

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

Christina Dixon Parnall

Associate Attorney

September 22, 2011

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

RE: Otis James Compton v. State; 2008-CP-01-00085.

Dear Mr. Shearouse:

I had requested an extension of time in which to file the Petitioner's Reply to the State's Return to the Petition for Writ of Certiorari, and this Court graciously granted that request. I am most grateful for that consideration. After careful review, I have decided not to file a Reply to the State's Return. I thank the Court for giving me the extension in which to file this Reply, even though it has not proven appropriate to do so.

Sincerely yours,

Christina Parnall FOR

Tara Dawn Shurling
Attorney and Counselor at Law

TDS /cdp

cc: Rutledge Johnson, Assistant Attorney General
Otis James Compton, 262807
Wayne and Sandra Woody

RECEIVED

SEP 26 2011

S.C. SUPREME COURT

The Supreme Court of South Carolina

Otis James Compton,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable D. Garrison Hill

Abbeville County

Trial Court Case No. 2008-CP-01-00085

ORDER

For good cause shown, the request for an extension to serve and file the Reply to Return to Petition for a Writ of Certiorari is granted and extended until September 22, 2011.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Arenda J. Shealy*
Chief Deputy CLERK

Columbia, South Carolina

September 15, 2011

cc: Division of Appellate Defense
Tara Shurling, Esquire
Assistant Attorney General Harrison D. Brant

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

Christina Dixon Parnall

Associate Attorney

September 12, 2011

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

RE: Otis James Compton, 262807 v. State of South Carolina; 2008-CP-01-00085.

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of the Petitioner's Motion for Extension of Time and my Certificate of Service in the above-captioned case. I would appreciate your returning two (2) clocked copy of the Motion in the envelope provided. Thank you for your assistance in this matter. I remain,

Sincerely yours,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm

Enclosures

cc: Rutledge Johnson, Assistant Attorney General
Otis James Compton, 262807
Wayne and Sandra Woody

RECEIVED

SEP 14 2011

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Case No. 2008-CP-01-0085

OTIS JAMES COMPTON, 262807,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**PETITIONER'S MOTION
FOR EXTENSION OF TIME**

THIS MATTER comes before the Court by way of an appeal from a Post-Conviction Relief Order. The Reply to Return Petition for Writ of Certiorari is due for filing on today's date, September 12, 2011. Because of my heavy work schedule I have yet to be able to determine if there is a need for a Reply and therefore, I now respectfully request a 10-day extension of time in which to prepare and submit my Reply to Return to Petition for Writ of Certiorari on behalf of this client.

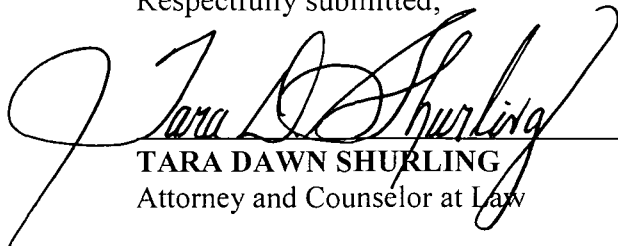
Since this is my second extension request, opposing counsel, Rutledge Johnson, Assistant Attorney General, has consented to this request by phone.

RECEIVED

SEP 14 2011

S.C. SUPREME COURT

Respectfully submitted,


TARA DAWN SHURLING
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER

This 12th day of September, 2011.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Case No. 2008-CP-01-0085

OTIS JAMES COMPTON, 262807,

PETITIONER,

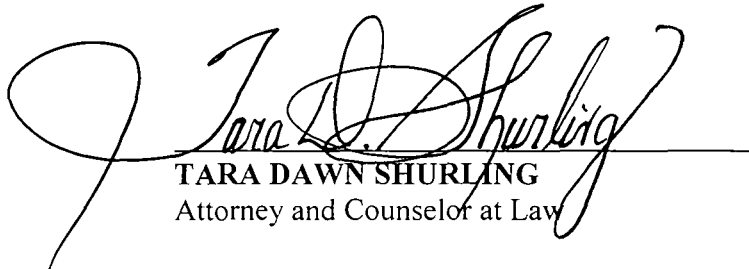
v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petitioner's Motion for Extension of Time in the above-entitled case have been served upon opposing counsel, Rutledge Johnson, Assistant Attorney General, by depositing in the U.S. Mail, postage pre-paid this 12th day of September, 2011.



TARA DAWN SHURLING
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 12th day
of September, 2011.

Shawn D. McCollister (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan. 16, 2017

The Supreme Court of South Carolina

Otis James Compton, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable D. Garrison Hill
Abbeville County
Trial Court Case No. 2008-CP-01-00085

ORDER

The request for an extension until September 12, 2011 to serve and file the Reply to 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 Brenda J. Shealy
Clerk

Columbia, South Carolina

August 26, 2011

cc: Division of Appellate Defense
Tara Shurling, Esquire
Assistant Attorney General Harrison D. Brant

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

Christina Dixon Parnall

Associate Attorney

August 25, 2011

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

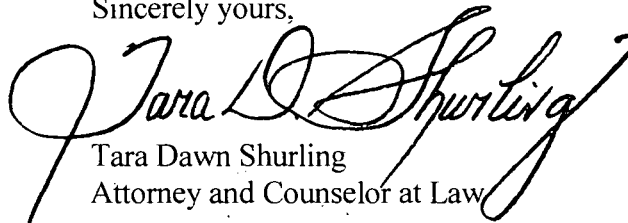
Re: Otis James Compton, 262807 v. State of South Carolina; 2008-CP-01-00085.

Dear Mr. Shearouse:

I am appointed counsel for this client for the perfection of his appeal. This is an appeal from a Post-Conviction Relief action. My Reply to the State's Return to the Petition for Writ of Certiorari is due on September 1, 2011. I am scheduled to be trying a murder case in Richland County the week of August 29th through September 2, 2011. For that reason I respectfully request a 10-day extension of time in which to prepare and submit my Reply to the State's Return to the Petition for Writ of Certiorari on behalf of this client.

There have been no previous extension requests in this matter. By copy of this letter, I am advising opposing counsel, Harrison D. Brant, Assistant Attorney General, of this request. With my thanks for the Court's kind assistance in this matter, I remain,

Sincerely yours,


Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

cc: Harrison D. Brant, Assistant Attorney General
Otis James Compton, #262807
Wayne and Sandra Woody

RECEIVED

AUG 26 2011

S.C. SUPREME COURT



ALAN WILSON
ATTORNEY GENERAL

August 22, 2011

RECEIVED

AUG 22 2011

S.C. Supreme Court

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

**RE: Otis James Compton v. State of South Carolina
2008-CP-01-0085**

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above case

Sincerely,

Harrison D. Brant
Assistant Attorney General

HDB:cey
Enclosures

cc: Tara Dawn Shurling, Esquire
Trisha Allen, Victim Services

The Supreme Court of South Carolina

Otis James Compton,

Petitioner,

V.

State of South Carolina,

Respondent.

The Honorable D. Garrison Hill
Abbeville County
Trial Court Case No. 2008-CP-01-00085.

ORDER

Respondent seeks a fourth extension of time 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 August 22, 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.

FOR THE COURT

Columbia, South Carolina

July 27, 2011

cc: Tara Dawn Shurling, Esquire
Assistant Attorney General Harrison D. Brant



ALAN WILSON
ATTORNEY GENERAL

July 26, 2011

RECEIVED

JUL 26 2011

S.C. Supreme Court

VIA HAND-DELIVERY

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

RE: Otis James Compton v. The State

Dear Mr. Shearouse:

Respondent filed a Motion for Fourth Extension of Time within which to Serve and File Return to Petition for Writ of Certiorari on Friday, July 22, 2011. Attempts were made to contact opposing counsel for consent to this motion; however, Ms. Shurling's Office was closed. Through this letter, Counsel indicates her consents to the requested relief.

Sincerely,

Harrison D. Brant
Assistant Attorney General

HDB/erd

I Consent:

Tara D. Shurling, Esquire

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Abbeville County
D. Garrison Hill, Circuit Court Judge
Trial Court Case No. 2008-CP-01-00085

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JUL 22 2011

OTIS JAMES COMPTON,

S.C. Supreme Court

Petitioner,

vs.

THE STATE,

(4)

Respondent.

**MOTION FOR FOURTH EXTENSION OF TIME WITHIN WHICH
TO SERVE AND FILE RETURN TO PETITION FOR WRIT CERTIORARI**

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

The Return to Petition for Writ of Certiorari is due to the Court today, pursuant to a previous extension granted by the Court.

II.

Respondent is working diligently to complete this return. However, due to work required in other cases pending in the eighth and sixteenth circuits as well as several PCR appeals at the South Carolina Supreme Court, I am unable to complete this Brief on time. I would therefore request an extension of time within which to serve and file the Return to Petition for Writ of Certiorari.

III.

This extension request is not intended for purposes of delay, but rather to ensure that the Return is properly researched and prepared.

WHEREFORE, Respondent prays that the Court extend the deadline for the service and filing of the Return to Petition for Writ of Certiorari in this case for thirty (30) days; and for such other and further relief as the Court may deem just and proper.

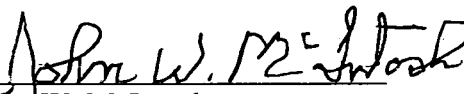
Respectfully submitted,

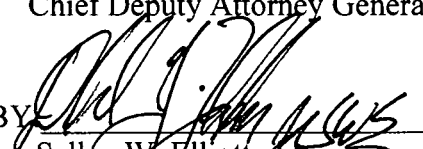
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HARRISON D. BRANT.
Assistant Attorney General

BY: 
John W. McIntosh
Chief Deputy Attorney General

BY: 
Salley W. Elliott
Assistant Deputy Attorney General

BY: 
Harrison D. Brant.
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 22, 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Abbeville County
D. Garrison Hill, Circuit Court Judge
Trial Court Case No. 2008-CP-01-00085

OTIS JAMES COMPTON,

Petitioner,

vs.

THE STATE,

Respondent.

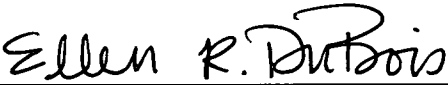
PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the Return to Petition for Writ of Certiorari on Petitioner by depositing a copy of same in the United States mail, postage prepaid, addressed to:

Tara Shurling, Esquire
3614 Landmark Drive, Ste. D
Columbia, SC 29204

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

This 22nd day of July, 2011.



ELLEN R. DuBOIS
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL



July 22, 2011

RECEIVED

JUL 22 2011

S.C. Supreme Court

VIA HAND DELIVERY

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

Re: Otis James Compton v. The State

Dear Mr. Sherouse:

Enclosed please find the original and six (6) copies of a Motion for Fourth Extension of Time within Which to serve and File Return to Petition for Writ of Certiorari, with proof of service, for filing in the above-referenced appeal.

Sincerely,

Harrison D. Brant
Assistant Attorney General

Enclosures

cc: Tara Shurling, Esquire
Victim Services

The Supreme Court of South Carolina

Otis James Compton,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable D. Garrison Hill
Abbeville County
Trial Court Case No. 2008-CP-01-00085

ORDER

For good cause shown, the request for an extension until July 22, 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 *Deirda I. Shealy*
Clerk

Columbia, South Carolina *Chief Deputy*

June 23, 2011

cc: Division of Appellate Defense
Tara Shurling, Esquire
Assistant Attorney General Harrison D. Brant

ALAN WILSON
ATTORNEY GENERAL



June 22, 2011

RECEIVED

JUN 22 2011

S.C. Supreme Court

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

(3)

RE: Otis J. Compton, #262807 v. State of South Carolina
2008-CP-01-0085

Dear Mr. Shearouse:

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

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

Sincerely,

Harrison D. Brant
Assistant Attorney General

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

TARA DAWN SHURLING
Attorney for Respondent

The Supreme Court of South Carolina

Otis James Compton,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable D. Garrison Hill
Abbeville County
Trial Court Case No. 2008-CP-01-00085

ORDER

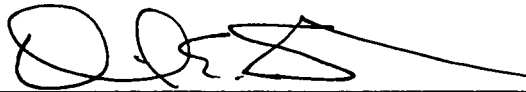
For good cause shown, the request for an extension until June 22, 2011 to serve and file the Return to the Petition for Writ of Certiorari is granted.

Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

May 24, 2011

cc: Division of Appellate Defense
Tara Shurling, Esquire
Assistant Attorney General Harrison D. Brant



ALAN WILSON
ATTORNEY GENERAL

May 23, 2011

RECEIVED

MAY 23 2011

S.C. Supreme Court

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

(2)

RE: Otis J. Compton, #262807 v. State of South Carolina
2008-CP-01-0085

Dear Mr. Shearouse:

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

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

Sincerely,

Harrison D. Brant
Assistant Attorney General

cc: Tara D. Shurling, Esquire

The Supreme Court of South Carolina

Otis James Compton, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable D. Garrison Hill
Abbeville County
Trial Court Case No. 2008-CP-01-00085

ORDER

The request for an extension until May 23, 2011 to serve and file the Return to the Petition for Writ of Certiorari is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 11, 2011

cc: Division of Appellate Defense
Tara Shurling, Esquire
Assistant Attorney General Harrison D. Brant



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

April 6, 2011

APR - 6 2011

S.C. Supreme Court

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

RE: **Otis J. Compton, #262807 v. State of South Carolina**
2008-CP-01-0085

Dear Mr. Shearouse:

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

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

Sincerely,

Harrison D. Brant
Assistant Attorney General

cc: Tara D. Shurling, Esquire

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

Christina Dixon Parnall

Associate Attorney

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

March 8, 2011

VIA HAND DELIVERY

RECEIVED

MAR - 8 2011

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

S.C. Supreme Court

RE: Otis James Compton, 262807 v. State of South Carolina; 2008-CP-01-00085.

Dear Mr. Shearouse:

Enclosed for filing please find the original and one copy of the Appendix and the Certificate of Service in the above-captioned case. I would appreciate your returning one (1) clocked copy of the Appendix covers and the Certificate of Service my courier. I mailed the Petition for Writ of Certiorari and the Certificate of Service for filing yesterday. Thank you for your assistance in this matter. I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink, reading "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm

Enclosures

cc: Harrison Brant, Assistant Attorney General (w/enclosure)
Otis James Compton, 262807 (w/enclosure)
Wayne and Sandra Woody (w/out enclosure)

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Case No. 2008-CP-01-0085

RECEIVED

MAR - 8 2011

S.C. Supreme Court

OTIS JAMES COMPTON, 262807,

PETITIONER,

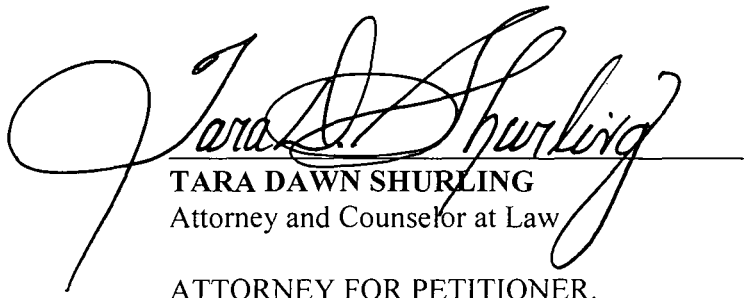
v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that one copy of the one copy of the Appendix in the above-entitled case have been served upon opposing counsel, Harrison Brant, Assistant Attorney General, Post Office Box 11549, Columbia, SC 29211, by depositing in the U.S. Mail, postage prepaid, this 7th day of March, 2011.


TARA DAWN SHURLING
Attorney and Counselor at Law
ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 7th day
of March, 2011.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: Jan. 16, 2017

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

Christina Dixon Parnall

Associate Attorney

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

March 7, 2011

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

RE: Otis James Compton, 262807 v. State of South Carolina; 2008-CP-01-00085.

