

The Supreme Court of South Carolina

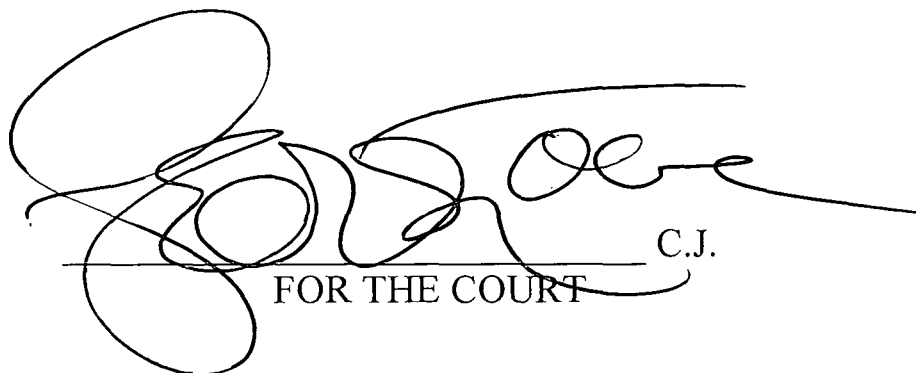
Dorian J. Cain, Respondent,
v.
State of South Carolina, Petitioner.

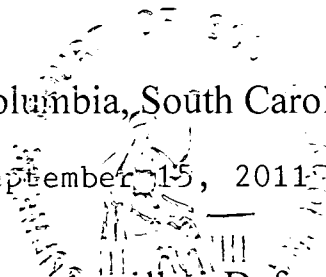
The Honorable R. Ferrell Cothran, Jr.
Lee County
Trial Court Case No. 2008-CP-31-00021

ORDER

Respondent seeks an extension to serve and file the Return to Petition for a Writ of Certiorari, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension is granted until September 21, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.


C.J.
FOR THE COURT



Columbia, South Carolina

September 15, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Mary S. Williams

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lee County
R. Ferrell Cothran, Jr., Circuit Court Judge

ORIGINAL

REC

SEP 11

S.C. Suprem.

DORIAN J. CAIN,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE RETURN TO
PETITION FOR WRIT OF CERTIORARI

Counsel for Dorian Cain, petitions the Court for a **final one week extension, until September 21, 2011** in which to file the return to petition for writ of certiorari in this case. In support of this petition, counsel shows:

1. The return to petition for writ of certiorari is due to be filed with the Court today.
2. Counsel for Mr. Cain respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. The petition for writ of certiorari and accompanying appendix in Kandia Crate v. State was filed on August 4, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in Charles Stokes v. State on August 5, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in Odell Carpenter v. State on August 10, 2011. The initial brief of appellant and designation of matter were filed in State v. Craig Cheeks on August 11, 2011. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first. Counsel filed the initial brief of appellant and designation of matter in State v. Carolyn Ann Hippensteil on August 16, 2011. Counsel filed the petition for writ of certiorari and

accompanying appendix in Troy Brown v. State and the initial brief of appellant and designation of matter in State v. Steve McFarland on August 18, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Nelson Castro on August 24, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in State v. Lawrence Burgess on August 26, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Doyle Garrett on August 29, 2011. On August 31, 2011, the petition for writ of certiorari and accompanying appendix were filed in State v. Samuel Grier. Counsel filed the initial brief of appellant and designation of matter in State v. Bert Foster on September 7, 2011. On September 12, 2011, counsel filed the petition for writ of certiorari and accompanying appendix in Travis Richardson v. State.


4. Counsel has not had time to complete the return to petition for writ of certiorari in this case. As a result, counsel respectfully asks this Court for a **final one week extension, until September 21, 2011** in which to file the initial brief of appellant and designation of matter. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. As indicated by signature below, Mary Williams, of the South Carolina Attorney General's Office, does not oppose this request.

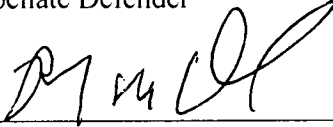
6. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a **final one week extension, until September 21, 2011** in which to file the return to petition for writ of certiorari in this case based upon the above circumstances.

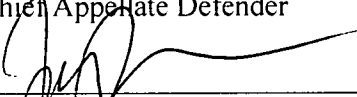
Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender



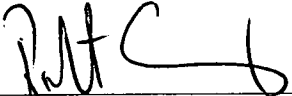
Robert M. Dudek
Chief Appellate Defender



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

September 14, 2011

I do not oppose:



For Mary S. Williams

The Supreme Court of South Carolina

Dorian J. Cain,

Respondent,

v.

State of South Carolina,

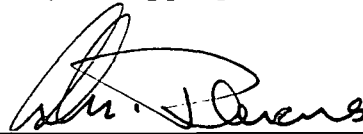
Petitioner.

The Honorable R. Ferrell Cothran, Jr.
Lee County
Trial Court Case No. 2008-CP-31-00021

ORDER

Petitioner seeks an extension until September 14, 2011 to serve and file the Return to the Petition for Writ of Certiorari, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extensions will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.



For the Court

J.

