



ALAN WILSON
ATTORNEY GENERAL

July 27, 2011

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

RECEIVED

JUL 27 2011

S.C. Supreme Court

RE: Rafael Escalante v. State

Dear Mr. Shearouse:

Attached please find the original and six (6) copies of the Return to Petition for Writ of Certiorari to be filed today in the above-captioned case.

Sincerely,

Karen C. Ratigan
Assistant Attorney General

cc: Elizabeth A. Franklin-Best, Esquire
Victim Services

The Supreme Court of South Carolina

Rafael Escalante,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable D. Garrison Hill
Greenville County
Trial Court Case No. 2009-CP-23-02315

ORDER

The request for an extension until July 27, 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 Brenda J. Shealy
Clerk

Columbia, South Carolina *Chief Deputy*

June 28, 2011

cc: Appellate Defender Elizabeth A. Franklin-Best
Assistant Attorney General Karen Ratigan



ALAN WILSON
ATTORNEY GENERAL

June 27, 2011

RECEIVED

JUN 27 2011

S.C. Supreme Court

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

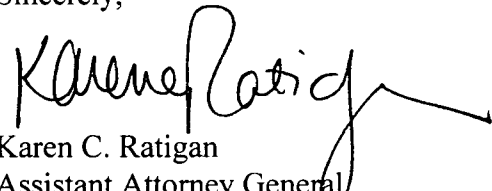
RE: Rafeal Escalante v. State
2009-CP-23-2315

C

Dear Mr. Shearouse:

The Return to Petition for Writ of Certiorari in the aforementioned matter is due to be served and filed today. I would respectfully request a 30-day extension in which to serve and file the Return. This request is not intended for the purpose of delay. Rather, this request is necessitated by my workload.

Sincerely,


Karen C. Ratigan
Assistant Attorney General

cc: Elizabeth A. Franklin-Best, Esquire

The Supreme Court of South Carolina

Rafael Escalante,

Petitioner,

v.

State of South Carolina,

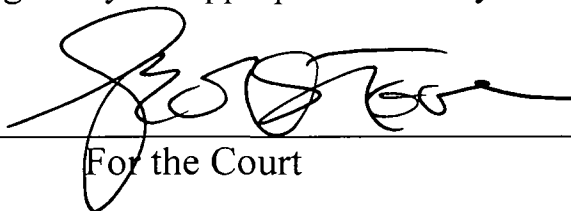
Respondent.

The Honorable D. Garrison Hill
Greenville County
Trial Court Case No. 2009-CP-23-02315

ORDER

Petitioner seeks an extension until June 8, 2011 to serve and file the Petition for Writ of Certiorari and Appendix, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extensions will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.



C.J.
For the Court

Columbia, South Carolina

May 16, 2011

cc: Appellate Defender Elizabeth A. Franklin-Best
Assistant Attorney General Karen Ratigan

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAY - 9 2011

S.C. Supreme Court

Appeal from Greenville County

Honorable D. Garrison Hill, Circuit Court Judge

RAFAEL ESCALANTE,

PETITIONER,

V.

THE STATE,

RESPONDENT.

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

(4)

Counsel for Rafael Escalante respectfully petitions this Court for a **final 30 days** to file the petition for writ of certiorari and appendix on behalf of her client. In support of this petition, counsel shows:

1. The petition for writ of certiorari and appendix is due today. The Court has granted three previous extensions.
2. Counsel respectfully submits that good cause exists to warrant the granting of an additional extension of time.
3. Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. *See Evitts v. Lucey*, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make

appellate proceedings fair). *See also* Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); South Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA maximum caseload standards of 25 appeals). *See generally* Polk County v. Dodson, 454 U.S. 312 (1981); Gideon v. Wainwright, 372 U.S. 335 (1963). Counsel has prioritized her caseload to complete the cases with the largest number of extensions first.

Counsel diligently works to keep up with her case load. On April 8, 2011 counsel filed the brief of respondent in Kelle Holden v. State. On April 8, 2011 counsel filed the U. S. petition for writ of certiorari and appendix in Jeriod J. Price v. State. On April 12, 2011 counsel filed the initial brief of appellant and designation of matter in State v. Kelesha Zaval-Tellez. On April 20, 2011 counsel filed the initial brief of appellant and designation of matter in State v. Henry Woods and State v. David Mario Johnson.