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of the Petition for Writ of Certiorari and the Certificate of Service in the above-captioned case. The Appendix will be hand delivered in the morning for filing. I would appreciate your returning one (1) clocked copy of both the Petition for Writ of Certiorari and Certificate of Service in the envelope provided. Thank you for your assistance in this matter. I remain,

Sincerely yours,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm

Enclosures

cc: Harrison Brant, Assistant Attorney General (w/ enclosure)
Otis James Compton, 262807 (w/ enclosure)
Wayne and Sandra Wood (w/ enclosure)

RECEIVED
MAR 04 2011
S.C. SUPREME COURT

RECEIVED

MAR - 8 2011

S.C. Supreme Court

The Supreme Court of South Carolina

Otis James Compton, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable D. Garrison Hill
Abbeville County
Trial Court Case No. 2008-CP-01-00085

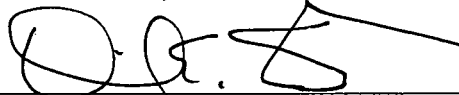
ORDER

For good cause shown, the request for an extension until March 7, 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

February 4, 2011

cc: Division of Appellate Defense
Tara Shurling, Esquire
Assistant Attorney General Jennifer Kinzeler

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite A

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(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

Christina Dixon Parnall

Associate Attorney

February 3, 2011

RECEIVED

FEB 04 2011

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

S.C. SUPREME COURT

RE: Otis James Compton, 262807 v. State of South Carolina; 2008-CP-01-00085.

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of the Petitioner's Motion for Extension of Time and my Certificate of Service in the above-captioned case. I would appreciate your returning two (2) clocked copy of the Motion in the envelope provided. Thank you for your assistance in this matter. I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink, reading "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm

Enclosures

cc: Harrison Grant, Assistant Attorney General (w/enclosure)
Otis James Compton, 262807 (w/enclosure)
Wayne and Sandra Woody (w/out enclosure)

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Case No. 2008-CP-01-00085

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FEB 04 2011

S.C. SUPREME COURT

OTIS JAMES COMPTON, 262807,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

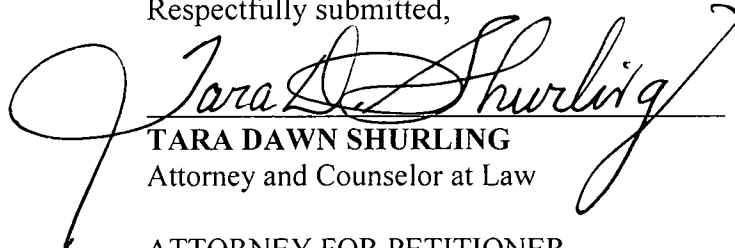
RESPONDENT.

**PETITIONER'S MOTION
FOR EXTENSION OF TIME**

THIS MATTER comes before the Court by way of an appeal from a Post-Conviction Relief Order. The Petition for Writ of Certiorari is due for filing on February 4, 2011. I have been out sick and so has my paralegal. That, coupled with the fact that we are still in the middle of relocating my office, has caused me to be unable to complete this Petition by that date. For that reason, I now respectfully request a 30-day extension of time in which to prepare and submit my Petition for Writ of Certiorari on behalf of this client.

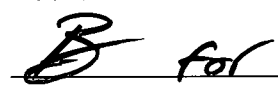
Since this is my third extension request, both opposing counsel, Harrison Grant, Assistant Attorney General, and my associate have consented to this request by their signatures below. (In compliance with *In Re: Extensions in Criminal and Post-Conviction Relief Cases*, S. C. Sup. Ct. Order dated March 18, 2009) (Davis Adv. Sh. No. 13 at 1)

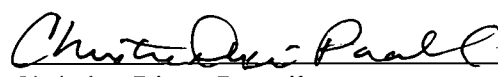
Respectfully submitted,


TARA DAWN SHURLING
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER

I Consent:


Harrison Grant
Assistant Attorney General


Christina Dixon Parnall
Associate Attorney

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Case No. 2008-CP-01-00085

RECEIVED

FEB 04 2011

S.C. SUPREME COURT

OTIS JAMES COMPTON, 262807,

PETITIONER,

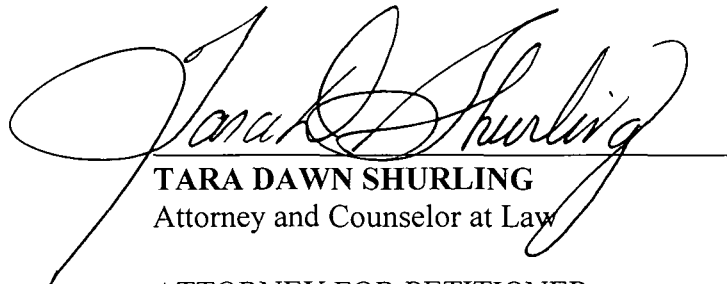
v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petitioner's Motion for Extension of Time in the above-entitled case have been served upon opposing counsel, Harrison Grant, Assistant Attorney General, by depositing in the U.S. Mail, postage pre-paid, this 3rd day of February, 2011.



TARA DAWN SHURLING
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 3rd day
of February, 2011.

Sharon H. McCallister (L.S.)
Notary Public for South Carolina

My Commission Expires: Apr 16, 2017

The Supreme Court of South Carolina

Otis James Compton, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable D. Garrison Hill
Abbeville County
Trial Court Case No. 2008-CP-01-00085

ORDER

For good cause shown, the request for an extension until February 4, 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

January 12, 2011

cc: Division of Appellate Defense
Tara Shurling, Esquire
Assistant Attorney General Jennifer Kinzeler

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Case No. 2008-CP-01-0085

RECEIVED

JAN 06 2011

S.C. Supreme Court

OTIS JAMES COMPTON, 262807,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

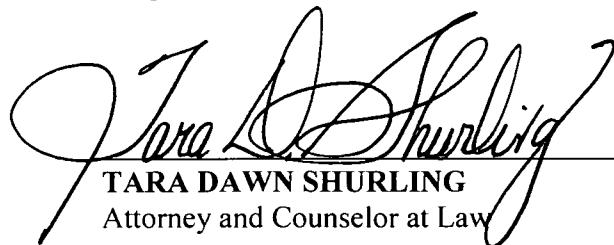
**PETITIONER'S MOTION
FOR EXTENSION OF TIME**

(2)

THIS MATTER comes before the Court by way of an appeal from a Post-Conviction Relief Order. The Petition for Writ of Certiorari is due for filing on January 5, 2011. This week and next I am moving my law firm to a new office. I have been in our current location for fourteen years so this move is quite an undertaking. I will be unable to complete this Petition by the current due date and for that reason, I now respectfully request a 30-day extension of time in which to prepare and submit my Petition for Writ of Certiorari on behalf of this client.

Since this is my second extension request, opposing counsel, Jennifer Kinzeler, Assistant Attorney General, has consented to this request by phone.

Respectfully submitted,


TARA DAWN SHURLING
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER

1/4/11

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Case No. 2008-CP-01-00085

OTIS JAMES COMPTON, 262807,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

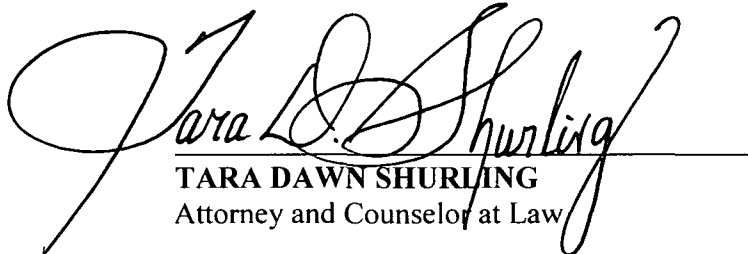
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JAN 06 2011

S.C. Supreme Court

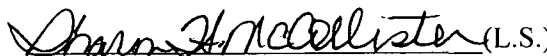
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petitioner's Motion for Extension of Time in the above-entitled case have been served upon opposing counsel, Jennifer Kinzeler, Assistant Attorney General, by depositing in the U.S. Mail, postage pre-paid, this 4th day of January, 2011.


TARA DAWN SHURLING
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 4th day
of January, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan. 16, 2017

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite D

Columbia, South Carolina 29204

Christina Dixon Parnall

Associate Attorney

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

January 4, 2011

RECEIVED

JAN 06 2011

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

S.C. Supreme Court

RE: Otis James Compton, 262807 v. State of South Carolina; 2008-CP-01-00085.

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of the Petitioner's Motion for Extension of Time and my Certificate of Service in the above-captioned case. I would appreciate your returning two (2) clocked copies of the Motion in the envelope provided. Thank you for your assistance in this matter. I remain,

Sincerely yours,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".
Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm

Enclosures

cc: Jennifer Kinzeler, Assistant Attorney General (w/enclosure)
Otis James Compton, 262807 (w/enclosure)

The Supreme Court of South Carolina

Otis James Compton, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable D. Garrison Hill
Abbeville County
Trial Court Case No. 2008-CP-01-00085

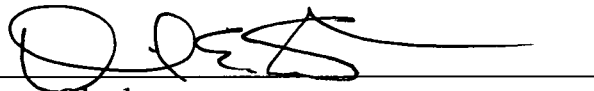
ORDER

The request for an extension until January 5, 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


Clerk

Columbia, South Carolina

November 24, 2010

cc: Division of Appellate Defense
Tara Shurling, Esquire
Assistant Attorney General Jennifer Kinzeler

LAW OFFICE OF



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TARA DAWN SHURLING, RA NOV 24 2010

Attorney and Counselor at Law

3614 Landmark Drive

Suite D

S.C. SUPREME COURT

(803) 738-8622

E-Mail: tdslaw@shurlinglaw.com

Columbia, South Carolina 29204

(Fax) (803) 738-1600

November 22, 2010

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

Re: Otis James Compton, 262807 v. State of South Carolina; 2008-CP-01-00085.

Dear Mr. Shearouse:

I am appointed counsel for this client for the perfection of his appeal. This is an appeal from a Post-Conviction Relief action. My Petition for Writ of Certiorari is due on December 6, 2010. Because of my scheduled vacation November 23 – December 7, 2010, I will be unable to complete my work on this Petition. For that reason I respectfully request a 30-day extension of time in which to prepare and submit my Petition for Writ of Certiorari on behalf of this client.

There have been no previous extension requests in this matter. By copy of this letter, I am advising opposing counsel, Jennifer A. Kinzeler, Assistant Attorney General, of this request. With my thanks for the Court's kind assistance in this matter, I remain,

Sincerely yours,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm

cc: Jennifer A. Kinzeler, Assistant Attorney General

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite D

Columbia, South Carolina 29204

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

Jeremy A. Thompson

Associate Attorney

October 7, 2010

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

RE: Otis James Compton v. State; 2008-CP-01-00085.

Dear Mr. Shearouse:

I received the PCR transcript in the above-captioned matter on October 6, 2010. I would ask that my time limits for filing the Petition for Writ of Certiorari and Appendix in this appeal be set from that date. Since I was court-appointed in this matter, I understand that I would have sixty (60) days to submit the petition. By my calculation the due date would be December 6, 2010. Please let me know if this calculation is incorrect. By copy of this letter, I am notifying opposing counsel of this request. With my thanks for your kind attention, I am,

Sincerely yours,

RECEIVED

OCT 14 2010

S.C. SUPREME COURT

A handwritten signature in cursive script that reads "Tara Dawn Shurling".
Tara Dawn Shurling
Attorney and Counselor at Law

TDS /sg

cc: Jennifer Kinzeler, Assistant Attorney General
Otis James Compton, 262807
Wayne and Sandra Woody



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, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

October 5, 2010

RECEIVED

OCT - 5 2010

S.C. SUPREME COURT

Tara D. Shurling, Esquire
Law Office of Tara Dawn Shurling, P.A.
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204

Re: Otis James Compton v. State of South Carolina

Dear Ms. Shurling :

Pursuant to the Supreme Court's order of September 23, 2010, enclosed please find the transcript of record and supporting documents in the above case.

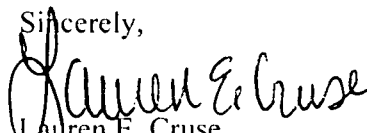
Our office will be associated with you in connection with this appeal for **costs of printing and binding only**, up to a maximum cost of ten (.10) cents per page and \$3.25 per volume for binding. Reimbursement for printing will only be for the quantity of documents required for this agency. You will be solely responsible for all aspects of the appeal, including printing and filing. However, this Office will obtain and furnish all necessary transcripts without cost to you or your client.

I need to stress that this Office cannot reimburse you for costs of transcripts which you order on your own. **In order for the state to bear the costs of the transcripts, these must be ordered through the Office of Appellate Defense, and not by private counsel.**

Your case must be registered at www.sccid.sc.gov . In order to receive reimbursement for printing and binding costs, you must submit an electronic voucher; the Order of Appointment or a copy of the letter from Division of Appellate Defense approving you to be associated as counsel; a copy of this letter as authorization for reimbursement from the Division of Appellate Defense; and the original **paid** receipt for the cost of printing and binding. Payment will be made only to the attorney of record. Payment cannot be made directly to the vendor or supplier.

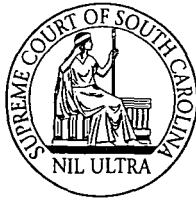
If you have any questions concerning printing, please contact me at the number listed above. If you have any questions about payment or costs, please contact Jean Tinder or Gale Westfall at 803-734-1343.

Sincerely,


Lauren E. Cruse
Legal Assistant

Enclosures

cc: South Carolina Supreme Court
S.C. Office of Indigent Defense



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 23, 2010

Appellate Defender Kathrine H. Hudgins
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: Compton, Otis James v. The State

Dear Counsel:

Enclosed is the Order issued pursuant to your Motion for Appointment of Outside Counsel in the above entitled matter.

Please be advised that you are to immediately forward the transcript of record and supporting documents in this matter to Tara Dawn Shurling, Esquire.

By copy of this letter, we are advising Ms. Shurling to notify this office upon receipt of these documents so that the time limits for perfecting the appeal may be set accordingly.

Very truly yours,

Daniel E. Shearouse
ES

CLERK

DES/jj

cc: Otis James Compton #262807
Tara Shurling, Esquire
Assistant Attorney General Jennifer Kinzeler

The Supreme Court of South Carolina

v.

Otis James Compton, Petitioner,
State of South Carolina, Respondent.

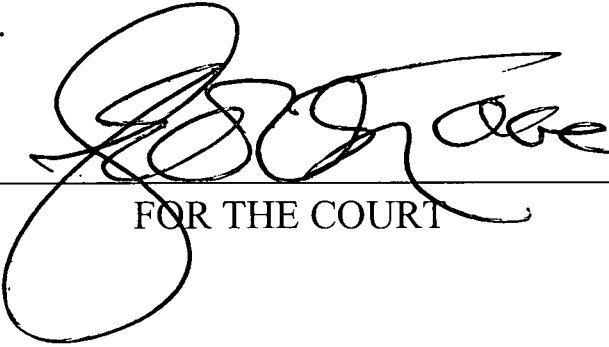
ORDER

Petitioner filed a notice of appeal from an order denying and dismissing his application for post-conviction relief (PCR). The South Carolina Commission on Indigent Defense, Division of Appellate Defense, assumed representation of petitioner in this matter. The Division of Appellate Defense now moves this Court to be relieved as counsel and to appoint outside counsel due to a conflict of interest. The State takes no position on the motion.

We find representation of petitioner by the Division of Appellate Defense constitutes a conflict of interest because petitioner alleged in his PCR application that Robert M. Dudek, of the Division of Appellate Defense, was ineffective in his representation of petitioner on direct appeal, and that allegation was ruled on in the order of dismissal. Accordingly, the Division

of Appellate Defense is hereby relieved as counsel in this matter and Tara Shurling is appointed to represent petitioner. The Division of Appellate Defense shall remain associated for the limited purpose of paying for any necessary transcript(s) and providing copies of the petition, appendix and briefs.

IT IS SO ORDERED.


C. J.
FOR THE COURT

Columbia, South Carolina

September 23, 2010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Abbeville County

Honorable D. Garrison Hill, Circuit Court Judge

 ORIGINAL

RECEIVED

SEP - 7 2010

OTIS JAMES COMPTON,

PETITIONER,

S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

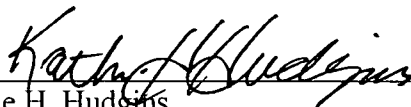
The undersigned respectfully shows the Court:

1. On October 30, 2000, the Abbeville County Grand Jury indicted Compton in a five count indictment for murder, burglary first degree, armed robbery, malicious injury to property and possession of a firearm or knife during the commission of a violent crime, indictment #2000-GS-01-0464. On November 18, 2002, Compton proceeded to jury trial before the Honorable Wyatt T. Saunders, Jr. E. Charles Grose Jr. represented Compton at trial. The jury found Compton guilty and Judge Saunders sentenced him to life without parole.