Columbia, South Carolina

August 17, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Mary S. Williams

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lee County

R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED

AUG 15 2011

S.C. Supreme Court

DORIAN J. CAIN,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

4

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE RETURN TO
PETITION FOR WRIT OF CERTIORARI

Counsel for Dorian Cain, petitions the Court for a **final thirty day extension** in which to file the return to petition for writ of certiorari in this case. In support of this petition, counsel shows:

1. The return to petition for writ of certiorari is due to be filed with the Court today.
2. Counsel for Mr. Cain respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. Counsel filed the initial brief of appellant and designation of matter in State v. Eddie Simmons on July 5, 2011. Counsel filed the petition for writ of certiorari in Christopher Stogner v. State on July 12, 2011. Counsel filed the petition for rehearing in State v. Eric Dantzler and the initial brief of appellant and designation of matter in State v. Bobbie Flemings Ford on July 14, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Duval Cooper on July 26, 2011. Counsel filed the return to petition for writ of certiorari for La'Ronte Scroggins v. State on July 29, 2011. The petition for writ of certiorari and accompanying appendix in Kandia Crate v. State was filed on August 4, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in

Charles Stokes v. State on August 5, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in Odell Carpenter v. State on August 10, 2011. The initial brief of appellant and designation of matter were filed in State v. Craig Cheeks on August 11, 2011. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

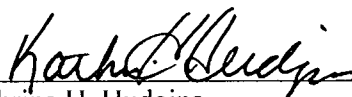
4. Counsel has not had time to complete the return to petition for writ of certiorari in this case. As a result, counsel respectfully asks this Court for a **final thirty day extension** in which to file the initial brief of appellant and designation of matter. Counsel is striving to limit the number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

5. As indicated by signature below, Mary Williams, of the South Carolina Attorney General's Office, does not oppose this request.

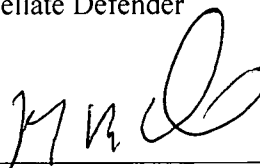
6. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a **final thirty day extension**, in which to file the return to petition for writ of certiorari in this case based upon the above circumstances.

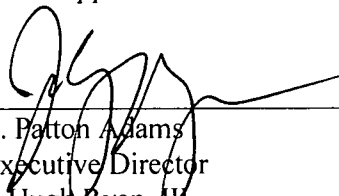
Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

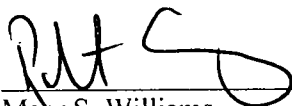


Robert M. Dudek
Chief Appellate Defender



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

August 15, 2011
I do not oppose:



Mary S. Williams

R012

The Supreme Court of South Carolina

Dorian J. Cain,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable R. Ferrell Cothran, Jr.
Lee County
Trial Court Case No. 2008-CP-31-00021

ORDER

For good cause shown, the request for an extension until August 15, 2011 to serve and file the Return to the Petition for Writ of Certiorari in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

July 18, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Mary S. Williams

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lee County

R. Ferrell Cothran, Jr., Circuit Court Judge

DORIAN J. CAIN,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE RETURN TO
PETITION FOR WRIT OF CERTIORARI

ORIGINAL

RECEIVED

JUL 15 2011

S.C. Supreme Court

(3)

Counsel for Dorian Cain, petitions the Court for a thirty day extension in which to file the return to petition for writ of certiorari in this case. In support of this petition, counsel shows:

1. The return to petition for writ of certiorari is due to be filed with the Court today.
2. Counsel for Mr. Cain respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. Counsel filed the petition for writ of certiorari and accompanying appendix in Walter Gaines v. State on June 7, 2011. Counsel has not had time to complete the brief of petitioner in this case. Counsel filed the initial briefs of appellant and designations of matter in State v. Jeffrey Tolliver and State v. Tony Williams on June 13, 2011. Counsel had oral argument in the Court of Appeals in State v. Andre Jackson on June 15, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Lewis Pipher on June 20, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Charles Cochran on June 24, 2011. Counsel filed the petition for rehearing in State v. Bobby Burdine on June 28, 2011. Counsel filed the initial brief of appellant and designation of matter

in State v. Roy Bright on June 30, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Eddie Simmons on July 5, 2011. Counsel filed the petition for writ of certiorari in Christopher Stogner v. State on July 12, 2011. Counsel filed the petition for rehearing in State v. Eric Dantzler and the initial brief of appellant and designation of matter in State v. Bobbie Flemings Ford on July 14, 2011. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

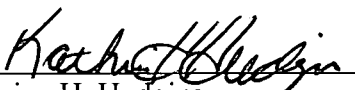
4. Counsel has not had time to complete the return to petition for writ of certiorari in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the initial brief of appellant and designation of matter. Counsel is striving to limit the number of extensions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

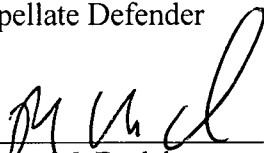
5. As indicated by signature below, Mary Williams, of the South Carolina Attorney General's Office, does not oppose this request.

6. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a thirty day extension, in which to file the return to petition for writ of certiorari in this case based upon the above circumstances.

