986). "It is the Client's Right to expect that his Lawyer will use every skill, expend every energy, and tap every legitimate Resource in the exercise of independent professional Judgment on behalf of the Client and in undertaking Representation of the Client's interest." *Fraser v. United States*, 18 F.3d 778 (9th Cir. 1994). "Defense Counsel must do his utmost to bring his legal acumen to bear on behalf of the defendant; keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequately and professionally for trial; conduct the trial in the best of his ability; and, at the bottom, serve as a vigorous and devoted advocate of the defendant's cause." See, *United States ex. Rel. Barte v. Lane*, 926 F.2d 694 (7th Cir. 1991).

As the Supreme Court recognized in *Strickland*, "counsel bears a duty to make a reasonable investigation of the law and facts in his Client's case." *Strickland*, 466 U.S. at 691.

5.

Additionally, The ABA Standards Relating To The Administration Of Criminal Justice provide:

IT is The duty of The Lawyer To Conduct a prompt Investigation of The Circumstances of The case and To explore all avenues leading To facts Relevant To The merits of The case and The penalty in The event of Conviction. The investigation shall always include Efforts To secure information in The possession of The prosecution and Law enforcement authorities. The duty to investigate exists Regardless of The accused's admissions or statements To The Lawyer of facts Constituting Guilt or The accused's stated desire To plead guilty.

A defendant's Right To effective assistance of Counsel Confers a duty on Counsel To Conduct an adequate pre-trial investigation. When a Lawyer fails To Conduct a Substantial Investigation into any of his Client's plausible Lines of defense, The Lawyer has failed To Render effective assistance of Counsel. Cobbs v. State, 408 S.E.2d 223 (1991). Pre-trial preparation, principle principally because it provides a basis upon which most of The defense case must rest, is perhaps, The most critical stage of a Lawyer's preparation. Id. Failure To investigate evidence that would be helpful To The defense is also an indication of ineffective ~~of~~ assistance of Counsel. Id.

6.

(2). Was petitioner denied due process and equal protection of the Law when the petitioner was forced to proceed to trial in violation of a fair trial due to his plea and conviction being unlawful due to a conflict of interest?

In the instant case, the petitioner was denied due process, equal protection and due process of law when trial counsel negligently allowed petitioner to proceed to trial by and through a conflict of interest. The victim Robert Masella is a former Richland County Magistrate, and is also an officer of the court (attorney); the trial judge is also a Richland County Judge:

Not only was defense counsel ineffective for failing to conduct a proper pretrial investigation; trial counsel's performance fell below an objective standard of reasonableness; thus, the errors did prejudice the petitioner, whereas, had counsel objected to the conflict, motion for recusal or motion for change of venue; thus, but for counsel's errors, the results of the proceedings would probably have been different. Strickland, 466 U.S. at 691; see, Cherry v. State, 386 S.E.2d 624 (1989); and Murray v. Grier, 477 U.S. 478 (1986).

Ineffective assistance of counsel may result from an attorney's conflict of interest. Strickland v. Washington, 466 U.S. 668, 692 (1984); (Right to effective assistance of counsel impaired when defense counsel operates under conflict of interest, because "counsel breaches the duty of loyalty, perhaps the most basic of counsel's duty duties").

7.

In the instant case, Trial Counsel was grossly neglect in his duties because Counsel knowingly knew that Victim was a former Richland County magistrate, the prosecutor a Richland County prosecutor and the Trial Judge a Richland County Circuit Court Judge.

In Cuyler v. Sullivan, 446 U.S. 335 (1980), the Supreme ruled that a defendant can demonstrate a Sixth Amendment violation by showing: (1) that defense counsel was actively representing conflicting interests, and (2) that the conflict had an adverse effect on specific instances of counsel's performance. *Id.* at 350. Compare Lopez v. Scully, 58 F.3d 38, 41 (2d Cir. 1995). When a defendant alleges that his or her guilty plea resulted from defense counsel's conflict of interest, the defendant must show a reasonable probability that he or she would have insisted on a trial but for the effect of the conflict of interest on his or her counsel's advice. See, Thomas v. Foltz, 818 F.2d 476 (6th Cir. 1987). A trial court has a limited duty to avoid potential conflicts of interest. Cuyler, 446 U.S. at 346-47. The court must initiate an inquiry if it knows or reasonably should know that a potential conflict exists. *Id.* at 347. When the trial court has notice of a potential conflict but fails to make such an inquiry, the reviewing court will presume a violation of the Sixth Amendment right to counsel. Compare, Holloway, 435 U.S. at 484; U.S. v. Geig, 967 F.2d 1018 (5th Cir. 1992).