2. Compton appealed his sentence and conviction. Chief Appellate Defender Robert M. Dudek and trial counsel, Charles Grose represented Compton on the appeal. The South Carolina Court of Appeals affirmed the sentence and conviction. State v. Compton, 366 S.C. 671, 623 S.E.2d 661 (Ct.App. 2005). The South Carolina Supreme Court denied the petition for writ of certiorari on August 9, 2007. The United States Supreme Court denied the petition for writ of certiorari on January 7, 2008.
3. On March 27, 2008, Compton filed an application for post conviction relief alleging ineffective assistance of counsel prior to trial, ineffective assistance of trial counsel and ineffective assistance of appellate counsel. Evidentiary hearings were held on August 17, 2009 and October 29, 2009, before the Honorable D. Garrison Hill. One issue alleged by Compton was that appellate counsel was ineffective in failing to raise the violation of Compton's Fifth Amendment right to counsel. Appellate counsel testified at the October 29, 2009 hearing.
4. In an order signed February 25, 2010, Judge Hill denied relief and dismissed the application. Judge Hill made a specific finding in regard to the allegation of ineffective assistance of appellate counsel writing, "Finally, even assuming this Court finds that appellate counsel was ineffective for not raising the Fifth Amendment on appeal with regard to [witness] Black, Compton suffered no prejudice from this alleged deficient performance." (Order p. 20).
5. Counsel is now appointed to represent Compton in the appeal from the PCR judge's denial of relief. Counsel submits that her representation of Compton presents a conflict of interest as the allegation of ineffective assistance of appellate counsel involves the chief appellate defender of the agency where counsel is an appellate defender.

6. Counsel respectfully moves to be relieved and asks the Court for appointment of outside counsel to represent Compton.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

Attorney for Petitioner

This 7th day of September, 2010

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Abbeville County

Honorable D. Garrison Hill, Circuit Court Judge

OTIS JAMES COMPTON,

PETITIONER,

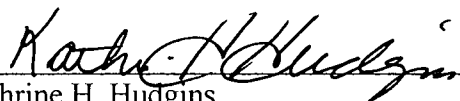
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

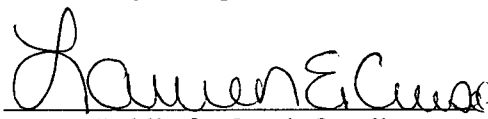
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion for Appointment of Outside Counsel in the above referenced case has been served upon opposing counsel, Jennifer A. Kinzeler, Esquire and Otis James Compton, # 262807 at Lieber Correctional Institution this 7th day of September, 2010.


Kathrine H. Hudgins
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 7th day of September, 2010.


(L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2010.

Respondent.

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ORDER DENYING POST-CONVICTION RELIEF

914

Carolina Court of Appeals affirmed Compton's convictions and sentences. State v. Compton, 366 S.C. 671, 623 S.E.2d 661 (Ct. App. 2005). After his Petition for Rehearing was denied Compton sought certiorari in the Supreme Court of South Carolina, which was also denied. State v. Compton, S.C. Sup. Ct. Order filed August 9, 2007. The Remittitur was issued on August 15, 2007. On November 7, 2007, Compton sought certiorari in the United States Supreme Court. That Petition was denied on January 7, 2008. Compton v. South Carolina, 128 S.Ct. 926 (2008).³

Compton then filed this Application for Post-Conviction Relief with the Abbeville County Clerk of Court on March 27, 2008. The State made its Return and Motion to Dismiss on September 30, 2008. Evidentiary hearings were convened on August 17, 2009, and October 29, 2009. At the conclusion of the October 29 hearing, this Court took the matter under advisement and requested both parties to submit post-hearing briefs.

II. ALLEGATIONS RAISED ON PCR

In his Application for Post-Conviction Relief, Compton alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel prior to trial;
2. Ineffective assistance of trial counsel; and
3. Ineffective assistance of appellate counsel.

He alleged generally that his rights pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, were violated prior to and during his trial, as well on his direct appeal.

³ Attorneys Dudek and Grose also represented Compton on the subsequent appeals.

At the evidentiary hearings, Compton added additional allegations through the testimony of his attorneys, thereby amending his Application for Post-Conviction Relief made pursuant to the evidence adduced at the hearing. See Simpson v. Moore, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006); Rule 15(b), SCRPC. At the evidentiary hearings, Compton specifically claimed:

1. Smithdeal was ineffective for failing to obtain a definitive immunity agreement with the State before permitting Compton to provide a statement to the police concerning the murder of the Johnny Hanna;
2. Smithdeal was ineffective for failing to assert Compton's Fifth Amendment right to remain silent and for failing to establish his position as counsel for Compton in connection with anything relating to the murder and any charges which might be brought relating to it;
3. Trial counsel was ineffective for failing to object to the State's use of Compton's prior burglary convictions;
4. Appellate counsel was ineffective for failing to raise on direct appeal the ground that Compton's Fifth Amendment rights had been violated.

III. STATEMENT OF FACTS

On August 6, 1999, the victim, Johnny Hanna, came home to find that his house was in the midst of being burglarized. The burglars were caught by surprise, and assaulted and murdered Hanna by hitting him with a bat, stabbing him twice, and shooting him five times. The final shot to the Hanna's head was fired while the assailant was standing over him. The burglars then fled the scene. Although investigators submitted blood samples, hair samples, and fingerprints from the crime scene for analysis, none of that evidence conclusively pointed to any of the suspects.⁴ Shortly thereafter, Otis Compton heard that he was a suspect in the Hanna burglary and murder. At the time of the victim's killing, Compton had pending first degree

⁴ However, Sheila Hanna Wildes testified that after the murder, she found a black glove in her house that did not belong to anyone who lived there. Tr. p. 265, line 14-p. 266, line 6. Michelle Dixon explained during her expert testimony that gloves can mask fingerprints. See Tr. p. 202 line 25; Tr. p. 265, line 14-p. 266, line 6.

burglary charges from other incidents. Joseph Smithdeal, Esquire, represented Compton on those charges.

On August 13, 1999 - one week after the crimes occurred - Compton called Abbeville County Chief Deputy Sheriff Marion Johnson. After being read and waiving his right to remain silent, and after speaking with Smithdeal, Compton gave a voluntary, incriminating statement.⁵ See Tr. p. 299, line 4-p. 302, line 8; p. 563, line 1-25. On November 30, 1999, he ultimately pled guilty to the unrelated burglary charges and was sentenced to fifteen years confinement.

On January 18, 2000, while Compton was in court to plead guilty to another unrelated third degree burglary, he spoke with Tracy Black in the holding cell at the Anderson County courthouse. Compton had known Black "almost all of my life." See Tr. p. 972, lines 4-7. According to Black, Compton told him that he pled guilty to the prior burglary charges to cover for his wife, Angel, so that she would keep quiet about another burglary he was involved in that "had went bad." Black testified that Compton told him he was a suspect in the victim's murder because the victim came home during the burglary, and that they had to do what they had to do. See Tr. p. 407, lines 2-p. 408, lines 1-19. Compton testified at trial that he talked with Black that day, but that all he told him about the murder was that he was a suspect. See Tr. p. 972, lines 15-23; p. 975, line 24-p. 973, line 5.

On March 9, 2000, a SLED officer went to speak with Black, who was incarcerated at McCormick Correctional Institution, about an unrelated matter. Black told the SLED officer that he had heard some information about Hanna's death and asked to be put in touch with Abbeville County Sheriff Charles Goodwin. See Tr. p. 409, line 8-p. 410, line 13. Later that day, four

⁵ According to Chief Johnson and Agent Gambrell, when the subject of hair samples, blood samples, and fingerprints came up, Compton responded "How could it be mine if I stayed in the car?" See, Tr. p. 302, lines 1-8.

police officers came to interview Black. Black told the officers about his conversation with Compton at the Anderson County courthouse on January 18th regarding the murder, and that he felt Compton was involved in it. See Tr. p. 413, lines 2-14. Black told them that he was getting transferred soon, and that if he were placed at Kershaw he could listen for other things Compton might say. See Tr. p. 413, line 25-p. 414, line 25. The following week, Black was transferred to Kershaw Correctional Institution, where Compton was housed.⁶ See Tr. p. 416, lines 2-4. As the Court of Appeals found, Black “was told by investigators to ‘listen to Mr. Compton and see if he would talk about the case any more or what he had done or any involvement in it. They told me that I could not question the guy or pursue nothing toward him, just listen.’ Black was eventually placed in a cell with Compton and relayed to police several conversations in which Compton admitted taking part in the burglary and murder of Hanna.” State v. Compton, 366 S.C. 671, 676, 623 S.E.2d 661 (Ct. App. 2005).

On July 12, 2000, Compton was brought back to Abbeville County because his wife was to appear in court on the unrelated first-degree burglaries. While at the courthouse, he contacted Sheriff Goodwin and told him that he would tell the police what he knew about the murder in exchange for a sentence reduction. Sheriff Goodwin asked Compton if he wanted an attorney. Per Compton’s request, he was then taken to attorney Joseph Smithdeal’s office. See Tr. p. 640, line 8-p. 643, line 17. After speaking with Smithdeal alone for approximately an hour, and after signing a waiver of rights form, Compton, Sheriff Goodwin, Solicitor Towne’s Jones, and Smithdeal signed a document captioned “plea agreement.” See Tr. p. 644, line 2-p. 645, line 24. At Compton’s request, the plea agreement provided that he would provide truthful information

⁶ Black was transferred the north yard, while Compton was housed in the south yard. They were not cellmates until some months later. See Tr. p. 417, lines 2-25; Tr. p. 979, lines 22.

about the murder of the victim in exchange for a reduction in sentence "by all reasonable means" on the other burglary charges from fifteen years to seven-and-a-half years imprisonment. See Tr. p. 856, line 6-25. The plea agreement did not include any express promise made by the State to not prosecute Compton for the murder of the victim. The agreement in fact had no provisions relevant to any future plea or any criminal charges other than the prior burglaries to which Compton had already pled guilty.

As part of the plea agreement, Compton gave a statement to the police in which he stated that Shane Rice had confessed to him the details of the crime after he, Otis Compton, and Robert Compton had all gone out drinking together. See Tr. p. 976, lines 3-22. In particular, Rice told Otis Compton that while he and Robert Compton were robbing Hanna's home, Hanna came home and surprised them. See Tr. p. 977, lines 19-22. When they saw Hanna, Robert Compton stabbed him and Rice shot him several times. See Tr. p. 977, lines 22-24. At trial, Compton maintained this statement was true, and that he was not present at the time the crime was committed. See Tr. p. 948, line 17-p. p. 998, line 6.⁷

After giving his statement, Compton was transported back to Kershaw Correctional Institution. Eventually, he and Black became cellmates. Several witnesses, including Black, testified that while they were all incarcerated together, Compton talked about his involvement in the victim's murder. See p. 419, line 17-p. 422, line 1; p. 536, line 18-p. 544, line 15; p. 555 line 2-p. 556, line 14. Compton first testified that he knew details about the crime because Black told him, but then later that he knew details from Shane Rice, not Black. Tr. p. 1016, lines 4-25; p. 1021, lines 3-6; p. 1033, line 9-11.

⁷ Compton presented the testimony of numerous family members who testified that he was with them during the robbery and murder. See Trial Tr. p. 872, line 11-p. 948, line 16. Compton also testified that he was at the courthouse on July 12, 2000 for his wife's trial on unrelated burglaries, and that he planned to lie for his wife on the witness stand and say "she wasn't there," or that "she didn't go in the house." See Tr. p. 1021, lines 7-25.

On October 9, 2000, Compton contacted SLED agent Steve Gambrell and told him that he had something he needed to get off his chest, but that he wanted to be taken to Abbeville. See Tr. p. 569, line 16-p. 573, line 5. He also stated that he wanted Black to accompany him. See Tr. p. 573, lines 22-23. Agents Gambrell and Templeton then picked up Compton and Black and transported them to Abbeville, where they met with Sheriff Goodwin and Chief Deputy Marion Johnson. See Tr. p. 575, line 7-p. 577, line 15. In the late evening of October 9th, after being advised of his rights and waiving them, Compton gave a statement that he was present at Hanna's house when the crimes were committed, but that he did not go inside. See p. 489, line 6-p. 492, line 13.

The following day, after resting and being advised of his rights again, Compton waived his rights and gave another statement to the police in which he stated that he was riding around with Shane Rice and Robert Compton when Rice suggested that they could rob the victim's home. See Tr. p. 582, line 21-p. 586, line 6; p. 576, lines 8-13. Compton further stated that he remained in Rice's truck while Rice and Robert Compton went into the home to rob it. See Tr. p. 586, line 23-p. 587, line 4. Compton then told the police that he watched as Rice and Robert Compton killed Hanna when he came home. See Tr. p. 588, line 9-p. 590, line 3.

Compton was arrested for the Hanna burglary and murder on October 12, 2000. Smithdeal testified that he wrote a letter the next day to the police stating that he had formerly represented Compton on other charges, and requested that the police not contact Otis until he had an attorney representing him. The letter did not claim that Smithdeal represented Compton on the murder charge, or that the police needed his approval before speaking with Compton.

After the October 9-10, 2000 statements, Compton agreed to go back to the scene of the crime with the pathologist and agent Derrick to lay out for them what happened when the crimes

were committed. See Tr. p. 494, lines 16-22. On October 25, 2000, Compton went back to Abbeville to walk through the victim's home with Dr. Brett Woodward, the pathologist who conducted the victim's autopsy, as well as with SLED agent Steve Derrick, who reconstructed the scene based on his analysis of the blood spatter evidence. Compton was advised of his rights again, waived them, and spoke voluntarily with Dr. Woodward and Agent Derrick. See, Tr. p. 745, lines 3-10. Agent Derrick testified at trial that on August 16, 1999 he formed an initial opinion about how the victim was shot, but that as additional evidence became available, including the autopsy report, his opinion about how the victim was shot became more precise although both were accurate.⁸ See p. 760, line 1-p. 762, line 17. Significantly, both Dr. Woodward and Agent Derrick testified at trial that Compton's description of the assault was consistent with their ultimate findings.

In addition, there was evidence that Compton was not being truthful in certain statements he gave during the October 25 meeting. For example, while at the scene, Compton stated that he was waiting in Shane Rice's truck when the burglary was taking place; however, he changed his story to state that he was in a 1980 Monte Carlo after he was informed that Rice's truck could not have made the tracks that were found in the victim's back yard. See Tr. p. 714, line 21-p. 716, line 21.

On October 30, 2010, Compton was indicted by the Abbeville County Grand Jury. Prior to trial, defense counsel moved to recuse Solicitor Jones and his office from prosecuting Compton because the Solicitor was a witness defense counsel intended to call at the subsequent suppression hearing. See July 15, 2002 Motion Tr. p. 6, lines 1-8. As a result, Solicitor Jones was subsequently recused. Defense counsel also argued a pre-trial motion to quash the

⁸ Dr. Woodward did not change opinions. See Tr. p. 3-p. 811, line 22.

indictment based on an immunity agreement or, in the alternative, to suppress all of Compton's statements made to law enforcement after he entered into the July 12, 2000 plea agreement. See 11/14/02 Motion Tr. p. 14, lines 15-23. In support of his motion, defense counsel argued four grounds: that the plea agreement granted Compton immunity, that Compton's incriminating statements were inadmissible under Rule 410 of the South Carolina Rules of Evidence, and that the statements were inadmissible on both Fifth and Sixth Amendment grounds. See 11/14/02 Motion Tr. p. 235, line 15-p. 244, line 17. The trial court denied both motions, and specifically ruled that Compton was not deprived of his right to counsel at any time, and was in no way caused to make self-incriminating statements against his will. See 11/14/02 Motion Tr. p. 259, line 2-p. 260, line 4.

The following day, defense counsel wrote the trial judge stating that "we will need to discuss what is admissible about the prior burglary convictions." After jury selection, defense counsel made several pretrial motions, and specifically addressed what information about the prior burglary convictions would be admissible, although the trial court determined the issue was premature to discuss at that time.⁹ See Tr. p. 57, line 21-p.58, line 18. The issue was revisited during a discussion, outside the presence of the jury, early in the trial. At that time, both Solicitor McMahon and defense counsel determined that the prior burglaries had to be addressed given the trial court's prior rulings. See Tr. p. 307, line 19-p. 309, line 18. The issue was not raised again.