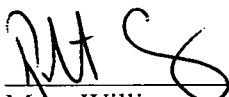
Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender


Robert M. Dudek
Chief Appellate Defender

July 15, 2011

I do not oppose:


Mary Williams

For

The Supreme Court of South Carolina

Dorian J. Cain,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable R. Ferrell Cothran, Jr.
Lee County
Trial Court Case No. 2008-CP-31-00021

ORDER

For good cause shown, the request for an extension until July 15, 2011 to serve and file the Return to the Petition for Writ of Certiorari is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

June 17, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Mary S. Williams

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lee County

R. Ferrell Cothran, Jr., Circuit Court Judge

DORIAN J. CAIN,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE RETURN TO
PETITION FOR WRIT OF CERTIORARI

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JUN 16 2011

S.C. Supreme Court

(2)

Counsel for Dorian Cain, petitions the Court for a thirty day extension in which to file the return to petition for writ of certiorari in this case. In support of this petition, counsel shows:

1. The return to petition for writ of certiorari is due to be filed with the Court today.
2. Counsel for Mr. Cain respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. Counsel filed the petition for rehearing in State v. Lawrence Burgess on May 5, 2011. Counsel filed the petition for rehearing in State v. Lawrence Burgess on May 5, 2011. The petition for writ of certiorari and accompanying appendix were filed in Corey Linder v. State on May 6, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in Eugene Kearns v. State on May 9, 2011. Counsel filed the brief of respondent in State v. Antonio Bordeaux on May 12, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in State v. Emmith Williams on May 26, 2011. Counsel filed the petitions for writ of certiorari and accompanying appendices in State v. Wesley Smith and Herbert English v. State and the initial brief of appellant and designation of matter in

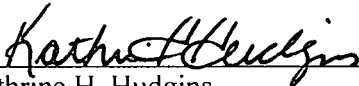
State v. Steve Lucas on May 31, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in Walter Gaines v. State on June 7, 2011. Counsel has not had time to complete the brief of petitioner in this case. Counsel filed the initial briefs of appellant and designations of matter in State v. Jeffrey Tolliver and State v. Tony Williams on June 13, 2011. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the brief of petitioner. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

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

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

Counsel respectfully requests a thirty day extension, in which to file the return to petition for writ of certiorari in this case based upon the above circumstances.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

June 15, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lee County

R. Ferrell Cothran, Jr., Circuit Court Judge

DORIAN J. CAIN,

RESPONDENT,

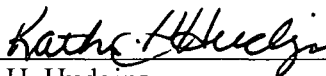
V.

STATE OF SOUTH CAROLINA,

PETITIONER

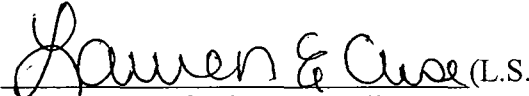
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the return to petition for writ of certiorari in the above referenced case has been served upon Mary Williams, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 15th day of June, 2011.



Kathrine H. Hudgins
Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 15th day of June, 2011.



Notary Public for South Carolina
My Commission Expires: August 23, 2014 .

The Supreme Court of South Carolina

Dorian J. Cain, Respondent,

v.

State of South Carolina, Petitioner.

The Honorable R. Ferrell Cothran, Jr.
Lee County
Trial Court Case No. 2008-CP-31-00021

ORDER

The request for an extension until June 15, 2011 to serve and file the Return to the Petition for Writ of Certiorari is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Arenda J. Shealy*
Clerk

Chief Deputy
Columbia, South Carolina

May 17, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Mary S. Williams



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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

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

May 16, 2011

RECEIVED

MAY 16 2011

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

C

S.C. Supreme Court

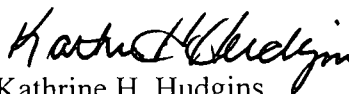
Re: Dorian J. Cain v. The State

Dear Mr. Shearouse:

The Return to Petition for Writ of Certiorari and accompanying appendix are due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the petition.

By copy of this letter, I am informing Mary Williams, Esquire, of the Attorney General's Office, of my request.

Sincerely,


Kathrine H. Hudgins
Appellate Defender

KHH/lec

cc: Mary Williams, Esquire



ALAN WILSON
ATTORNEY GENERAL

March 30, 2011

RECEIVED

MAR 30 2011

S.C. Supreme Court

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

Re: Dorian Cain v. State of South Carolina
2008-CP-31-0021

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the **Petition for Writ of Certiorari** and two (2) copies of the **Appendix** in the above mentioned case.

Sincerely,

Mary S. Williams
Assistant Attorney General

MSW/lm
Enclosures

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

The Supreme Court of South Carolina

Dorian J. Cain,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable R. Ferrell Cothran, Jr.
Lee County
Trial Court Case No. 2008-CP-31-00021

ORDER

For good cause shown, the request for an extension until March 30, 2011 to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

March 1, 2011

cc: Appellate Defense
Assistant Attorney General Mary S. Williams



ALAN WILSON
ATTORNEY GENERAL

February 28, 2011

RECEIVED

FEB 28 2011

S.C. Supreme Court

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

(3)

Re: Dorian Cain v. State of South Carolina
2008-CP-31-0021

Dear Mr. Shearouse:

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

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

Sincerely,

Mary S. Williams
Assistant Attorney General

MSW/lm

cc: Robert M. Dudek, Chief Appellate Defender

In compliance with:

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

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT M. DUDEK
Chief Appellate Defender