In the instant case, the trial court had notice that a potential conflict of interest existed when the honorable Judge Childs recused herself from the trial, but yet the sentencing and

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Trial Judge failed to make an inquiry. See, Jackson v State, 495 S.E.2d 768 (1998); Duncan v State, 315 S.E.2d 809 (1984)

(3) Did The Trial Court Lacked Subject Matter Jurisdiction due To The Insufficiency of The indictment For burglary 2d?

In The instant case, The Trial Court Lacked Subject Matter Jurisdiction To accept petitioners guilty plea, whereas his plea is not a lesser included plea, and petitioners did not waive presentment. (See Sentencing Sheet, There is no written waiver that he waived presentment to The Grand Jury); Hooks v State, 571 S.E.2d 211 (2003); State v. Small, 581 S.E.2d 850 (S.C. App. 2003). Thus, The Circuit Court Lacked Subject Matter Jurisdiction because his indictments failed to allege The essential elements of burglary second.

(4) Was petitioners guilty plea knowingly and voluntary due To Counsel's unpreparedness and failure To present client with discovery?

In The instant case, petitioner was denied due process and equal protection, and fundamental fairness by counsel's failure To provide petitioner with discovery prior To trial. Thus, because of counsel's errors, The errors rendered The trial fundamentally unfair; thus, petitioners guilty plea was not knowingly and intelligently made because Trial counsel was unprepared for trial and due To The conflict of interest and denial of discovery The ~~petitioner~~ petitioner was

9.

FORCED TO PROCEED TO TRIAL AND COERCED TO PLEAD GUILTY. See DAVIS V. STATE, 486 S.E.2d 747 (1977); BRADY V. MARYLAND, 83 S.Ct. 1194 (1963); GIBSON V. STATE, 514 S.E.2d 320 (1999).

In Conclusion

Based on the foregoing arguments the Applicant/Petitioner is entitled to a new trial.

Date: March 31, 2009

Ronald E. Jenkins

At the evidentiary hearing, Applicant proceeded, in part, on the allegations stated in the application for post-conviction relief.

## 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 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 (1985).

The Applicant testified that he pled guilty and received a twenty (20) year sentence and that he understands that he could be subjected to a longer sentence if his plea was vacated and he was later retried and convicted. The Applicant claimed that there was a conflict of interest and that the plea court should not have accepted the plea because the victim was a supposed high profile lawyer and ex-magistrate/clerk of court/solicitor... The Applicant explained that the victim defrauded him and that there were issues stemming from the victim's representation of the Applicant's wife during their divorce proceeding(s). The Applicant claimed plea counsel was ineffective for failing to have him evaluated, that there was an evaluation scheduled but that it was canceled. The Applicant testified that he thought he was going to plea in front of Judge Childs but that the victim and/or the Solicitor's office had that scheduled plea continued. The Applicant claimed that the Solicitor's office is also biased. The Applicant explained that he thought the case was going to be treated as if he set a crack house on fire. The

Applicant testified that he met with plea counsel four (4) or five (5) times but that he never saw the discovery materials or discussed the evidence with the plea counsel.<sup>2</sup> The Applicant complained that he was not indicted within the proper time frame of his arrest. The Applicant complained that he was threatened with consecutive sentences and that he thought he could ask for a lesser charge of *attempt to burn*. The Applicant complained that plea counsel refused to present his "fraud" evidence at trial, but that he was told if he pled guilty he could explain the "fraud" claims to the plea court. The Applicant explained that he pled guilty so that he could present his "fraud" evidence but that we do not really know who burned down the victim's law office.