On direct appeal to the South Carolina Court of Appeals, appellate counsel raised several issues including immunity, the promise of leniency, Rule 410, SCRE, violation of the Sixth

⁹ Defense counsel motioned to dismiss a juror, offered to stipulate to the contents of the 911 tape so Compton would not be prejudiced by the jury hearing the tape, and objected to the jury being sworn for the reasons previously argued on November 14, 2002. Tr. p. 54, line 13-p. 59, line 23. All of defense counsel's motions were denied.

Amendment, right to counsel, and cross-examination of a witness. However, the Court affirmed Compton's convictions.

IV. STANDARD OF REVIEW

This Application for Post-Conviction Relief raises numerous specific allegations of ineffective assistance of counsel. The burden of proof is on Compton to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP. To prevail, Compton must demonstrate that trial counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by errors and omissions of counsel such that he was deprived of a fair trial. Strickland v. Washington, 466 U.S. 668 (1984). In other words, Compton must show that but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. Id.; Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007).

Where trial counsel articulates a valid reason for employing certain trial strategies, such conduct will not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). An Applicant may not simply posit suppositions and speculations in an attempt to establish that counsel was ineffective. Simpson v. Moore, 367 S.C. 587, 598, 627 S.E.2d 701, 707 (2006). Furthermore, judicial scrutiny of counsel's performance is highly deferential and is not subject to the distorting effects of hindsight. Id. In reviewing counsel's performance, there is a strong presumption that

counsel's conduct falls within the wide range of reasonable professional assistance. Id. citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052.

The Sixth Amendment's guarantee of effective assistance of counsel includes the effective assistance of counsel in the defendant's first appeal as of right. Evitts v. Lucey, 469 U.S. 387 (1985). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). The two-prong test of Strickland v. Washington applies to claims of ineffective assistance of appellate counsel. Bennett v. State, 383 S.C. 303, 680 S.E.2d 273 (2009).

Compton must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift v. State, 302 S.C. 535, 537, 539, 397 S.E.2d 523 (1990); Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

V. DISCUSSION

A. Allegations of Ineffective Assistance of Counsel Prior to Trial

Compton alleges that Smithdeal was ineffective for failing to obtain a specific immunity agreement for the murder charge and for failing to assert Compton's Fifth Amendment right to an attorney for all future conversations with Compton. He also claims that he never would have made the incriminating statements if Smithdeal had taken either action, and that consequently the State would not have been able to prosecute him.

1. Specific Immunity Agreement

Compton argues that Smithdeal should have insisted on a specific immunity provision in the July 12, 2000 "plea agreement." Smithdeal testified that he did speak with Solicitor Jones about immunity, but that Solicitor Jones was not willing to consider it. Smithdeal further testified that as counsel for Compton on pending burglary charges, and per Compton's request to help him get his existing sentence on prior burglary convictions reduced, he was trying to get the best deal he could for Compton on the charges for which he *did* represent Compton.¹⁰ He stated that, regardless, he could not have negotiated a deal for Compton on the murder charge, because Compton was not charged with murder.¹¹ Furthermore, Solicitor Jones testified that he could not recall a single instance during his tenure as Solicitor when he granted a defendant total immunity in exchange for information.

Compton contends he never would have given information for which he could be prosecuted if he knew the July 12, 2000 plea agreement did not afford him immunity. First, the

¹⁰ In the plea agreement, Smithdeal was able to negotiate a seven and a half year sentence for Compton on the burglary charges for which he did represent Compton; seven and a half years being *half* of the fifteen years to which Compton was originally sentenced. However, Compton was ultimately sentenced to the fifteen years because he failed to adhere to the terms of the plea agreement.

¹¹ Compton was not arrested for the murder until October 12, 2000. See Arrest Warrant.

agreement never uses the word immunity, or any variation thereof, and therefore Compton cannot credibly claim he was lulled into believing the agreement prevented the State from prosecuting him for murder.¹² Second, it cannot be surmised that Compton only gave statements because he believed the July 12th plea agreement offered immunity considering that Compton began voluntarily talking with law enforcement on August 13, 1999-within one week of the murder and almost a year before entering into the agreement. Indeed, in the August 13, 1999 statement Compton had already placed himself at the scene of the crime. See, Tr. p. 302, lines 1-25; p. 563, lines 19-25.

Compton made another voluntary statement on November 30, 1999, well before entering into the plea agreement, in which he gave officers the names of Robert Compton and Shane Rice. On July 12, 2000, Compton initiated contact with law enforcement again, and gave another voluntary statement, telling the officers that Shane Rice confessed to him that he (Shane) and Robert burglarized the Hanna's home and killed Johnny Hanna. See Tr. p. 976, line 18-p. 977, line 24. Compton gave further voluntary statements on October 9-10, 2000 and on October 25, 2000. In addition, several witnesses testified at trial about incriminating statements Compton made to fellow inmates, in addition to law enforcement, both before and after entering into the July 12, 2000 agreement.¹³ Moreover, every time Compton gave a statement to law

¹² The trial court determined that the document could not be interpreted "in any reasonable way to affect charges that may result from actions and doings" by Compton, but "directly affects the charges that arose out of the prior indictments." See, Motion 11/14/02, p. 256, line 23-p. 257, line 4. This conclusion was affirmed by the Court of Appeals.

¹³ Compton initiated contact with law enforcement, and gave voluntary statements after being advised of and waiving his rights on August 13, 1999, November 30, 1999, July 12, 2000, October 9-10 2000, and October 25, 2000. See Tr. p. 284, line 16-25; p. 299, line 23-p. 302, line 20; p. 965, line 23-966 line 18; p. 1000, lines 4-18; p. 1007, lines 18-24; Tr. p. 974, line 23-978, line 2; p. 1003, line 24-p. 1004, line 3; p. 1007, lines 18-24; p. 974, line 23-978, line 2; p. 1003, line 24-p. 1004, line 3; p. 974, line 23-978, line 2; p. 1003, line 24-p. 1004, line 3. p. 1024, line 12- p. 1036, line 16. It is worth noting that these citations refer only to statements Compton gave to law enforcement, and do not include the additional voluntary statements Compton made to three fellow inmates, on several occasions.

enforcement, he did so after being advised of his Miranda rights, particularly that anything he said could be used against him in a court of law.

Therefore, Smithdeal was not ineffective for failing to obtain immunity for Compton. Even if Smithdeal were found to have rendered ineffective assistance during the negotiations of the plea agreement, Compton was not prejudiced by Smithdeal's alleged deficient performance. Smithdeal testified that he told Compton not to talk with the police, but that Compton insisted on giving a statement. One can infer that this is the same advice Smithdeal would have given Compton if he had been more formally retained or appointed. Nonetheless, despite Smithdeal's advice, Compton entered into the July 12, 2000 plea agreement and gave a statement. That statement was preceded by and followed by several other incriminating statements, all initiated and made voluntarily by Compton. Clearly, Smithdeal could not prevent Compton from waiving his rights, and could not protect Compton from the consequences of his voluntary statements. Thus, Smithdeal's alleged failure to do so did not prejudice Compton.

2. Fifth Amendment Right to Counsel

The sojourn of Compton's Fifth Amendment right is circuitous, but essentially simple. Compton undoubtedly invoked his Fifth Amendment rights when he requested that Mr. Smithdeal be present at the July 12, 2000 meeting with police. From that point, Edwards v. Arizona, 451 U.S. 477 (1981) prevented law enforcement from initiating contact with Compton unless he was accompanied by counsel. As Edwards explained:

When an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights ... [He] is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further

communication, exchanges, or conversations with the police. 451 U.S. at 484-485.

Indeed, the police could not approach him about any offense unless counsel was present.

McNeil v. Wisconsin, 501 U.S. 171, 177 (1991). Any attempt by the police to surreptitiously approach Compton and secure a waiver of his Fifth Amendment rights would have been presumptively invalid. See Minnick v. Mississippi, 498 U.S. 146 (1990).¹⁴

These “prophylactic” rules, however, do not apply if Compton himself initiated contact with police. For while Miranda and McNeil expressly prohibit the police from “badgering” a criminal suspect who has previously embraced the protections of the Fifth Amendment, Michigan v. Harvey, 494 U.S. 344, 350 (1990), nothing prevents the suspect from independently approaching the police. See Miranda v. Arizona, 384 U.S. 436 (1966). To hold otherwise would effectively declare that an individual’s invocation of Fifth Amendment rights is per se irrevocable.¹⁵ Id. Miranda did not prohibit voluntary statements; it only provided that a suspect be warned of and voluntarily waive his Fifth Amendment rights before his custodial statement could be considered voluntary and admissible in court. To show that Compton voluntarily waived his Fifth Amendment right after invoking it, the State must prove by the greater weight of the evidence that Compton (1) initiated further communication, exchanges or conversations with the police and (2) voluntarily, knowingly and intelligently abandoned his right to counsel. Oregon v. Bradshaw, 462 U.S. 1039 (1983).

¹⁴ The Supreme Court recently retreated from this bright-line rule. In Maryland v. Shatzer, 559 U.S. ____ (Op. No. 08-680 U.S. Sup. Ct. Feb. 24, 2010), the Court held that a break in Miranda custody exceeding 14 days removes the presumptive invalidity of a subsequent waiver of a suspect’s Miranda rights. Under Shatzer, if a suspect invokes his Miranda rights when first approached by police, then the police may still re-approach the suspect for questioning provided at least 14 days have elapsed since the suspect’s release from the confines of custodial interrogation.

¹⁵ Taken to its logical ends such a result would mean, for example, that a defendant who had previously claimed his right to counsel or to remain silent could not later testify at his own trial. As has been observed in another context, to adopt such an approach would “imprison a man in his privileges and call it the Constitution.” Adams v. United States ex rel. McCann, 317 U.S. 269, 280 (1942).

The record easily demonstrates that Compton, exercising his free will, reopened dialogue with police about the Hanna murder. In addition, after he sought the audience with police he knowingly, and intelligently and voluntarily waived his Miranda rights to counsel. His decision to discard his rights was the product of a free and deliberate choice, made with full awareness of both the nature of the rights and the consequences of abandoning them. Moran v. Burbine, 475 U.S. 412 (1986).

Because Compton on his own initiative voluntarily approached the police seeking to give subsequent statements - and because he was thereafter specifically advised of his Miranda rights and voluntarily chose to waive them - the Fifth Amendment was not offended.

To escape this conclusion, Compton contends that Mr. Smithdeal was ineffective for not expressly advising police that he represented Compton for all purposes related to the murder investigation. Had Smithdeal done so, Compton alleges that the police would never have been allowed to take any subsequent statement from him.

Among the flaws embedded in this argument is the stubborn fact that Smithdeal was not retained or appointed to represent Compton on the yet to be lodged murder charge. It must be remembered that, at that point, Smithdeal was representing Compton on unrelated burglary charges. Because Smithdeal never formed an attorney-client relationship with Compton to cover the murder charge, it is unclear how Compton can allege his Sixth Amendment right to the effective assistance of counsel has been infringed. The Sixth Amendment is offense specific, and its rights do not attach until a defendant is formally charged.

Compton cites Smithdeal's letter to Sheriff Goodwin, dated October 13, 2000, to support his position that Smithdeal could have asserted Compton's Fifth Amendment rights before that

time, and therefore should have done so sooner. This letter was clearly Smithdeal's best effort at protecting Compton, despite the fact that he did not represent him on the murder charge, and despite the fact that the law does not allow a third party to invoke Fifth Amendment rights on behalf of another. Close analysis reveals that any attempt by Smithdeal to more formally invoke Compton's Fifth Amendment rights would have been superfluous. As noted above, Compton unambiguously claimed his Fifth Amendment right on July 12, 2000, which as a matter of law was a blanket assertion for any criminal matters. See McNeil, 501 U.S. at 177 ("Once a suspect invokes the Miranda right to counsel for interrogation regarding one offense, he may not be reapproached regarding any offense unless counsel is present.") (citing Arizona v. Roberson, 486 U.S. 675 (1988) (emphasis in original)). There was nothing Smithdeal could have done to further establish Compton's Fifth Amendment rights, particularly when Compton had announced he was waiving them.¹⁶

The State contends that Smithdeal could not anticipatorily invoke Compton's Fifth Amendment rights for future police interrogations. Compton counters that his October 2000 statements would have been deemed inadmissible as fruit of the poisonous tree "had Smithdeal ensured that the police knew that the invocation was anticipatory." Reply Brief at 2.

Both the State and Compton miss the mark. The Supreme Court has hinted – but never flatly held – that a suspect cannot anticipatorily invoke his Fifth Amendment rights. McNeil, 501 U.S. at 182 n. 3 (dicta). Other courts, however, have ruled that an accused – much less his counsel – cannot invoke his Fifth Amendment right unless he is in the throes of custodial

¹⁶ Given the abrogation of the Edwards rule announced in Shatzer, it is unclear what duty, if any, an accused's lawyer now has to constantly reassert his client's Fifth Amendment rights every 14 days. Even if Shatzer applied to Compton's 2000 conduct, this court need not address this issue because Compton on his own volition reopened the dialogue with law enforcement.

interrogation or such interrogation is imminent. State v. Hambly, 745 N.W.2d 48 (Wis. 2008) (collecting cases); See Alston v. Redman, 34 F.3d 1237 (3d Cir. 1994); United States v. LaGrone, 43 F.3d 332 (7th Cir. 1994); United States v. Grimes, 142 F.3d 1342 (11th Cir. 1998). This court need not address the validity or scope of anticipatory invocation, for Compton is correct that he effectively claimed his Miranda rights on July, 12 2000. What Compton is now claiming, however, is that Smithdeal was somehow incompetent for not attempting to re-invoke the very rights Compton had voluntarily abandoned. This syllogistic argument chases its own tail, and has no basis in logic or precedent.

As the credible evidence demonstrates, Compton spurned Smithdeal's advice to remain silent and insisted on talking to police. And he did not seek Smithdeal's counsel (or the assistance of any lawyer) after that time, despite being repeatedly given Miranda warnings that reminded him he had the absolute right to counsel and to remain silent.

Statements that are freely and voluntarily given are of course admissible. Miranda, 384 U.S. at 476. Furthermore, it is well settled that the Fifth Amendment privilege against self-incrimination is personal and may not be invoked by, or on behalf of, a third person. Moran v. Burbine, 475 U.S. 412 (1986); State v. Hughes, 328 S.C. 146, 493 S.E.2d 821 (1997); United States v. Wise, 603 F.2d 1101 (4th Cir. 1979) (recognizing that Fifth Amendment rights are personal and cannot be vicariously asserted.).

B. Allegation of Ineffective Assistance of Counsel on Direct Appeal

Compton further alleges that his Sixth Amendment right to effective appellate counsel was violated by appellate counsel's failure to raise the issue that Compton's Fifth Amendment right to counsel had been violated. While a defendant is constitutionally entitled to effective

assistance of appellate counsel, appellate counsel is not required to raise every non-frivolous issue presented by the record. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985); Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

In Compton's case, Appellate counsel raised several issues including immunity, the promise of leniency, Rule 410, SCRE, Sixth Amendment right to counsel, cross-examination of a witness. Appellate counsel testified that the central theory of Compton's appeal was whether the agreement included immunity.

Compton now claims his appellate counsel was ineffective for failing to raise the issue that the State infringed on his Fifth Amendment rights by deploying Black as a government agent to initiate contact with Compton after he had invoked his Miranda rights at the July 12 meeting. For support, Compton relies on United States v. Henry, 447 U.S. 264 (1980), which forbade the State from interfering with an accused's right to counsel by use of a government agent posing as a cellmate. Henry, however, was premised on the Sixth Amendment. Because Compton was not charged with the murder at the time Black was eliciting information from him about that crime, the Sixth Amendment cannot aid Compton.