The Supreme Court of South Carolina

Dorian J. Cain,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable R. Ferrell Cothran, Jr.
Lee County
Trial Court Case No. 2008-CP-31-00021

ORDER

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

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Brenda J. Shealy*
Clerk

Columbia, South Carolina *Chief Deputy*

January 31, 2011

cc: Appellate Defense
Assistant Attorney General Mary S. Williams



ALAN WILSON
ATTORNEY GENERAL

January 28, 2011

RECEIVED

JAN 28 2011

S.C. Supreme Court

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

(2)

Re: Dorian Cain v. State of South Carolina
2008-CP-31-0021

Dear Mr. Shearouse:

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

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

Sincerely,

Mary S. Williams
Assistant Attorney General

MSW/lm

cc: Office of Appellate Defense

The Supreme Court of South Carolina

Dorian J. Cain,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable R. Ferrell Cothran, Jr.
Lee County
Trial Court Case No. 2008-CP-31-00021

ORDER

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

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Brenda J. Shealy
Clerk

Columbia, South Carolina

December 30, 2010

cc: Appellate Defense
Assistant Attorney General Mary S. Williams



HENRY McMASTER
ATTORNEY GENERAL

December 29, 2010

RECEIVED

DEC 29 2010

S.C. Supreme Court

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

Re: Dorian Cain v. State of South Carolina
2008-CP-31-0021

Dear Mr. Shearouse:

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

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

Sincerely,

Mary S. Williams
Assistant Attorney General

MSW/lm

cc: Hemphill P. Pride, II, Esquire



RECEIVED

OCT 27 2010

S.C. Supreme Court

HENRY McMASTER
ATTORNEY GENERAL

October 27, 2010

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

RE: Dorian Cain v. State of South Carolina
2008-CP-31-0021

Dear Mr. Shearouse:

We are in receipt of the Post-Conviction Relief hearing transcript in the above captioned matter. We have calendared the State's Petition for Writ of Certiorari to be due 60 days from the date of receipt, October 26, 2010. If this date, December 29, 2010, is incorrect or inconsistent with your records, please contact this office.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Mary S. Williams
Assistant Attorney General

MSW/lm

cc: Hemphill P. Pride, II, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

November 1, 2010

RECEIVED

NOV - 1 2010

S.C. Supreme Court

Hemphill P. Pride, Jr., Esquire
P O Box 4529
Columbia, SC 29240

Re: Dorian J. Cain v. State of South Carolina

Dear Mr. Pride:

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

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

Sincerely,


Lorlene French
Legal Services Coordinator

cc: S.C. Supreme Court



HENRY MCMASTER
ATTORNEY GENERAL

September 21, 2010

Kathleen M. Richardson
South Carolina Court Administration
1015 Sumter Street
Columbia, SC 29201

**RE: Dorian Cain v. State of South Carolina
2008-CP-31-0021**

RECEIVED

SEP 21 2010

S.C. SUPREME COURT

Dear Ms. Richardson:

Please prepare a transcript of the post conviction hearing of the above named individual taken on October 26, 2009, before the Honorable R. Ferrell Cothran, Jr., for the term of the Court of Common Pleas for Sumter County.

Please note that the amended Rule 243, SCACR, now requires as detailed an index for PCR hearings as for trial transcripts filled in the Supreme Court. The index should include all exhibits. If exhibits were not introduced, then please note that no exhibits were submitted at the hearing.

If you will prepare this transcript and forward it to me along with your statement, I will arrange for payment. Please note that all statements are to be signed.

Very truly yours,

Mary S. Williams, Assistant Attorney General

MSW/

cc: ~~(The Honorable Daniel Shearouse, Clerk of the Supreme Court of South Carolina)~~
Court Administration
Hemphill P. Pride, Esquire
Appellate Defense



HENRY McMASTER
ATTORNEY GENERAL

September 21, 2010

RECEIVED

SEP 21 2010

S.C. SUPREME COURT

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

**RE: Dorian Cain v. State of South Carolina
2008-CP-31-0021**

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. Proof of service of the notice of appeal on the respondent.
2. A copy of the order which is to be challenged on appeal.

With highest regards,

Mary S. Williams
Assistant Attorney General

MSW/
Enclosures

cc: Hemphill P. Pride, II, Esquire
The Honorable James I. Davis, Clerk of Court of Lee County
The Honorable C. Kelly Jackson, Third Circuit Solicitor
Appellate Defense (via interagency mail)
David Tatarsky, SCDC
Trisha Allen, Victims Services (via interagency mail)

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LEE COUNTY
COURT OF COMMON PLEAS

RECEIVED

SEP 21 2010

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge
Case No. 2008-CP-31-0021

S.C. SUPREME COURT

Dorian Cain,

Respondent,


v.

State of South Carolina,

Petitioner.

NOTICE OF APPEAL

The State of South Carolina hereby appeals from the **Order to Set Aside Conviction** of the Honorable R. Ferrell Cothran, Jr., Presiding Judge for the Third Judicial Circuit, dated September 13, 2010, and filed September 14, 2010, and received by the State on September 20, 2010, in the matter of Dorian Cain vs. State of South Carolina, Case No. 2008-CP-31-0021.


Mary S. Williams, Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Sept. 21, 20 10.