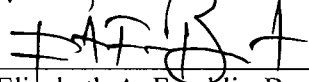
5. In the month of May, counsel is assigned to file **25** briefs and cert petitions not including her substantial work on the following capital case Bayan Aleksey. The Appendix in this case is over **6,000 pages long**, and there are at least **97 exhibits** involved. Counsel and co-counsel have been to the Courthouse in Orangeburg in an attempt to ensure that all exhibits are in the appendix and they have met with the client on death row to go over the exhibit list. A second trip to the Courthouse is needed to ensure all exhibits have been located, and likely a second trip to death row as well.

6. As indicated by the signature below, the Attorney General's Office does not oppose the request.

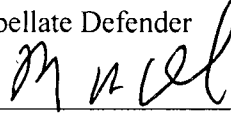
7. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a **final 30 day extension** in which to file her client's petition for writ of certiorari and appendix.

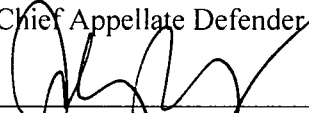
Respectfully submitted,



Elizabeth A. Franklin-Best
Appellate Defender



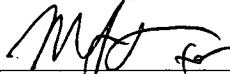
Robert M. Dudek
Chief Appellate Defender



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

May 9, 2011

I do not oppose:



Karen Katigan

The Supreme Court of South Carolina

Rafael Escalante,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable D. Garrison Hill
Greenville County
Trial Court Case No. 2009-CP-23-02315

ORDER

For good cause shown, the request for an extension until May 9, 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

April 13, 2011

cc: Appellate Defender Elizabeth A. Franklin-Best
Assistant Attorney General Karen Ratigan

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Honorable D. Garrison Hill, Circuit Court Judge

RECEIVED

APR 11 2011

S.C. Supreme Court

RAFAEL ESCALANTE,

PETITIONER,

V.

THE STATE,

RESPONDENT.

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

(3)

Counsel for Rafael Escalante respectfully petitions this Court for an additional 30 days to file the petition for writ of certiorari and appendix on behalf of her client. In support of this petition, counsel shows:

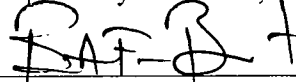
1. The petition for writ of certiorari and appendix is due today. The Court has granted two previous extensions.
2. Counsel respectfully submits that good cause exists to warrant the granting of an additional extension of time.
3. Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. See Evitts v. Lucey, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make

appellate proceedings fair). *See also* Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); South Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA maximum caseload standards of 25 appeals). *See generally* Polk County v. Dodson, 454 U.S. 312 (1981); Gideon v. Wainwright, 372 U.S. 335 (1963). Counsel has prioritized her caseload to complete the cases with the largest number of extensions first.

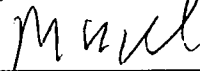
4. Counsel diligently works to keep up with her case load.
5. In the month of April, counsel is assigned to file 21 briefs.
6. As indicated by the signature below, the Attorney General's Office does not oppose the request.
7. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a 30 day extension in which to file her client's petition for writ of certiorari and appendix.

Respectfully submitted,



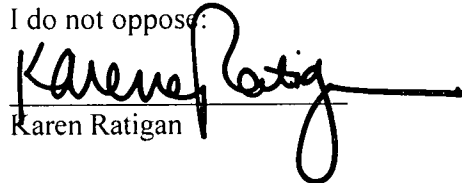
Elizabeth A. Franklin-Best
Appellate Defender



Robert M. Dudek
Chief Appellate Defender

April 8, 2011

I do not oppose:



Karen Ratigan

The Supreme Court of South Carolina

Rafael Escalante,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable D. Garrison Hill
Greenville County
Trial Court Case No. 2009-CP-23-02315

ORDER

For good cause shown, the request for an extension until April 8, 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 *Drenda J. Shady*
Clerk

Columbia, South Carolina *Chief Deputy*

March 10, 2011

cc: Appellate Defender Elizabeth A. Franklin-Best
Assistant Attorney General Karen Ratigan

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Honorable D. Garrison Hill, Circuit Court Judge

 ORIGINAL

RECEIVED

MAR - 9 2011

S.C. Supreme Court

RAFAEL ESCALANTE,

PETITIONER,

v.

THE STATE,

RESPONDENT.