Nor can the Fifth Amendment provide comfort. It was long ago settled that the government may plant an undercover policeman in a suspect's cell for the express purpose of gathering incriminating information without running afoul of the suspect's Fifth Amendment rights. Illinois v. Perkins, 496 U.S. 292 (1990). Like Compton, Perkins was incarcerated on unrelated charges at the time he voluntarily spoke to the undercover agent and confessed to a

murder. Observing that, "Miranda forbids coercion, not mere strategic deception by taking advantage of a suspect's misplaced trust in one he supposes to be a fellow prisoner," the Court further reasoned:

Miranda was not meant to protect suspects from boasting about their criminal actions in front of persons whom they believe to be their cellmates ... [Perkins] had no reason to feel that [the] undercover agent ... had any legal authority to force him to answer questions or that [the undercover agent] could affect [Perkins'] future treatment. [Perkins] viewed the cellmate/agent as an equal and showed no hint of being intimidated by the atmosphere of the jail. In recounting the details of the ... murder, [Perkins] was motivated solely by the desire to impress his fellow inmates. He spoke at his own peril.

Perkins, 496 U.S. at 298; see also United States v. Stubbs, 944 F.2d 828 (11th Cir. 1991) ("'Miranda and Fifth Amendment concerns are not implicated when a defendant misplaces his trust in a cellmate who then relays the information - whether voluntarily or by prearrangement - to law enforcement officials.'"); Alexander v. Connecticut, 917 F.2d 747 (2d Cir. 1990).

Perkins relied on Hoffa v. United States, 385 U.S. 293 (1966), which held the Fifth Amendment posed no impediment to law enforcement placing an undercover informant near a suspect who was free on bond awaiting trial. The controlling authority of Perkins and Hoffa soundly refutes Compton's claim that law enforcement's placement of Black violated Compton's Fifth Amendment rights.¹⁷

Finally, even assuming this Court finds that appellate counsel was ineffective for not raising the Fifth Amendment issue on appeal with regard to Black, Compton suffered no prejudice from this alleged deficient performance. Two other inmates testified against Compton

¹⁷ Perkins noted that the Henry rule - while unavailable to Perkins who had not yet been charged for the murder - still survived within the context of the Sixth Amendment, i.e. after the State has filed formal adversary proceedings.

at trial. Both inmates testified that Compton confessed to them his involvement in the victim's murder. There is no evidence anywhere in the record, nor does Compton allege, that either of these two inmates was government agents eliciting incriminating information from Compton in violation of his Fifth Amendment rights. As a result, Compton was not prejudiced by the admission at trial of statements he made to Black, given the testimony of the two other inmates, and any error in the admission would have been deemed harmless.

C. Allegations of Ineffective Assistance of Counsel During Trial

Compton claims that Mr. Grose should have requested an order from the trial judge to prohibit the State from referencing his prior burglary convictions during his trial on the Hanna burglary and murder. Pointing to the record, Compton notes that the fact that he had prior burglary convictions "was explicitly stated no less than fourteen times, including multiple occasions where the witnesses explained that [Compton] was the primary suspect because of the similarities between the prior burglaries and the instant offense."

At the PCR hearing, Mr. Grose testified that while he moved in limine to limit reference to prior burglary convictions, he did not pursue the issue because he realized that a main plank of his defense theory was that the plea agreement afforded Compton immunity from prosecution, and that statements made by Compton were involuntary due to police trickery. Therefore, Mr. Grose reasoned that the jury would inevitably learn of Compton's previous burglary convictions.

While conceding that this may have been valid trial strategy, Compton asserts that competent counsel would have sought a ruling from the trial court redacting the exact nature of his prior convictions, thereby minimizing the prejudicial impact. Compton notes this approach of sanitizing a defendant's admissible record was specifically encouraged by State v. Elmore,

368 S.C. 230, 239 n. 5, 628 S.E.2d 271 (Ct. App. 2006) and Green v. State, 338 S.C. 428, 527 S.E.2d 98 (2000).

While there may be instances where the Elmore approach can benefit a defendant, merely limiting references to a defendant's prior record to unspecified felonies does not in all cases magically remove any undue prejudice. Indeed, by not disclosing the exact nature of the prior crimes, the jury's imagination is free to roam and the resulting speculation may enhance rather than blunt the prejudice that concerned Elmore.

This court is not persuaded that the trial judge here would have granted a motion to redact Compton's prior burglary convictions. To be sure, inherent prejudice flows from using similar prior convictions for impeachment. It follows that the more similar the prior conviction is to the crime charged, the more prejudice ensues. This is what State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000) reminds us, and why trial courts are required to conduct an on – the – record balancing test encompassing numerous factors. Id.

Yet, SCRE 609 mandated that once Mr. Compton took the stand his prior burglary convictions "shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused." This court cannot say that, after applying this Rule and performing the Colf calculus, Judge Saunders would have chosen to exclude or sanitize Compton's burglary record.

The record also supports the admission of prior burglaries as proof of identity. See Gillion, 373 S.C. at 609-610 (prior burglaries committed by defendant admissible to prove identity); State v. Good, 308 S.C. 308, 417 S.E.2d 640 (Ct. App. 1992). Moreover, they were allowable under the "common scheme or plan" exception of SCRE 404(b). It would have been

reasonable for a trial judge utilizing his discretion to conclude that there was a close degree of similarity between the Hanna crimes and the prior burglaries, and that, pursuant to SCRE 403, such evidence was not substantially outweighed by the danger of unfair prejudice. State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009) (establishing test for admissibility of "common scheme or plan" bad act evidence). Given the significant factual similarity between Compton's prior burglaries and the Hanna burglary, it is reasonably likely that Compton's objections to such evidence would have been overruled.¹⁸ Chief Johnson testified about the similarities at trial: the proximity of the victim's house to where the majority of the other burglaries occurred, when the burglaries occurred, the fact that burglaries almost stopped while Compton was incarcerated, how the door was pried open and window broken, and the items that were taken.¹⁹

In any event, even assuming Grose was deficient in failing to object to the introduction of Compton's prior burglary convictions, the error did not contribute to the verdict. Among its proof, the State had Compton's own sworn confession that placed him at the scene of the crime, and his boastful remarks to Black and other fellow prisoners concerning his participation in the Hanna crime. While there was no physical evidence, the record was replete with proof of Compton's guilt.

¹⁸ The court is not persuaded, however, by the State's alternate theory that the prior burglary record was independently admissible under the res gestae exception. The Supreme Court has rejected this precise argument in another case involving the admission of a defendant's prior burglaries. State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007).

¹⁹ Chief Johnson elaborated: "If you were a crow, you would fly behind the Hanna house, and slightly to the right and that's where the majority of these burglaries occurred." See Tr. p. 374, lines 2-4; p. 374, line 6-p. 375, line 25. Chief Johnson further explained: "Because of the proximity of Johnny Hanna's house, due to the fact that Otis had only been out of jail for a little over a week. They were in the same area. Basically our burglaries had stopped, not completely, but basically had stopped in that area the whole time he was in jail and then they started, kind of started back and we had two burglaries that same week that Johnny was killed in that same area. So, yes, sir that's why he was considered our number one suspect." See, Tr. p. 376, lines 13-21; p. 376, line 22-p. 377, line 6.

Furthermore, Judge Saunders provided a limiting instruction to the jury that evidence of prior convictions went only to witness credibility and "is not evidence of guilt of any of the matters contained in this indictment." T. 1147.

Mr. Grose testified that by the time he was appointed to Compton's case, the plea agreement already existed. He stated that he had to decide how to strategically handle the agreement, particularly given that the trial court had deemed it admissible. He further stated that because Compton had given inconsistent statements and had recanted others was because he was trying to get the benefit of his plea agreement. Mr. Grose's strategy was to maintain that his client was not present at the scene, point out the holes and inconsistencies in the State's case, and argue that any statement Compton gave stating he involved in the murder was induced by the State's illusory promise in the plea agreement to reduce his sentence on the other burglaries.

Defense counsel clearly articulated a valid defense strategy, particularly in light of Compton's numerous voluntary, yet inconsistent statements, and given the fact that the plea agreement already existed by the time defense counsel was appointed to Compton's case. This strategy was the product of reasonable and experienced professional judgment, made after a thorough investigation. Cf. Wiggins v. Smith, 539 U.S. 510 (2003).

Above all, Compton has failed to show any prejudice that may have resulted from defense counsel's alleged deficient representation. Any error in counsel's alleged failure to object to the introduction of Compton's prior burglary convictions was harmless, given other overwhelming evidence of Compton's guilt. See State v. Keenon, 356 S.C. 457, 590 S.E.2d 34 (2003). Compton has presented no evidence that his counsel's representation was so deficient that the outcome would have been different had he objected to admission of Compton's prior bad acts.

CONCLUSION

For all of the above reasons, Compton has failed to prove his entitlement to post-conviction relief and his application must therefore be denied.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED!

February 25, 2010
Greenville, SC



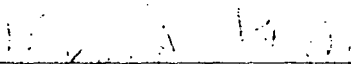
D. Garrison Hill
Circuit Judge

STATE OF SOUTH CAROLINA,	)	
	)	IN THE COURT OF COMMON PLEAS.
COUNTY OF ABBEVILLE.	)	
 Otis James Compton, #262807	)	
	)	
Applicant,	)	
	)	
v.	)	CERTIFICATE OF SERVICE BY MAIL
	)	
State of South Carolina,	)	08-CP-01-085
	)	
	)	

The undersigned, an employee of the Abbeville County Clerk of Court's Office, does hereby certify that copy of Order Denying Post Conviction Relief in the above-referenced PCR case was made upon the following persons by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 1 day of March, 2010, addressed as follows:

Attorney General's Office
ATTN: Jennifer Kinzeler, PCR Dept.
Post Office Box 11549
Columbia, SC 29211

Tara Dawn Shurling, Esq.
3614 Landmark Dr., Ste. D
Columbia, SC



Peggy A. Payne, Common Pleas Clerk



HENRY McMASTER
ATTORNEY GENERAL

September 16, 2010

RECEIVED

SEP 16 2010

S.C. SUPREME COURT

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

RE: Otis Compton v. The State

Dear Mr. Shearouse:

I am in receipt of counsel's Motion for Appointment of Outside Counsel and take no position on counsel's motion. Please let me know if a formal Return or any further response is needed and I will prepare one promptly.

Sincerely,

Jennifer A. Kinzeler
Assistant Attorney General

JAK:cey

cc: Kathrine Hudgins, Esquire
Ms. Trisha Allen

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

OTIS JAMES COMPTON,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2008-CP-01-0085

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of a letter in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Kathrine Hudgins, Esquire
South Carolina Office of Indigent Defense
1330 Lady St., Suite 401
Columbia, South Carolina 29201

DATED this 16TH day of September, 2010.


Chandra E. Young, Legal Assistant
For Respondent

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite D

Columbia, South Carolina 29204

Jeremy A. Thompson

Associate Attorney

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

August 19, 2010

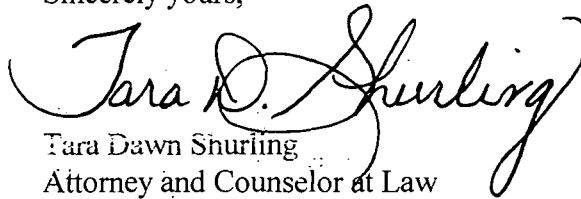
The Honorable Daniel E. Shearouse
Clerk of Court of South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211-1330

Re: Otis James Compton, 262807 v. State of South Carolina; 2008-CP-01-00085

Dear Mr. Shearouse:

It is my understanding that the Appellate Division of SCCID has filed a request for the appointment of outside counsel in this PCR appeal. I am writing to advise the Court that I was counsel of record in the Court of Common Pleas and would be happy to accept the court-appointment for this appeal, provided SCCID is ordered to pay the printing costs for the case. I realize my fees may not get paid for the foreseeable future, however, I would ask that SCCID be responsible for the printing bills. With my thanks for your time and assistance, I remain,

Sincerely yours,


Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm

RECEIVED

AUG 24 2010

S.C. SUPREME COURT



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

September 7, 2010

RECEIVED
SEP - 7 2010
S.C. SUPREME COURT

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

Re: Otis James Compton v. State of South Carolina

Dear Mr. Shearouse:

Enclosed are an original and six copies of the Motion for Appointment of Outside Counsel in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,


Kathrine H. Hudgins
Appellate Defender

KHH/khh

Enclosure

cc: Jennifer A. Kinzeler, Esquire
Mr. Otis James Compton

The Supreme Court of South Carolina

Otis James Compton, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable D. Garrison Hill
Abbeville County
Trial Court Case No. 2008-CP-01-00085

ORDER

The request for an extension until September 13, 2010 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Brenda J. Shealy
Clerk

Columbia, South Carolina *Chief Deputy*

August 17, 2010

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Jennifer Kinzeler



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

August 13, 2010

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

RECEIVED

AUG 16 2010

S.C. SUPREME COURT

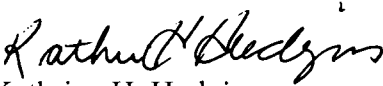
Re: Otis James Compton v. The State

Dear Mr. Shearouse:

The 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 Jennifer Kinzeler, Esquire, of the Attorney General's Office, of my request.

Sincerely,


Kathrine H. Hudgins
Appellate Defender

KHH/lec

cc: Jennifer Kinzeler, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

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

June 14, 2010

RECEIVED

JUN 14 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.

Otis James Compton v. State of South Carolina

6/14/2010

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,

Loriene 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
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

April 19, 2010

RECEIVED

APR 19 2010

S.C. SUPREME COURT

Tara D. Shurling, Esquire
3614 Landmark Drive
Columbia, SC 29204

Re: Otis James Compton v. State of South Carolina

Dear Ms. Shurling:

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. Compton.

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

Sincerely,

Loriane French
Legal Services Coordinator

cc: S.C. Supreme Court



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

RECEIVED

APR 19 2010

S.C. SUPREME COURT

April 19, 2010

Mr. Henry P. Young
Circuit Court Reporter
11 Roxanna Drive
Ninety Six, SC 29666

Dear Mr. Young:

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

Otis James Compton v. State of South Carolina Case #: 08-CP-01-00085.

County: Abbeville Date of Trial: August 17, 2009

Presiding Judge: D. Garrison Hill

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.

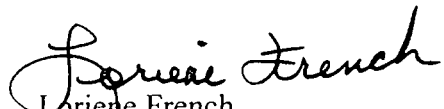
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Mr. Henry P. Young
April 19, 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,


Lorie French
Legal Services Coordinator

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



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

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

RECEIVED

April 19, 2010

APR 19 2010

S.C. SUPREME COURT

Ms. Hollie M. Jenkins
Circuit Court Reporter
P O Box 16506
Greenville, SC 29606

Dear Ms. Jenkins:

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

Otis James Compton v. State of South Carolina Case #: 08-CP-01-00085.

County: Abbeville Date of Trial: October 29, 2009

Presiding Judge: D. Garrison Hill

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.

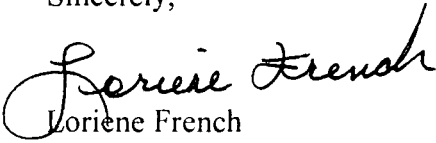
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Hollie M. Jenkins
April 19, 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,


Lorie French
Legal Services Coordinator

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

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite D

Columbia, South Carolina 29204

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

Jeremy A. Thompson

Associate Attorney

April 12, 2010

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

Re: Otis James Compton, 262807 v. State of South Carolina; 2008-CP-01-00085.

Dear Mr. Shearouse:

I recently filed a Notice of Appeal in the above captioned Post-Conviction Relief matter. At that time I advised the Court that I was hired for the Circuit Court action only. I have obtained an Affidavit of Indigency from the client. By copy of this letter he is asking that SCCID represent him in this Post-Conviction Relief appeal. I am sending the original affidavit to SCCID. I enclose a copy of the affidavit for the Court's convenient reference. I am asking to be relieved as counsel in this matter. I have not sent the materials necessary for the appeal to the Appellate Division of SCCID, because I anticipate that they will petition the Court to conflict out of representing this client. One of the allegations involved in this Post-Conviction Relief case was a claim of ineffective assistance of counsel against acting Chief Attorney Bob Dudek.