OTHER COUNSEL OF RECORD: Hemphill P. Pride, II, Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LEE COUNTY
COURT OF COMMON PLEAS

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge
Case No. 2008-CP-31-0021

Dorian Cain,

v.

State of South Carolina,

RECEIVED

SEP 21 2010

S.C. SUPREME COURT

Respondent,

Petitioner.

PROOF OF SERVICE

I hereby certify that I have served the **Notice of Appeal** in the above-referenced matter upon Respondent by depositing a copy of it in the United States Mail, postage prepaid, on September 21, 2010, to his attorney of record, at the addresses listed below:

Hemphill P. Pride, II, Esquire
Law Office of Hemphill P. Pride, II, LLC
P.O. Box 4529
Columbia, SC 29240

Mary S. Williams

MARY S. WILLIAMS
Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

SWORN to before me this 21st day of September, 2010.

Lauren Meera
Notary Public for South Carolina.

My Commission Expires: September 25, 2019

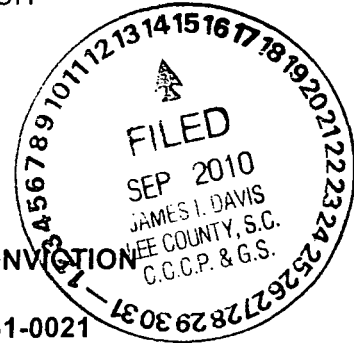
STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)

COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

DORIAN J. CAIN,)
)
Applicant,)
)
v.)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)
_____)

ORDER TO SET ASIDE CONVICTION

Docket No. 2008-CP-31-0021



This matter is before the Court pursuant to the verified Application for Post Conviction Relief ("PCR"), filed January 29, 2008, and related motions filed by the Applicant. The Applicant seeks an Order of the Court granting Applicant's Post-Conviction motions.

At the scheduled hearing on October 26, 2009, the Applicant appeared with counsel, Hemphill P. Pride II, Esq.; and, testified on his own behalf. Also present was Mary S. Williams, Esq., Assistant Attorney General ("AAG Williams") for the State of South Carolina ("Respondent"). Witnesses who appeared and gave testimony were Ms. Gina Trenise Cain-Davis ("Ms. Cain-Davis"), mother of the Applicant, and Charles T. Brooks III, Esq. ("Attorney Brooks"), Applicant's former attorney.

Following the October 26, 2009 PCR hearing, the Court accepted a proposed Order of Dismissal, submitted by AAG Williams, and entered that Order of Dismissal on December 30, 2009, denying and dismissing with prejudice Applicant's PCR.

Applicant filed his Motion to Reconsider Order of Dismissal on January 6, 2010; and, his Amended Motion to Reconsider Order of Dismissal on January 7, 2010. Respondent's Return to Motion to Reconsider was filed on that same date, January 7, 2010.

Certified as a True Copy

A handwritten signature in cursive script, appearing to read "James I. Davis".

Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina

This Court convened a hearing in this matter on March 23, 2010, during which counsel for both parties appeared and offered argument. And, after having considered all of the materials presented for review, together with the argument of counsel, the Court is persuaded that a mixed question of law and fact is before this Court, to wit: whether Attorney Brooks' failure to produce testimony--on the part of Applicant's surgeon, Pickens K. Moyd, M.D., as an expert witness, Applicant's mother, and alibi witnesses at the trial of Applicant--was deficient assistance; and, whether that deficiency prejudiced the outcome of that trial.

DISCUSSION

As previously noted in this Court's Order of December 30, 2009, Applicant must prove by a preponderance of the evidence that he received ineffective assistance of counsel. *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e) SCRCP). And, 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 (1984). The *Strickland* Court elaborated:

Representation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.

These basic duties neither exhaustively define the obligations of counsel nor form a checklist for judicial evaluation of attorney performance. **In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances.**

Strickland, supra, 466 U.S. at 688, 104 S. Ct. at 2065; (citations omitted). (Emphasis added.)

Additionally, where trial counsel articulates a valid reason for employing certain trial strategy, counsel will not be deemed ineffective. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995).

But, in the case at bar, Attorney Brooks' only explanation for failing to produce medical expert testimony, on the question of whether Applicant was incapable of running on the date of the robberies, was that he felt Applicant's testimony on that subject was adequate. He offered no explanation for having spent less than two hours and forty-five minutes, total, with Applicant in preparing him for trial; nor for his failure to offer the testimony of Applicant's mother as to her first-hand knowledge of Applicant's physical and mental condition and their resulting limitations.

Our Supreme Court recently reiterated "strategic choices made by counsel after an incomplete investigation are reasonable only to the extent that reasonable professional judgment supports the limitations on the investigation." *McKnight v. State*, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (S.C. 2008) (internal quotation marks omitted); (quoting *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); and, *Wiggins v. Smith*, 539 U.S. 510, 533, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003)).

In *McKnight, supra*, our Supreme Court held that trial counsel's failure to procure favorable expert medical testimony, opposing the prosecution's main theory of the case, was unreasonable; and, it further found "that there is a **reasonable probability that this deficiency prejudiced McKnight.**" *McKnight, supra*, 378 S.C. at 45, 661 S.E.2d at 360. (Emphasis added.) The Court also found that "neglecting to elicit favorable testimony from other experts when such testimony was known to exist and readily available, represents counsel's **inadequate preparation for trial rather than a valid trial strategy.** Accordingly, we find that counsel's performance in this regard was deficient. Because we further find that this deficient performance prejudiced McKnight's case,

we hold that the PCR court erred in determining that counsel was not ineffective on these grounds." *Id.* (Emphasis added.)