Plea counsel testified that he recalled his representation of the Applicant and that he and the Applicant discussed the family court matter(s) extensively. Plea counsel explained that at first the Applicant did seem to want to go to trial, that it is not easy for most defendants to accept an open plea. Plea counsel explained that he thought at one point there was an offer but that the prosecution was handed off to a higher level solicitor and the offer (that had not yet been accepted) was withdrawn. Plea counsel testified that he did not see how the family court matter [motive] was relevant to the defense but it was immensely important to the Applicant to discuss the family court issue(s). Plea counsel testified that the Applicant insisted that he did not need an evaluation that is why the evaluation

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<sup>2</sup> This is directly refuted by the plea transcript. (Guilty plea transcript, p. 7).

was canceled. Plea counsel testified that he advised his client that that he could say pretty much anything he wanted at the end of a guilty plea, so if he wanted to explain the family court issue(s) that would be the best opportunity to do so. However, plea counsel testified that he warned the Applicant not to go on too much because it would be apparent that he still held a grudge.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). 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 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use 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, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

This Court finds that the Applicant's testimony was not credible. The Applicant's testimony was directly refuted by the plea transcript. Also, his claims of

a conspiracy were things he knew when he entered the plea, so there can be no prejudice because the Applicant necessarily waived any issues with the case by pleading guilty. A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976). An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State, 368 S.C. 378, 383-84, 629 S.E.2d 353, 356 (2006); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). The "prejudice," requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). In other words, the applicant must prove prejudice by showing that, but for counsel's inadequacy, there is a reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). The Applicant in this case has failed to demonstrate counsel's performance was deficient or that he was prejudiced. The Applicant

merely voiced his complaints about the victim. The fact is the Applicant admitted to burning down the victim's law office (and an accompanying 2<sup>nd</sup> degree burglary) and he also admitted to aggravated stalking. (Guilty plea transcript, p. 16 – 17). The Applicant explained that he felt it was the victim who enraged him so much and that is why he threatened him and burned down his office, i.e. what “motivated” him. (Guilty plea transcript, p. 34 - 44).

The Applicant claims plea counsel was ineffective for failing to have him evaluated yet the Applicant has not presented any evidence of a current evaluation to show that he was *or is* effected by any mental issues. Prejudice from counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a mental evaluation would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). 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' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Finally, The Applicant contends that the indictments were void because the State did not obtain indictments within ninety days of the Applicant's arrest. This

allegation does not warrant relief. The grand jury returned each indictment. The failure to obtain an indictment within ninety days of arrest does not render it void for lack of jurisdiction. State v. Culbreath, 282 S.C. 38, 316 S.E.2d 681 (1984). The Applicant has not shown that the sentencing court lacked subject matter jurisdiction to accept his plea.

## 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. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that 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 Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional

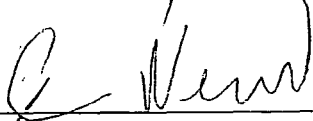
relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are 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.

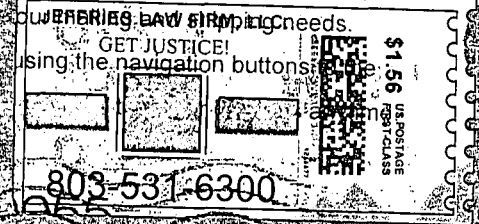
**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

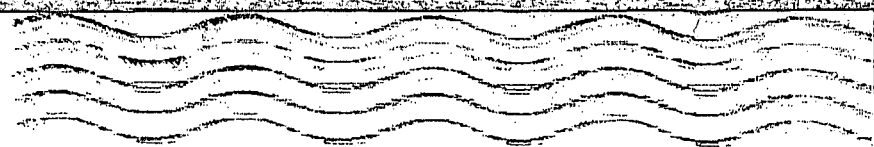
AND IT IS SO ORDERED this 19<sup>th</sup> day of July, 2010.

  
The Honorable Clifton Newman  
Presiding Judge  
Fifth Judicial Circuit

Kingsley, South Carolina.



COLUMBIA SC 292



  
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*Ronald  
Jenkins*