As I said in my earlier correspondence, I would be willing to serve as court-appointed counsel if SCCID asks to be relieved in this matter. I will await further instruction from the Court. For now, I remain,

Sincerely yours,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

RECEIVED

APR 13 2010

TDS/sg **S.C. SUPREME COURT**
Enclosures

cc: Robert M. Dudeck, Chief Attorney for SCCID
Jennifer Kinzeler, Assistant Attorney General
Otis Compton, 262807
Wayne and Sandra Woody

STATE OF SOUTH CAROLINA

COUNTY OF Abbeville

AFFIDAVIT OF INDIGENCY

Case Name Otis J Compton 262807-Vs-S.C

Criminal Case No. 2008-CP-01-0085

Current Address: Lieber-CI P.O. Box 205 Ridgville, SC 29472

Are you incarcerated? ✓ Yes (If "Yes") Where? Lieber, CI
No

What were you convicted of? Murder

What was your sentence? Life

In what county was this hearing held? Abbeville

Presiding Judge's name? Judge D. Garrison Hill

Date of hearing? 8-17-2009 10-29-2009

Are you appealing from ____ a trial, ____ a guilty plea or from ✓ a post-conviction relief hearing?

Were you represented by _____ a court-appointed attorney, _____ a public defender, or
 ✓ retained counsel?

Name of attorney/public defender? Tara Dawn Shurling

If retained, how much did you pay for attorney fees? \$ Contact Mother & Step Father

If you still owe money to your attorney, how much? \$ _____

1. Are you presently employed? Yes _____ No ✓

a. If "yes," state the amount of your salary or wages per month, and give the name and address of your employer.

b. If "no," state the name and address of last employment, date of termination of employment, and amount of your salary or wages per month. 1999
Benson Shaw Cons. Loundesville S.C. 10 dollars Hr

2. List by name, age and relationship to you, any persons who are dependent upon you for support. Indicate beside each how much you contribute toward their support. _____

Mother + Stepdad Sandra + Wayne Woolly 100%

3. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment?
Yes _____ No ✓

b. Rent payments, interest or dividends?
Yes _____ No ✓

c. Pensions, annuities or life insurance payments?
Yes _____ No ✓

d. Gifts or inheritance?
Yes _____ No ✓

e. Any other sources?
Yes ✓ No _____

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. _____

Cooper donations

4. Do you own cash, or do you have any money in a checking or savings account?
Yes _____ No ✓

If the answer is "yes," state the total amount of the cash owned. \$ _____

5. Do you own any real estate, stocks, bonds, notes or other valuable property (excluding ordinary household furnishings and clothing)? Yes _____ No ✓

If the answer is "yes," describe the property and state the appropriate value of the items owned. _____

6. What kind of motor vehicle do you own? None

Is it paid for? Yes _____ No _____

If not, what are the monthly payments? \$ _____

7. How much do you owe (on liens, mortgages, other encumbrances or debts)? None

I do solemnly swear that the account by me delivered into this Court does contain a true and full account of all my real and personal estate, debts, credits and effects whatsoever without exception, which I, or any person in trust for me, have or at the time of my possession had, or am, or ~~was~~, in respect, entitled to, in possession, remainder or reversion and that I have not at any time since charges were made against me or before, directly or time since charges were made against me or before, directly or indirectly sold, leased, assigned or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned herein.

I understand that the State shall file a claim against me in an amount equal to the cost for representation, but that such claim shall not constitute a lien against my property, unless, the claim is reduced to judgment by the Order of the Court after giving me at least thirty days' notice.

Under penalty of perjury, I certify that the information give by me on this affidavit is true and correct, and I understand that I will be subject to civil and/or criminal penalties if I knowingly furnish false information.

I am financially unable to employ counsel.

This 22 day of March, 10.

[Signature]
Defendant

I understand that I am entitled to at least thirty days' notice before a claim against me may be reduced to judgment, and I do hereby waive the right to such notice.

This 22 day of March, 10.

[Signature]
Defendant

SUBSCRIBED AND SWORN to before
me this 22nd day of March, 2010.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission Expires: 1/24/2018

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite D

Columbia, South Carolina 29204

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

Jeremy A. Thompson
Associate Attorney

March 18, 2010

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

RECEIVED

MAR 18 2010

S.C. SUPREME COURT

Re: Otis James Compton, 262807 v. State of South Carolina; 2008-CP-01-00085.

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal on behalf of the above-captioned Post-Conviction Relief client. I would appreciate your returning two (2) clocked copies to me in the envelope provided. Although I was retained in this matter, I may be turning this file over to the South Carolina Office of Appellate Defense for perfection of this appeal. I believe this client is indigent. I was retained by his family and my fee agreement expressly excludes representation on appeal. The family does not intend to hire me to handle this appeal and the client does not have the resources to hire me or anyone else for this appeal. I am asking that they make this decision immediately. I have sent the client an Affidavit of Indigency and hope to have it back from him any day now. As soon as I have the affidavit, I will request to be relieved as counsel, and will pass the file on to SCCID's appellate division. With my thanks for your assistance in this matter, as always, I remain,

Sincerely yours,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosures

cc: Jennifer Kinzeler, Assistant Attorney General
Lorienne French, South Carolina Office of Appellate Defense
Otis Compton, 262807
Wayne and Sandra Woody

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorney and Counselor at Law

3614 Landmark Drive

Suite D

Columbia, South Carolina 29204

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

Jeremy A. Thompson
Associate Attorney

March 18, 2010

Jennifer Kinzeler, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

RE: Otis James Compton, 262807, v. State of South Carolina; 2008-CP-01-00085.

Dear Ms. Kinzeler.

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. I was retained in this matter for the circuit court action only. I have notified the South Carolina Commission on Indigent Defense that this client is indigent and will be applying for court-appointed representation. Since the client alleged ineffective assistance of counsel against Bob Dudek, I expect the Appellate Division of SCCID to conflict out of this case. If they do, I will more than likely be appointed for the appeal. I will keep you informed of the status of this case. For now, I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosure

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

RECEIVED

MAR 19 2010

S.C. SUPREME COURT

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite D

Columbia, South Carolina 29204

Jeremy A. Thompson
Associate Attorney

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

March 18, 2010

The Honorable Emily McMahan
Clerk of Court, Abbeville County
P. O. Box 99
Abbeville, SC 29620

Re: Otis James Compton, 262807 v. State of South Carolina; 2008-CP-01-00085.

Dear Ms. McMahan:

Enclosed please find for filing a copy of the Notice of Appeal in the above-captioned matter. As you can see from the enclosed Certificate of Service, opposing counsel has been served with this Notice. The original is on file with the Supreme Court of South Carolina. As always, I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink, appearing to read "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosure

cc: The Honorable Daniel E. Shearouse ✓
Jennifer Kinzeler, Assistant Attorney General

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Presiding Judge

2008-CP-01-00085

OTIS JAMES COMPTON, 262807

Applicant,

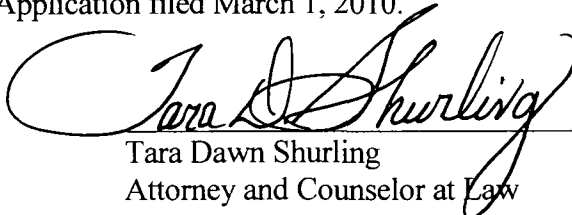
v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Order of Dismissal denying his Post-Conviction Relief Application filed March 1, 2010.



Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Drive, Suite D
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 18th day of March, 2010.

Other Counsel of Record:
Jennifer Kinzeler, Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Presiding Judge

2008-CP-01-00085

OTIS JAMES COMPTON, 262807,

Applicant,

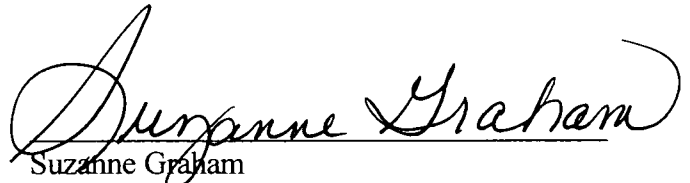
v.

THE STATE OF SOUTH CAROLINA,

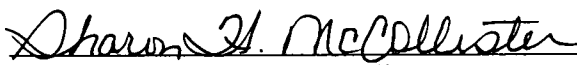
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Jennifer Kinzeler, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 18th day of March, 2010.


Suzanne Graham
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE me this 18th day
of March, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan. 16, 2017

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT
Case No.: 2008-CP-01-0085

Case No.: 2008-CP-01-0085

177

ORDER DENYING POST-CONVICTION RELIEF

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POST-CONVICTION RELIEF

I. PROCEDURAL HISTORY

On October 30, 2000, the Abbeville County Grand Jury returned a five count indictment charging Compton with Murder, Burglary in the First Degree, Armed Robbery, Malicious Injury to Property, and Possession of a Firearm or Knife during the Commission of a Violent Crime (2000-GS-01-0464). On November 18-23, 2002,¹ Compton proceeded to trial by jury, and was represented by E. Charles Grose, Jr., Esquire, of the Eighth Circuit Public Defender's Office. The jury convicted Compton of all charges as indicted. The Honorable Wyatt T. Saunders, Jr., sentenced him to life without parole pursuant to S.C. Code Ann. §17-25-45 for the murder, burglary, and armed robbery charges, to thirty days imprisonment for the malicious injury charge, and to five years imprisonment, to be served consecutively, on the weapon charge.²

Compton appealed his conviction and sentence. Robert M. Dudek, Assistant Appellate Defender, and Mr. Grose represented him on the appeal. In a published opinion, the South

¹ Pretrial hearings were also held on July 15, 2002, and November 14, 2002. Unless otherwise noted, all references to the transcript will be to the transcript of the actual trial.

² Compton is presently confined in the South Carolina Department of Corrections.

Carolina Court of Appeals affirmed Compton's convictions and sentences. State v. Compton, 366 S.C. 671, 623 S.E.2d 661 (Ct. App. 2005). After his Petition for Rehearing was denied Compton sought certiorari in the Supreme Court of South Carolina, which was also denied. State v. Compton, S.C. Sup. Ct. Order filed August 9, 2007. The Remittitur was issued on August 15, 2007. On November 7, 2007, Compton sought certiorari in the United States Supreme Court. That Petition was denied on January 7, 2008. Compton v. South Carolina, 128 S.Ct. 926 (2008).³

Compton then filed this Application for Post-Conviction Relief with the Abbeville County Clerk of Court on March 27, 2008. The State made its Return and Motion to Dismiss on September 30, 2008. Evidentiary hearings were convened on August 17, 2009, and October 29, 2009. At the conclusion of the October 29 hearing, this Court took the matter under advisement and requested both parties to submit post-hearing briefs.

II. ALLEGATIONS RAISED ON PCR

In his Application for Post-Conviction Relief, Compton alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel prior to trial;
2. Ineffective assistance of trial counsel; and
3. Ineffective assistance of appellate counsel.

He alleged generally that his rights pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, were violated prior to and during his trial, as well on his direct appeal.

³ Attorneys Dudek and Grose also represented Compton on the subsequent appeals.

At the evidentiary hearings, Compton added additional allegations through the testimony of his attorneys, thereby amending his Application for Post-Conviction Relief made pursuant to the evidence adduced at the hearing. See Simpson v. Moore, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006); Rule 15(b), SCRPC. At the evidentiary hearings, Compton specifically claimed:

1. Smithdeal was ineffective for failing to obtain a definitive immunity agreement with the State before permitting Compton to provide a statement to the police concerning the murder of the Johnny Hanna;
2. Smithdeal was ineffective for failing to assert Compton's Fifth Amendment right to remain silent and for failing to establish his position as counsel for Compton in connection with anything relating to the murder and any charges which might be brought relating to it;
3. Trial counsel was ineffective for failing to object to the State's use of Compton's prior burglary convictions;
4. Appellate counsel was ineffective for failing to raise on direct appeal the ground that Compton's Fifth Amendment rights had been violated.

III. STATEMENT OF FACTS

On August 6, 1999, the victim, Johnny Hanna, came home to find that his house was in the midst of being burglarized. The burglars were caught by surprise, and assaulted and murdered Hanna by hitting him with a bat, stabbing him twice, and shooting him five times. The final shot to the Hanna's head was fired while the assailant was standing over him. The burglars then fled the scene. Although investigators submitted blood samples, hair samples, and fingerprints from the crime scene for analysis, none of that evidence conclusively pointed to any of the suspects.⁴ Shortly thereafter, Otis Compton heard that he was a suspect in the Hanna burglary and murder. At the time of the victim's killing, Compton had pending first degree

⁴ However, Sheila Hanna Wildes testified that after the murder, she found a black glove in her house that did not belong to anyone who lived there. Tr. p. 265, line 14-p. 266, line 6. Michelle Dixon explained during her expert testimony that gloves can mask fingerprints. See Tr. p. 202 line 25; Tr. p. 265, line 14-p. 266, line 6.

burglary charges from other incidents. Joseph Smithdeal, Esquire, represented Compton on those charges.

On August 13, 1999 - one week after the crimes occurred - Compton called Abbeville County Chief Deputy Sheriff Marion Johnson. After being read and waiving his right to remain silent, and after speaking with Smithdeal, Compton gave a voluntary, incriminating statement.⁵ See Tr. p. 299, line 4-p. 302, line 8; p. 563, line 1-25. On November 30, 1999, he ultimately pled guilty to the unrelated burglary charges and was sentenced to fifteen years confinement.

On January 18, 2000, while Compton was in court to plead guilty to another unrelated third degree burglary, he spoke with Tracy Black in the holding cell at the Anderson County courthouse. Compton had known Black "almost all of my life." See Tr. p. 972, lines 4-7. According to Black, Compton told him that he pled guilty to the prior burglary charges to cover for his wife, Angel, so that she would keep quiet about another burglary he was involved in that "had went bad." Black testified that Compton told him he was a suspect in the victim's murder because the victim came home during the burglary, and that they had to do what they had to do. See Tr. p. 407, lines 2-p. 408, lines 1-19. Compton testified at trial that he talked with Black that day, but that all he told him about the murder was that he was a suspect. See Tr. p. 972, lines 15-23; p. 975, line 24-p. 973, line 5.

On March 9, 2000, a SLED officer went to speak with Black, who was incarcerated at McCormick Correctional Institution, about an unrelated matter. Black told the SLED officer that he had heard some information about Hanna's death and asked to be put in touch with Abbeville County Sheriff Charles Goodwin. See Tr. p. 409, line 8-p. 410, line 13. Later that day, four

⁵ According to Chief Johnson and Agent Gambrell, when the subject of hair samples, blood samples, and fingerprints came up, Compton responded "How could it be mine if I stayed in the car?" See, Tr. p. 302, lines 1-8.

police officers came to interview Black. Black told the officers about his conversation with Compton at the Anderson County courthouse on January 18th regarding the murder, and that he felt Compton was involved in it. See Tr. p. 413, lines 2-14. Black told them that he was getting transferred soon, and that if he were placed at Kershaw he could listen for other things Compton might say. See Tr. p. 413, line 25-p. 414, line 25. The following week, Black was transferred to Kershaw Correctional Institution, where Compton was housed.⁶ See Tr. p. 416, lines 2-4. As the Court of Appeals found, Black “was told by investigators to ‘listen to Mr. Compton and see if he would talk about the case any more or what he had done or any involvement in it. They told me that I could not question the guy or pursue nothing toward him, just listen.’ Black was eventually placed in a cell with Compton and relayed to police several conversations in which Compton admitted taking part in the burglary and murder of Hanna.” State v. Compton, 366 S.C. 671, 676, 623 S.E.2d 661 (Ct. App. 2005).

On July 12, 2000, Compton was brought back to Abbeville County because his wife was to appear in court on the unrelated first-degree burglaries. While at the courthouse, he contacted Sheriff Goodwin and told him that he would tell the police what he knew about the murder in exchange for a sentence reduction. Sheriff Goodwin asked Compton if he wanted an attorney. Per Compton’s request, he was then taken to attorney Joseph Smithdeal’s office. See Tr. p. 640, line 8-p. 643, line 17. After speaking with Smithdeal alone for approximately an hour, and after signing a waiver of rights form, Compton, Sheriff Goodwin, Solicitor Towne’s Jones, and Smithdeal signed a document captioned “plea agreement.” See Tr. p. 644, line 2-p. 645, line 24. At Compton’s request, the plea agreement provided that he would provide truthful information

⁶ Black was transferred the north yard, while Compton was housed in the south yard. They were not cellmates until some months later. See Tr. p. 417, lines 2-25; Tr. p. 979, lines 22.

about the murder of the victim in exchange for a reduction in sentence "by all reasonable means" on the other burglary charges from fifteen years to seven-and-a-half years imprisonment. See Tr. p. 856, line 6-25. The plea agreement did not include any express promise made by the State to not prosecute Compton for the murder of the victim. The agreement in fact had no provisions relevant to any future plea or any criminal charges other than the prior burglaries to which Compton had already pled guilty.