As a result of the October 26, 2009 PCR hearing, this Court's Order included the determination that prejudice to the Applicant was only speculative, without any evidence as to what Applicant's expert witness testimony would have been. (Order of December 30, 2009, p. 8) Following the hearing on this matter, conducted on March 23, 2010, Applicant's counsel deposed the surgeon¹ whose testimony was allegedly crucial to acquittal at trial, Pickens K. Moyd, M.D., on June 2, 2010; and, the transcript of that deposition has been presented to and reviewed by this Court.

And, after having reconsidered the Order of December 30, 2009, and all submitted materials, law, and argument, the Court is of the opinion that Applicant's PCR should be granted on the basis of the following, to wit:

FINDINGS OF FACT

1. The record before the Court reflects that the Application for Post-Conviction Relief was timely filed and verified by the Applicant; and, that it alleges that Attorney Brooks provided ineffective assistance of counsel at and after the armed robbery trial of the Applicant. (Application for PCR, pp. 3, 5-6)

2. Regarding ineffective assistance of counsel at the trial, the record before the Court reflects that there is no dispute that the Applicant was age sixteen at the time of trial; that he suffered from Attention Deficit Hyperactivity Disorder (ADHD); and, that he had no criminal record of any kind prior to being charged with two counts of armed robbery -- alleged to have been committed by him on December 18, 2003, for which he was tried on April 6 through April 8, 2004.

¹State objected to additional testimony as part of Rule 59 motion, SCRCR. Applicant took no exception to the form in which the motion was presented (i.e., letter dated 04-08-2010)

3. The record before the Court reflects no dispute that the Applicant had testicular surgery, on December 1, 2003, seventeen days before the crimes in question; nor that Attorney Brooks did not offer available corroborating testimony as to the physical significance and impairments caused by the surgery, from Applicant's mother, Ms. Cain-Davis, nor any expert witness testimony.

4. The record reflects that Attorney Brooks presented alibi testimony at trial to the effect that the Applicant was at the home of Mrs. Alphine Brooks until after the time of the robberies, together with her son Lequint Johnson and Donnie Jefferson; and, that they were joined by Demetrius McDonald who came to Mrs. Brooks' home to pick up Donnie Jefferson and the Applicant in a vehicle. However, only the testimony of Mrs. Brooks was offered as to this alibi.

5. At the October 26, 2009 hearing on Applicant's PCR, Attorney Brooks offered no explanation for failing to call Lequint Johnson, Donnie Jefferson and/or Demetrius McDonald as alibi witnesses at trial in addition to that of Mrs. Brooks. He did not show that they were unavailable, nor that their testimony would not have supported the alibi, nor that they lacked credibility.

6. The Transcript of the trial reflects that a victim, Mr. Edward Scott ("Mr. Scott"), repeatedly testified that Applicant was one of several young black men who robbed him at gunpoint, taking his wallet and money; and, that after they robbed him, Applicant and others fled the scene running at high speed for several blocks. The arresting Officer, Ernest Mosely ("Officer Mosely") offered conflicting testimony that the Applicant and other suspects were apprehended in a car, rather than on foot, and only one block from the crime scene. Further conflicting evidence came from the Applicant who testified that his recent testicular surgery prevented him from running on the date of the crime. Attorney Brooks did not offer any expert witness or other corroborating evidence to support Applicant's testimony that he could not run on that date.

7. At the October 26, 2009 hearing on Applicant's PCR, Attorney Brooks admitted that he believes the jury's guilty verdict turned on Mr. Scott's identification of the Applicant as one of the robbers.

8. Specifically, the trial Transcript shows that the identifying victim, Mr. Scott, testified that Applicant 'ran, ' and/or answered 'yes' when questioned whether he ran, a minimum of ten times:

A . . . running, went down the hill, and around the curve.

(T². p. 47, lines 18-19);

Q . . . [D]id they run out the store?

A Yes. . . .

(T. p. 108, lines 1-3);

Q . . . [Y]'all saw them run around the corner?

A Yes.

(T. p. 111, lines 14-15);

A They run away but they got in the car.

(T. p. 112, line 15);

A They turned around, ran out the door.

_____ Q Okay. And you saw them leave?

²All parenthetical references to "T" are to the Official Transcript of the trial, April 6, 7 and 8, 2004, in Lee County Court of General Sessions, in the matter of *The State v. Dorian J. Cain*, 2004-GS-41-0006.

A Yes, when they ran out of the door, I watched them going up the hill. They had about far as from here to go across that road pretty good hide themselves and watched them to see where they went.

Q So you were watching them to see where they ran to?

A Yes.

(T. p. 125, lines 18-25);

A They ran out the door, went to the right, ran down the hill, went to the left, and went on around up there to the other street up there. . . . I don't know what the name of that street, trying the name of the street so, Cedar Lane is about the only one I can say they went down the street around the curve.

_____ Q Only reason I'm trying to do this, Mr. Scott, is I'm not from Bishopville. I'm trying to get an idea of everything that was in the area and so can you think a little bit harder and see if you remember what street that was after they made the right and then made the left and ran up the hill?

A Yes They came out the building and went that way and went around on the next street to the next street.

Q And they all ran together

A Right after each other.

Q They were going pretty fast?

A As fast as they could go They was on foot at that time.

(T. p. 133, line 22 through p. 134, line 24)

9. Officer Mosely testified that he first observed the Applicant riding as a passenger in a car one block from the robbery site:

A . . . From where the crime occurred if I was to keep straight down Beebee Street, it's one block from where the location where the victims were and the radius is a two-block radius.

(T. p. 185, line 24 through p. 186, line 2)

10. Applicant testified that Mr. Scott did not identify Applicant as a suspect initially but, instead, that the other victim, Mr. Burke, did so first, claiming to recognize him from the scene; and, Applicant denied being on the scene and denied being able to run:

Q Okay. Who said that's the guy; you going to Columbia?

A Mr. Burke because he said he seen me at the scene, something like that.

Q Okay.

A Before it happened.

Q All right. Were you at the scene before this happened?

A No, sir.

Q Okay. All right. Now, were you able to run?

A No, sir.

Q Why weren't you able to run?

A I had surgery.

Q What kind of surgery you had?

A Testicle drop and I had it on December the 1st . . . Well, I had a testicle drop and I had this, like, it was stapled to my leg until they take the staples out.

_____ Q Okay.

A So I wasn't able to run.

(T. p. 289, line 14 through p. 290, line 14)

11. Applicant testified to the effect that, at the time of the robbery, his scrotum was stapled to his leg; and, the staples were not removed until after his release following arrest:

Q Okay. Now, after you got out of D.J.J., that's when they took the sutures out?

A. Yes, I supposed to get it taken out like that Friday but . . . I had to wait until I get out and reschedule an appointment. I had to get it out, like, a week later Staples.

(T. p. 291, lines 11-19)

12. The June 2, 2010 deposition testimony of Pickens K. Moyd, M.D. includes the following persuasive expert testimony:

A. . . . I'm board certified in general surgery, and then you go on to -- the highest ranking you get is a fellow of American College of Surgeons, and I'm that. I started practicing -- he won't say it -- in 1961.

_____ Q. And you have been practicing the entire time here at Hartsville?

A. That's correct.

(Moyd Dep. p. 4, lines 11-18)

A. . . . This boy had an undescended testicle. The little sac closed off before the testicle got all the way down in the scrotum, and ~~testis/canals and testis. And sometimes you can -- sometimes you can't see it, but it's already~~ did not want that and the mother did not want that. And the testicle was already -- it just barely got trapped up there in the first place.

_____ And I made a little note just to be on the safe side in case anybody anywhere ever asked a question. The surgeon noted due to the fact that the patient has a testicle that was residing relatively low in the canal and he very strongly resisted having his testicle removed, which coupled with the fact that the testicle in fact did lay low in the canal as compared to many undescended testicles and many problems of similar undescended testicle problems exist, but since he's only 16 years old, it is fair that the orchiopexy was in the best interest of all concerned. X-ray and laboratory findings are recorded on the chart.

_____ Q. Orchiopexy is what?

A. Bringing that testicle or -- down into the scrotum like it's supposed to be in the first place.

Q. Okay.

- A. And then we put a little elastic band, if you recall. It attaches to the opposite thigh to hold it down into the scrotum until it all fixes itself.

(Moyd Dep. p. 5, line 24 through p. 7, line 4)

- A. . . . The testicle is up in the inguinal canal. It's up above the scrotum, the sac, see, and you have to go up and surgically dissect it free and bring it down from up here into his sac, see. And then if you remember, we make a little tiny opening in the bottom of that sac and attach a rubber band -- it's sterile and all that -- attach it to the testicle and fix it in such a way when the time comes to take it loose, you just clip it and it slides back out.

And you recall that he had the little rubber band attaching to the opposite thigh. Once you bring it down -- the cremasteric muscle is the little muscle that pulls the testicle up in the sac. If a person gets real cold, there's a tendency for that testicle to go back up high in the scrotum, but there's a tendency for it to pull back up.

Once you've gone through all this trouble to get it down just exactly the way you want it, by all means, do something to keep it from going back up again, and so that's what the little rubber band was, see, and the little 16-year-old boy he's going to be up and down and about no matter what you do to him, but as long as that rubber band is putting a little tension on it -- and it will hurt if he pulls it too hard, see. That just holds it down in the scrotum in the sac until it sort of fixes itself there because we have the fixing sutures too to hold it there.

But that rubber band -- at the big medical center in Virginia they -- we always demanded that we do that. It's just double safety to keep it reduced down into the scrotum once you get it down there. So that's what that's about.

(Moyd Dep. p. 9, line 1 through p. 10, line 10)

- A. . . . A 16-year-old has a tendency -- and I've operated on many, many teenagers -- to get up and about, see.

So could he have run? See, I didn't see him run. I didn't see how rapidly he run -- ran, but I listened carefully to you when they said he ran around the corner and across the field toward the car. So --

- Q. And as hard as he could.