As part of the plea agreement, Compton gave a statement to the police in which he stated that Shane Rice had confessed to him the details of the crime after he, Otis Compton, and Robert Compton had all gone out drinking together. See Tr. p. 976, lines 3-22. In particular, Rice told Otis Compton that while he and Robert Compton were robbing Hanna's home, Hanna came home and surprised them. See Tr. p. 977, lines 19-22. When they saw Hanna, Robert Compton stabbed him and Rice shot him several times. See Tr. p. 977, lines 22-24. At trial, Compton maintained this statement was true, and that he was not present at the time the crime was committed. See Tr. p. 948, line 17-p. 998, line 6.⁷

After giving his statement, Compton was transported back to Kershaw Correctional Institution. Eventually, he and Black became cellmates. Several witnesses, including Black, testified that while they were all incarcerated together, Compton talked about his involvement in the victim's murder. See p. 419, line 17-p. 422, line 1; p. 536, line 18-p. 544, line 15; p. 555 line 2-p. 556, line 14. Compton first testified that he knew details about the crime because Black told him, but then later that he knew details from Shane Rice, not Black. Tr. p. 1016, lines 4-25; p. 1021, lines 3-6; p. 1033, line 9-11.

⁷ Compton presented the testimony of numerous family members who testified that he was with them during the robbery and murder. See Trial Tr. p. 872, line 11-p. 948, line 16. Compton also testified that he was at the courthouse on July 12, 2000 for his wife's trial on unrelated burglaries, and that he planned to lie for his wife on the witness stand and say "she wasn't there," or that "she didn't go in the house." See Tr. p. 1021, lines 7-25.

On October 9, 2000, Compton contacted SLED agent Steve Gambrell and told him that he had something he needed to get off his chest, but that he wanted to be taken to Abbeville. See Tr. p. 569, line 16-p. 573, line 5. He also stated that he wanted Black to accompany him. See Tr. p. 573, lines 22-23. Agents Gambrell and Templeton then picked up Compton and Black and transported them to Abbeville, where they met with Sheriff Goodwin and Chief Deputy Marion Johnson. See Tr. p. 575, line 7-p. 577, line 15. In the late evening of October 9th, after being advised of his rights and waiving them, Compton gave a statement that he was present at Hanna's house when the crimes were committed, but that he did not go inside. See p. 489, line 6-p. 492, line 13.

The following day, after resting and being advised of his rights again, Compton waived his rights and gave another statement to the police in which he stated that he was riding around with Shane Rice and Robert Compton when Rice suggested that they could rob the victim's home. See Tr. p. 582, line 21-p. 586, line 6; p. 576, lines 8-13. Compton further stated that he remained in Rice's truck while Rice and Robert Compton went into the home to rob it. See Tr. p. 586, line 23-p. 587, line 4. Compton then told the police that he watched as Rice and Robert Compton killed Hanna when he came home. See Tr. p. 588, line 9-p. 590, line 3.

Compton was arrested for the Hanna burglary and murder on October 12, 2000. Smithdeal testified that he wrote a letter the next day to the police stating that he had formerly represented Compton on other charges, and requested that the police not contact Otis until he had an attorney representing him. The letter did not claim that Smithdeal represented Compton on the murder charge, or that the police needed his approval before speaking with Compton.

After the October 9-10, 2000 statements, Compton agreed to go back to the scene of the crime with the pathologist and agent Derrick to lay out for them what happened when the crimes

were committed. See Tr. p. 494, lines 16-22. On October 25, 2000, Compton went back to Abbeville to walk through the victim's home with Dr. Brett Woodward, the pathologist who conducted the victim's autopsy, as well as with SLED agent Steve Derrick, who reconstructed the scene based on his analysis of the blood spatter evidence. Compton was advised of his rights again, waived them, and spoke voluntarily with Dr. Woodward and Agent Derrick. See, Tr. p. 745, lines 3-10. Agent Derrick testified at trial that on August 16, 1999 he formed an initial opinion about how the victim was shot, but that as additional evidence became available, including the autopsy report, his opinion about how the victim was shot became more precise although both were accurate.⁸ See p. 760, line 1-p. 762, line 17. Significantly, both Dr. Woodward and Agent Derrick testified at trial that Compton's description of the assault was consistent with their ultimate findings.

In addition, there was evidence that Compton was not being truthful in certain statements he gave during the October 25 meeting. For example, while at the scene, Compton stated that he was waiting in Shane Rice's truck when the burglary was taking place; however, he changed his story to state that he was in a 1980 Monte Carlo after he was informed that Rice's truck could not have made the tracks that were found in the victim's back yard. See Tr. p. 714, line 21-p. 716, line 21.

On October 30, 2010, Compton was indicted by the Abbeville County Grand Jury. Prior to trial, defense counsel moved to recuse Solicitor Jones and his office from prosecuting Compton because the Solicitor was a witness defense counsel intended to call at the subsequent suppression hearing. See July 15, 2002 Motion Tr. p. 6, lines 1-8. As a result, Solicitor Jones was subsequently recused. Defense counsel also argued a pre-trial motion to quash the

⁸ Dr. Woodward did not change opinions. See Tr. p. 3-p. 811, line 22.

indictment based on an immunity agreement or, in the alternative, to suppress all of Compton's statements made to law enforcement after he entered into the July 12, 2000 plea agreement. See 11/14/02 Motion Tr. p. 14, lines 15-23. In support of his motion, defense counsel argued four grounds: that the plea agreement granted Compton immunity, that Compton's incriminating statements were inadmissible under Rule 410 of the South Carolina Rules of Evidence, and that the statements were inadmissible on both Fifth and Sixth Amendment grounds. See 11/14/02 Motion Tr. p. 235, line 15-p. 244, line 17. The trial court denied both motions, and specifically ruled that Compton was not deprived of his right to counsel at any time, and was in no way caused to make self-incriminating statements against his will. See 11/14/02 Motion Tr. p. 259, line 2-p. 260, line 4.

The following day, defense counsel wrote the trial judge stating that "we will need to discuss what is admissible about the prior burglary convictions." After jury selection, defense counsel made several pretrial motions, and specifically addressed what information about the prior burglary convictions would be admissible, although the trial court determined the issue was premature to discuss at that time.⁹ See Tr. p. 57, line 21-p.58, line 18. The issue was revisited during a discussion, outside the presence of the jury, early in the trial. At that time, both Solicitor McMahon and defense counsel determined that the prior burglaries had to be addressed given the trial court's prior rulings. See Tr. p. 307, line 19-p. 309, line 18. The issue was not raised again.

On direct appeal to the South Carolina Court of Appeals, appellate counsel raised several issues including immunity, the promise of leniency, Rule 410, SCRE, violation of the Sixth

⁹ Defense counsel motioned to dismiss a juror, offered to stipulate to the contents of the 911 tape so Compton would not be prejudiced by the jury hearing the tape, and objected to the jury being sworn for the reasons previously argued on November 14, 2002. Tr. p. 54, line 13-p. 59, line 23. All of defense counsel's motions were denied.

Amendment, right to counsel, and cross-examination of a witness. However, the Court affirmed Compton's convictions.

IV. STANDARD OF REVIEW

This Application for Post-Conviction Relief raises numerous specific allegations of ineffective assistance of counsel. The burden of proof is on Compton to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC. To prevail, Compton must demonstrate that trial counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by errors and omissions of counsel such that he was deprived of a fair trial. Strickland v. Washington, 466 U.S. 668 (1984). In other words, Compton must show that but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. Id.; Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007).

Where trial counsel articulates a valid reason for employing certain trial strategies, such conduct will not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). An Applicant may not simply posit suppositions and speculations in an attempt to establish that counsel was ineffective. Simpson v. Moore, 367 S.C. 587, 598, 627 S.E.2d 701, 707 (2006). Furthermore, judicial scrutiny of counsel's performance is highly deferential and is not subject to the distorting effects of hindsight. Id. In reviewing counsel's performance, there is a strong presumption that

counsel's conduct falls within the wide range of reasonable professional assistance. Id. citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052.

The Sixth Amendment's guarantee of effective assistance of counsel includes the effective assistance of counsel in the defendant's first appeal as of right. Evitts v. Lucey, 469 U.S. 387 (1985). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). The two-prong test of Strickland v. Washington applies to claims of ineffective assistance of appellate counsel. Bennett v. State, 383 S.C. 303, 680 S.E.2d 273 (2009).

Compton must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift v. State, 302 S.C. 535, 537, 539, 397 S.E.2d 523 (1990); Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

V. DISCUSSION

A. Allegations of Ineffective Assistance of Counsel Prior to Trial

Compton alleges that Smithdeal was ineffective for failing to obtain a specific immunity agreement for the murder charge and for failing to assert Compton's Fifth Amendment right to an attorney for all future conversations with Compton. He also claims that he never would have made the incriminating statements if Smithdeal had taken either action, and that consequently the State would not have been able to prosecute him.

1. Specific Immunity Agreement

Compton argues that Smithdeal should have insisted on a specific immunity provision in the July 12, 2000 "plea agreement." Smithdeal testified that he did speak with Solicitor Jones about immunity, but that Solicitor Jones was not willing to consider it. Smithdeal further testified that as counsel for Compton on pending burglary charges, and per Compton's request to help him get his existing sentence on prior burglary convictions reduced, he was trying to get the best deal he could for Compton on the charges for which he *did* represent Compton.¹⁰ He stated that, regardless, he could not have negotiated a deal for Compton on the murder charge, because Compton was not charged with murder.¹¹ Furthermore, Solicitor Jones testified that he could not recall a single instance during his tenure as Solicitor when he granted a defendant total immunity in exchange for information.

Compton contends he never would have given information for which he could be prosecuted if he knew the July 12, 2000 plea agreement did not afford him immunity. First, the

¹⁰ In the plea agreement, Smithdeal was able to negotiate a seven and a half year sentence for Compton on the burglary charges for which he did represent Compton; seven and a half years being *half* of the fifteen years to which Compton was originally sentenced. However, Compton was ultimately sentenced to the fifteen years because he failed to adhere to the terms of the plea agreement.

¹¹ Compton was not arrested for the murder until October 12, 2000. See Arrest Warrant.

agreement never uses the word immunity, or any variation thereof, and therefore Compton cannot credibly claim he was lulled into believing the agreement prevented the State from prosecuting him for murder.¹² Second, it cannot be surmised that Compton only gave statements because he believed the July 12th plea agreement offered immunity considering that Compton began voluntarily talking with law enforcement on August 13, 1999-within one week of the murder and almost a year before entering into the agreement. Indeed, in the August 13, 1999 statement Compton had already placed himself at the scene of the crime. See, Tr. p. 302, lines 1-25; p. 563, lines 19-25.

Compton made another voluntary statement on November 30, 1999, well before entering into the plea agreement, in which he gave officers the names of Robert Compton and Shane Rice. On July 12, 2000, Compton initiated contact with law enforcement again, and gave another voluntary statement, telling the officers that Shane Rice confessed to him that he (Shane) and Robert burglarized the Hanna's home and killed Johnny Hanna. See Tr. p. 976, line 18-p. 977, line 24. Compton gave further voluntary statements on October 9-10, 2000 and on October 25, 2000. In addition, several witnesses testified at trial about incriminating statements Compton made to fellow inmates, in addition to law enforcement, both before and after entering into the July 12, 2000 agreement.¹³ Moreover, every time Compton gave a statement to law

¹² The trial court determined that the document could not be interpreted "in any reasonable way to affect charges that may result from actions and doings" by Compton, but "directly affects the charges that arose out of the prior indictments." See, Motion 11/14/02, p. 256, line 23-p. 257, line 4. This conclusion was affirmed by the Court of Appeals.

¹³ Compton initiated contact with law enforcement, and gave voluntary statements after being advised of and waiving his rights on August 13, 1999, November 30, 1999, July 12, 2000, October 9-10 2000, and October 25, 2000. . See Tr. p. 284, line 16-25; p. 299, line 23-p. 302, line 20; p. 965, line 23-966 line 18; p. 1000, lines 4-18; p. 1007, lines 18-24; Tr. p. 974, line 23-978, line 2; p. 1003, line 24-p. 1004, line 3; p. 1007, lines 18-24; p. 974, line 23-978, line 2; p. 1003, line 24-p. 1004, line 3; p. 974, line 23-978, line 2; p. 1003, line 24-p. 1004, line 3. p. 1024, line 12- p. 1036, line 16. It is worth noting that these citations refer only to statements Compton gave to law enforcement, and do not include the additional voluntary statements Compton made to three fellow inmates, on several occasions.

enforcement, he did so after being advised of his Miranda rights, particularly that anything he said could be used against him in a court of law.

Therefore, Smithdeal was not ineffective for failing to obtain immunity for Compton. Even if Smithdeal were found to have rendered ineffective assistance during the negotiations of the plea agreement, Compton was not prejudiced by Smithdeal's alleged deficient performance. Smithdeal testified that he told Compton not to talk with the police, but that Compton insisted on giving a statement. One can infer that this is the same advice Smithdeal would have given Compton if he had been more formally retained or appointed. Nonetheless, despite Smithdeal's advice, Compton entered into the July 12, 2000 plea agreement and gave a statement. That statement was preceded by and followed by several other incriminating statements, all initiated and made voluntarily by Compton. Clearly, Smithdeal could not prevent Compton from waiving his rights, and could not protect Compton from the consequences of his voluntary statements. Thus, Smithdeal's alleged failure to do so did not prejudice Compton.

2. Fifth Amendment Right to Counsel

The sojourn of Compton's Fifth Amendment right is circuitous, but essentially simple. Compton undoubtedly invoked his Fifth Amendment rights when he requested that Mr. Smithdeal be present at the July 12, 2000 meeting with police. From that point, Edwards v. Arizona, 451 U.S. 477 (1981) prevented law enforcement from initiating contact with Compton unless he was accompanied by counsel. As Edwards explained:

When an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights ... [He] is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further

communication, exchanges, or conversations with the police. 451 U.S. at 484-485.

Indeed, the police could not approach him about any offense unless counsel was present.

McNeil v. Wisconsin, 501 U.S. 171, 177 (1991). Any attempt by the police to surreptitiously approach Compton and secure a waiver of his Fifth Amendment rights would have been presumptively invalid. See Minnick v. Mississippi, 498 U.S. 146 (1990).¹⁴

These “prophylactic” rules, however, do not apply if Compton himself initiated contact with police. For while Miranda and McNeil expressly prohibit the police from “badgering” a criminal suspect who has previously embraced the protections of the Fifth Amendment, Michigan v. Harvey, 494 U.S. 344, 350 (1990), nothing prevents the suspect from independently approaching the police. See Miranda v. Arizona, 384 U.S. 436 (1966). To hold otherwise would effectively declare that an individual’s invocation of Fifth Amendment rights is per se irrevocable.¹⁵ Id. Miranda did not prohibit voluntary statements; it only provided that a suspect be warned of and voluntarily waive his Fifth Amendment rights before his custodial statement could be considered voluntary and admissible in court. To show that Compton voluntarily waived his Fifth Amendment right after invoking it, the State must prove by the greater weight of the evidence that Compton (1) initiated further communication, exchanges or conversations with the police and (2) voluntarily, knowingly and intelligently abandoned his right to counsel. Oregon v. Bradshaw, 462 U.S. 1039 (1983).

¹⁴ The Supreme Court recently retreated from this bright-line rule. In Maryland v. Shatzer, 559 U.S. ____ (Op. No. 08-680 U.S. Sup. Ct. Feb. 24, 2010), the Court held that a break in Miranda custody exceeding 14 days removes the presumptive invalidity of a subsequent waiver of a suspect’s Miranda rights. Under Shatzer, if a suspect invokes his Miranda rights when first approached by police, then the police may still re-approach the suspect for questioning provided at least 14 days have elapsed since the suspect’s release from the confines of custodial interrogation.