- A. Yeah, well, as hard as he could. Again, a doctor doesn't just talk to God. He doesn't know. But in my expert opinion you'll have to say he would have to be very scared to run that fast, but, see, neither you nor I or anybody in this room knows how "that fast" is because we didn't see it, but apparently he was running pretty fast.

Following an undescended testicle operation, could he -- it would be possible but I think not probable that he would run real hard 18 days after surgery. But he could run seven days after surgery, but 14 days he could run, 18 days, but can he run hard? I don't know. That's what I told you is the honest truth.

It would be unlikely that a boy would do anything that was strenuous 18 days after an -- essentially for the same as a hernia -- a hernia repair. But did -- does this mean that it could not have been him? That is really what your question is.

Q. That is correct.

- A. Yes, sir. And I understand that, Mr. Price, [sic] and I'm trying to help a teenage boy and everybody concerned, but I'm also trying to be very honest and fair.

Q. That's all I ask of you, Doctor.

- A. See, I know it, and that's what you said on the telephone when you first called me.

He -- he could have done that, but it would have been unusual and not likely. However, once you couple with the fact that according to the testimony of some people, he was under a lot of duress, and under those circumstances maybe so, but it would have been hard for him to do.

That's a good point that you have, and I respect your opinion on that -- your position on that, see. I don't know. I don't know if he could run hard or not. And, besides, I don't know how hard hard is, but I'm answering you as accurately as possible bearing in mind that I'm here to tell the truth, the whole truth and nothing but the truth, see.

Unlikely, but possible. That's my answer.

(Moyd Dep. p. 26, line 1, through p. 28, line 4)

Q. Doc, if he ran, would it have pulled it hard, being the stitches and the testicular that was --

A. Since the rubber band was still on there?

Q. Yeah.

A. Yeah, I believe it would. Yes. Now, that's a good question. If that rubber band was still intact -- and according to everything that's been said to me, this occurred on the 18th. He didn't get the thing cut loose till the 22nd, so it in fact was present. Yes, that would hurt, because, see, it's attached to the leg and that leg would be running. So it would -- it would have hurt if he had run.

(Moyd Dep. p. 30, line 17 through p 31, line 6)

Q. And when you removed the stitches, did you see anything that would lead you to believe that there was any kind of rupture down there, anything that was irregular during --

A. No, sir. And we -- if we had noted anything irregular --

Q. You would have noted it?

A. -- at all abnormal, it always goes in my note.

(Moyd Dep. p. 33, lines 14-22)

CONCLUSIONS OF LAW

1. Under the existing legal standards stated in Discussion above, this Court must determine whether Attorney Brooks' assistance was reasonable considering all the circumstances. *Strickland, supra*, 466 U.S. at 688, 104 S. Ct. at 2065

2. Considering all the circumstances, Attorney Brooks did not "articulate a valid reason" for failing to investigate; obtain and offer the expert witness testimony of Dr. Moyd; for failing to offer corroborating testimony of Applicant's mother as to Applicant's physical condition; nor, for failing to offer additional witnesses' testimony corroborating Applicant's alibi. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995).

3. Considering all the circumstances, "reasonable professional judgment" does not support Attorney Brooks' failure to investigate the availability of, and to offer, additional evidence to refute the Prosecution's main theory of the case that Applicant fled the robbery scene running. *McKnight v. State*, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (S.C. 2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); and, *Wiggins v. Smith*, 539 U.S. 510, 533, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003).

4. Attorney Brooks' failure to procure favorable expert medical testimony supporting Applicant's claim that he could not run on the date of the robberies; and, failure to present additional witness testimony corroborating his alibi was unreasonable under all the circumstances of this case.

5. Attorney Brooks' failures to investigate and elicit available favorable testimony from Dr. Moyd as an expert, from Applicant's mother in corroboration of Applicant's condition, and from additional alibi witnesses, combined with Attorney Brooks' admission of having spent only two hours and forty-five minutes with Applicant in preparation for trial, represent his inadequate preparation for trial rather than a valid trial strategy; and, Attorney Brooks' assistance was, thus, deficient and unreasonable.

6. Attorney Brooks' deficient assistance prejudiced Applicant because it undermined the proper functioning of the adversarial process and the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984).

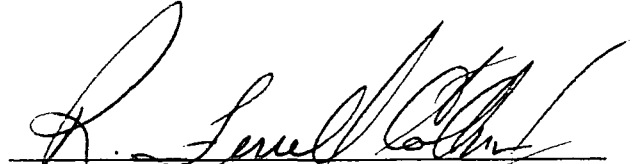
WHEREFORE, IT IS HEREBY ORDERED, that the Applicant's Amended Motion to Reconsider Order of Dismissal is granted;

IT IS FURTHER HEREBY ORDERED that the Applicant's Application for Post-Conviction Relief is granted;

IT IS FURTHER HEREBY ORDERED that the State has thirty (30) days in which to appeal this Order, Rule 243, SCRCP; and,

IT IS FURTHER HEREBY ORDERED that Applicant is entitled to a new trial and has the right to make application for bond while in the custody of the Respondent.

AND, IT IS SO ORDERED.



R. Ferrell Cothran, Jr., Presiding Judge
Court of Common Pleas
Third Judicial Circuit

Manning, South Carolina

September 13 2010.