¹⁵ Taken to its logical ends such a result would mean, for example, that a defendant who had previously claimed his right to counsel or to remain silent could not later testify at his own trial. As has been observed in another context, to adopt such an approach would “imprison a man in his privileges and call it the Constitution.” Adams v. United States ex rel. McCann, 317 U.S. 269, 280 (1942).

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The record easily demonstrates that Compton, exercising his free will, reopened dialogue with police about the Hanna murder. In addition, after he sought the audience with police he knowingly, and intelligently and voluntarily waived his Miranda rights to counsel. His decision to discard his rights was the product of a free and deliberate choice, made with full awareness of both the nature of the rights and the consequences of abandoning them. Moran v. Burbine, 475 U.S. 412 (1986).

Because Compton on his own initiative voluntarily approached the police seeking to give subsequent statements - and because he was thereafter specifically advised of his Miranda rights and voluntarily chose to waive them – the Fifth Amendment was not offended.

To escape this conclusion, Compton contends that Mr. Smithdeal was ineffective for not expressly advising police that he represented Compton for all purposes related to the murder investigation. Had Smithdeal done so, Compton alleges that the police would never have been allowed to take any subsequent statement from him.

Among the flaws embedded in this argument is the stubborn fact that Smithdeal was not retained or appointed to represent Compton on the yet to be lodged murder charge. It must be remembered that, at that point, Smithdeal was representing Compton on unrelated burglary charges. Because Smithdeal never formed an attorney-client relationship with Compton to cover the murder charge, it is unclear how Compton can allege his Sixth Amendment right to the effective assistance of counsel has been infringed. The Sixth Amendment is offense specific, and its rights do not attach until a defendant is formally charged.

Compton cites Smithdeal's letter to Sheriff Goodwin, dated October 13, 2000, to support his position that Smithdeal could have asserted Compton's Fifth Amendment rights before that

time, and therefore should have done so sooner. This letter was clearly Smithdeal's best effort at protecting Compton, despite the fact that he did not represent him on the murder charge, and despite the fact that the law does not allow a third party to invoke Fifth Amendment rights on behalf of another. Close analysis reveals that any attempt by Smithdeal to more formally invoke Compton's Fifth Amendment rights would have been superfluous. As noted above, Compton unambiguously claimed his Fifth Amendment right on July 12, 2000, which as a matter of law was a blanket assertion for any criminal matters. See McNeil, 501 U.S. at 177 ("Once a suspect invokes the Miranda right to counsel for interrogation regarding one offense, he may not be reapproached regarding any offense unless counsel is present.") (citing Arizona v. Roberson, 486 U.S. 675 (1988) (emphasis in original)). There was nothing Smithdeal could have done to further establish Compton's Fifth Amendment rights, particularly when Compton had announced he was waiving them.¹⁶

The State contends that Smithdeal could not anticipatorily invoke Compton's Fifth Amendment rights for future police interrogations. Compton counters that his October 2000 statements would have been deemed inadmissible as fruit of the poisonous tree "had Smithdeal ensured that the police knew that the invocation was anticipatory." Reply Brief at 2.

Both the State and Compton miss the mark. The Supreme Court has hinted – but never flatly held – that a suspect cannot anticipatorily invoke his Fifth Amendment rights. McNeil, 501 U.S. at 182 n. 3 (dicta). Other courts, however, have ruled that an accused – much less his counsel – cannot invoke his Fifth Amendment right unless he is in the throes of custodial

¹⁶ Given the abrogation of the Edwards rule announced in Shatzer, it is unclear what duty, if any, an accused's lawyer now has to constantly reassert his client's Fifth Amendment rights every 14 days. Even if Shatzer applied to Compton's 2000 conduct, this court need not address this issue because Compton on his own volition reopened the dialogue with law enforcement.

interrogation or such interrogation is imminent. State v. Hambly, 745 N.W.2d 48 (Wis. 2008) (collecting cases); See Alston v. Redman, 34 F.3d 1237 (3d Cir. 1994); United States v. LaGrone, 43 F.3d 332 (7th Cir. 1994); United States v. Grimes, 142 F.3d 1342 (11th Cir. 1998). This court need not address the validity or scope of anticipatory invocation, for Compton is correct that he effectively claimed his Miranda rights on July, 12 2000. What Compton is now claiming, however, is that Smithdeal was somehow incompetent for not attempting to re-invoke the very rights Compton had voluntarily abandoned. This syllogistic argument chases its own tail, and has no basis in logic or precedent.

As the credible evidence demonstrates, Compton spurned Smithdeal's advice to remain silent and insisted on talking to police. And he did not seek Smithdeal's counsel (or the assistance of any lawyer) after that time, despite being repeatedly given Miranda warnings that reminded him he had the absolute right to counsel and to remain silent.

Statements that are freely and voluntarily given are of course admissible. Miranda, 384 U.S. at 476. Furthermore, it is well settled that the Fifth Amendment privilege against self-incrimination is personal and may not be invoked by, or on behalf of, a third person. Moran v. Burbine, 475 U.S. 412 (1986); State v. Hughes, 328 S.C. 146, 493 S.E.2d 821 (1997); United States v. Wise, 603 F.2d 1101 (4th Cir. 1979) (recognizing that Fifth Amendment rights are personal and cannot be vicariously asserted.).

B. Allegation of Ineffective Assistance of Counsel on Direct Appeal

Compton further alleges that his Sixth Amendment right to effective appellate counsel was violated by appellate counsel's failure to raise the issue that Compton's Fifth Amendment right to counsel had been violated. While a defendant is constitutionally entitled to effective

assistance of appellate counsel, appellate counsel is not required to raise every non-frivolous issue presented by the record. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985); Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

In Compton's case, Appellate counsel raised several issues including immunity, the promise of leniency, Rule 410, SCRE, Sixth Amendment right to counsel, cross-examination of a witness. Appellate counsel testified that the central theory of Compton's appeal was whether the agreement included immunity.

Compton now claims his appellate counsel was ineffective for failing to raise the issue that the State infringed on his Fifth Amendment rights by deploying Black as a government agent to initiate contact with Compton after he had invoked his Miranda rights at the July 12 meeting. For support, Compton relies on United States v. Henry, 447 U.S. 264 (1980), which forbade the State from interfering with an accused's right to counsel by use of a government agent posing as a cellmate. Henry, however, was premised on the Sixth Amendment. Because Compton was not charged with the murder at the time Black was eliciting information from him about that crime, the Sixth Amendment cannot aid Compton.

Nor can the Fifth Amendment provide comfort. It was long ago settled that the government may plant an undercover policeman in a suspect's cell for the express purpose of gathering incriminating information without running afoul of the suspect's Fifth Amendment rights. Illinois v. Perkins, 496 U.S. 292 (1990). Like Compton, Perkins was incarcerated on unrelated charges at the time he voluntarily spoke to the undercover agent and confessed to a

murder. Observing that, “Miranda forbids coercion, not mere strategic deception by taking advantage of a suspect’s misplaced trust in one he supposes to be a fellow prisoner,” the Court further reasoned:

Miranda was not meant to protect suspects from boasting about their criminal actions in front of persons whom they believe to be their cellmates ... [Perkins] had no reason to feel that [the] undercover agent ... had any legal authority to force him to answer questions or that [the undercover agent] could affect [Perkins’] future treatment. [Perkins] viewed the cellmate/agent as an equal and showed no hint of being intimidated by the atmosphere of the jail. In recounting the details of the ... murder, [Perkins] was motivated solely by the desire to impress his fellow inmates. He spoke at his own peril.

Perkins, 496 U.S. at 298; see also United States v. Stubbs, 944 F.2d 828 (11th Cir. 1991) (“Miranda and Fifth Amendment concerns are not implicated when a defendant misplaces his trust in a cellmate who then relays the information - whether voluntarily or by prearrangement - to law enforcement officials.”); Alexander v. Connecticut, 917 F.2d 747 (2d Cir. 1990).

Perkins relied on Hoffa v. United States, 385 U.S. 293 (1966), which held the Fifth Amendment posed no impediment to law enforcement placing an undercover informant near a suspect who was free on bond awaiting trial. The controlling authority of Perkins and Hoffa soundly refutes Compton’s claim that law enforcement’s placement of Black violated Compton’s Fifth Amendment rights.¹⁷

Finally, even assuming this Court finds that appellate counsel was ineffective for not raising the Fifth Amendment issue on appeal with regard to Black, Compton suffered no prejudice from this alleged deficient performance. Two other inmates testified against Compton

¹⁷ Perkins noted that the Henry rule – while unavailable to Perkins who had not yet been charged for the murder – still survived within the context of the Sixth Amendment, i.e. after the State has filed formal adversary proceedings.

at trial. Both inmates testified that Compton confessed to them his involvement in the victim's murder. There is no evidence anywhere in the record, nor does Compton allege, that either of these two inmates was government agents eliciting incriminating information from Compton in violation of his Fifth Amendment rights. As a result, Compton was not prejudiced by the admission at trial of statements he made to Black, given the testimony of the two other inmates, and any error in the admission would have been deemed harmless.

C. Allegations of Ineffective Assistance of Counsel During Trial

Compton claims that Mr. Grose should have requested an order from the trial judge to prohibit the State from referencing his prior burglary convictions during his trial on the Hanna burglary and murder. Pointing to the record, Compton notes that the fact that he had prior burglary convictions "was explicitly stated no less than fourteen times, including multiple occasions where the witnesses explained that [Compton] was the primary suspect because of the similarities between the prior burglaries and the instant offense."

At the PCR hearing, Mr. Grose testified that while he moved in limine to limit reference to prior burglary convictions, he did not pursue the issue because he realized that a main plank of his defense theory was that the plea agreement afforded Compton immunity from prosecution, and that statements made by Compton were involuntary due to police trickery. Therefore, Mr. Grose reasoned that the jury would inevitably learn of Compton's previous burglary convictions.

While conceding that this may have been valid trial strategy, Compton asserts that competent counsel would have sought a ruling from the trial court redacting the exact nature of his prior convictions, thereby minimizing the prejudicial impact. Compton notes this approach of sanitizing a defendant's admissible record was specifically encouraged by State v. Elmore,

368 S.C. 230, 239 n. 5, 628 S.E.2d 271 (Ct. App. 2006) and Green v. State, 338 S.C. 428, 527 S.E.2d 98 (2000).

While there may be instances where the Elmore approach can benefit a defendant, merely limiting references to a defendant's prior record to unspecified felonies does not in all cases magically remove any undue prejudice. Indeed, by not disclosing the exact nature of the prior crimes, the jury's imagination is free to roam and the resulting speculation may enhance rather than blunt the prejudice that concerned Elmore.

This court is not persuaded that the trial judge here would have granted a motion to redact Compton's prior burglary convictions. To be sure, inherent prejudice flows from using similar prior convictions for impeachment. It follows that the more similar the prior conviction is to the crime charged, the more prejudice ensues. This is what State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000) reminds us, and why trial courts are required to conduct an on – the – record balancing test encompassing numerous factors. Id.

Yet, SCRE 609 mandated that once Mr. Compton took the stand his prior burglary convictions "shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused." This court cannot say that, after applying this Rule and performing the Colf calculus, Judge Saunders would have chosen to exclude or sanitize Compton's burglary record.

The record also supports the admission of prior burglaries as proof of identity. See Gillion, 373 S.C. at 609-610 (prior burglaries committed by defendant admissible to prove identity); State v. Good, 308 S.C. 308, 417 S.E.2d 640 (Ct. App. 1992). Moreover, they were allowable under the "common scheme or plan" exception of SCRE 404(b). It would have been

reasonable for a trial judge utilizing his discretion to conclude that there was a close degree of similarity between the Hanna crimes and the prior burglaries, and that, pursuant to SCRE 403, such evidence was not substantially outweighed by the danger of unfair prejudice. State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009) (establishing test for admissibility of “common scheme or plan” bad act evidence). Given the significant factual similarity between Compton’s prior burglaries and the Hanna burglary, it is reasonably likely that Compton’s objections to such evidence would have been overruled.¹⁸ Chief Johnson testified about the similarities at trial: the proximity of the victim’s house to where the majority of the other burglaries occurred, when the burglaries occurred, the fact that burglaries almost stopped while Compton was incarcerated, how the door was pried open and window broken, and the items that were taken.¹⁹

In any event, even assuming Grose was deficient in failing to object to the introduction of Compton’s prior burglary convictions, the error did not contribute to the verdict. Among its proof, the State had Compton’s own sworn confession that placed him at the scene of the crime, and his boastful remarks to Black and other fellow prisoners concerning his participation in the Hanna crime. While there was no physical evidence, the record was replete with proof of Compton’s guilt.

¹⁸ The court is not persuaded, however, by the State’s alternate theory that the prior burglary record was independently admissible under the res gestae exception. The Supreme Court has rejected this precise argument in another case involving the admission of a defendant’s prior burglaries. State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007).

¹⁹ Chief Johnson elaborated: “If you were a crow, you would fly behind the Hanna house, and slightly to the right and that’s where the majority of these burglaries occurred.” See Tr. p. 374, lines 2-4; p. 374, line 6-p. 375, line 25. Chief Johnson further explained: “Because of the proximity of Johnny Hanna’s house, due to the fact that Otis had only been out of jail for a little over a week. They were in the same area. Basically our burglaries had stopped, not completely, but basically had stopped in that area the whole time he was in jail and then they started, kind of started back and we had two burglaries that same week that Johnny was killed in that same area. So, yes, sir that’s why he was considered our number one suspect.” See, Tr. p. 376, lines 13-21; p. 376, line 22-p. 377, line 6.

Furthermore, Judge Saunders provided a limiting instruction to the jury that evidence of prior convictions went only to witness credibility and “is not evidence of guilt of any of the matters contained in this indictment.” T. 1147.

Mr. Grose testified that by the time he was appointed to Compton’s case, the plea agreement already existed. He stated that he had to decide how to strategically handle the agreement, particularly given that the trial court had deemed it admissible. He further stated that because Compton had given inconsistent statements and had recanted others was because he was trying to get the benefit of his plea agreement. Mr. Grose’s strategy was to maintain that his client was not present at the scene, point out the holes and inconsistencies in the State’s case, and argue that any statement Compton gave stating he involved in the murder was induced by the State’s illusory promise in the plea agreement to reduce his sentence on the other burglaries.

Defense counsel clearly articulated a valid defense strategy, particularly in light of Compton’s numerous voluntary, yet inconsistent statements, and given the fact that the plea agreement already existed by the time defense counsel was appointed to Compton’s case. This strategy was the product of reasonable and experienced professional judgment, made after a thorough investigation. Cf. Wiggins v. Smith, 539 U.S. 510 (2003).

Above all, Compton has failed to show any prejudice that may have resulted from defense counsel’s alleged deficient representation. Any error in counsel’s alleged failure to object to the introduction of Compton’s prior burglary convictions was harmless, given other overwhelming evidence of Compton’s guilt. See State v. Keenon, 356 S.C. 457, 590 S.E.2d 34 (2003). Compton has presented no evidence that his counsel’s representation was so deficient that the outcome would have been different had he objected to admission of Compton’s prior bad acts.

CONCLUSION

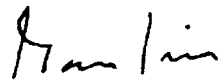
For all of the above reasons, Compton has failed to prove his entitlement to post-conviction relief and his application must therefore be denied.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED!

February 25, 2010
Greenville, SC



D. Garrison Hill
Circuit Judge

STATE OF SOUTH CAROLINA,)
)
COUNTY OF ABBEVILLE.)

IN THE COURT OF COMMON PLEAS.

Otis James Compton, #262807)

Applicant,)

v.)

State of South Carolina,)

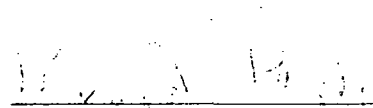
CERTIFICATE OF SERVICE BY MAIL

08-CP-01-085

The undersigned, an employee of the Abbeville County Clerk of Court's Office,
does hereby certify that copy of Order Denying Post Conviction Relief in the above-
referenced PCR case was made upon the following persons by placing same in the United
States Mail, first class postage prepaid, at the below listed address clearly indicated on
said envelope this the 1 day of March, 2010, addressed as follows:

Attorney General's Office
ATTN: Jennifer Kinzeler, PCR Dept.
Post Office Box 11549
Columbia, SC 29211

Tara Dawn Shurling, Esq.
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Peggy A. Payne, Common Pleas Clerk



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Otis James Compton

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

RE: Otis James Compton

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