(2)

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

Counsel for Rafael Escalante respectfully petitions this Court for an additional 30 days to file the petition for writ of certiorari and appendix on behalf of her client. In support of this petition, counsel shows:

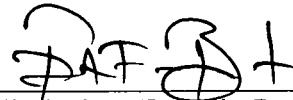
1. The petition for writ of certiorari and appendix is due today. The Court has granted one previous extension.
2. Counsel respectfully submits that good cause exists to warrant the granting of an additional extension of time.
3. Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. See Eyitts v. Lucey, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make

appellate proceedings fair). *See also* Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); South Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA maximum caseload standards of 25 appeals). *See generally* Polk County v. Dodson, 454 U.S. 312 (1981); Gideon v. Wainwright, 372 U.S. 335 (1963). Counsel has prioritized her caseload to complete the cases with the largest number of extensions first.

4. Counsel diligently works to keep up with her case load.
5. In the month of March, counsel is assigned to file 27 briefs.
6. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a 30 day extension in which to file her client's petition for writ of certiorari and appendix.

Respectfully submitted,



Elizabeth A. Franklin-Best
Appellate Defender

March 9, 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Honorable D. Garrison Hill, Circuit Court Judge

RAFAEL ESCALANTE,

PETITIONER,

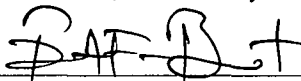
V.

THE STATE,

RESPONDENT.

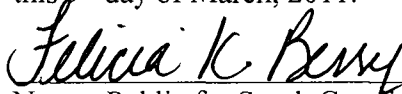
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of March, 2011.


Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 9th day of March, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020.

The Supreme Court of South Carolina

Rafael Escalante,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable D. Garrison Hill
Greenville County
Trial Court Case No. 2009-CP-23-02315

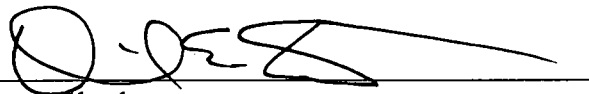
ORDER

The request for an extension until March 9, 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

February 8, 2011

cc: Appellate Defender Elizabeth A. Franklin-Best
Assistant Attorney General Karen Ratigan



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

February 7, 2011

RECEIVED

FEB - 7 2011

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

S.C. Supreme Court

Re: Rafael Escalante v. State of South Carolina

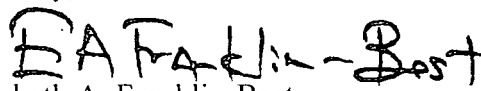
Dear Mr. Shearouse:

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

By copy of this letter to Assistant Attorney General Karen Ratigan, I am informing her of this request.

Thank you for your assistance in this matter.

Sincerely,


Elizabeth A. Franklin-Best
Appellate Defender

EAf/fkb

cc: Karen Ratigan, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

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

RECEIVED

DEC - 9 2010

S.C. Supreme Court

December 9, 2010

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.

Rafael Escalante v. State of South Carolina

12/9/2010

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
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

October 28, 2010

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:

Rafael Escalante v. State of South Carolina Case #: 09-CP-23-02315.

County: Greenville Date of Trial: August 27, 2010

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.

RECEIVED

OCT 28 2010

S.C. Supreme Court
RECEIVED

OCT 28 2010

S.C. Supreme Court

Ms. Hollie M. Jenkins
October 28, 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,


Lorienne French
Legal Services Coordinator

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

Law Office of Lawrence W. Crane

101 WHITSETT STREET
GREENVILLE, SOUTH CAROLINA 29601

LAWRENCE W. CRANE, ESQ.
ELIZABETH P. WIYGUL, ESQ.
CAROLINE M. HORLBECK, ESQ.

TELEPHONE (864) 235-2900
FAX (864) 467-1916
TOLL FREE (800) 852-0899

October 18, 2010

Via Regular Mail

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

Re: RAFEAL ESCALANTE v. State

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

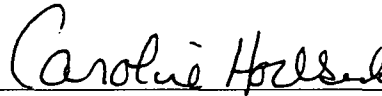
Thank you for your attention to this matter.

Yours very truly,

RECEIVED

OCT 20 2010

S.C. SUPREME COURT


Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
THE HONORABLE ROBIN B. STILWELL

CA No. 2009-CP-23-2315

2010 OCT 18 PM 3:39
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS/STAFF

RAFEAL ESCALANTE,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

NOTICE OF APPEAL

Appellant RAFEAL ESCALANTE, appeals from the Order of the Honorable Robin B. Stilwell, Circuit Court Judge clocked October 5, 2010.

RECEIVED

OCT 20 2010

S.C. SUPREME COURT

Respectfully submitted,

Caroline M. Horlbeck

Caroline M. Horlbeck, Esq.
101 Whitsett St
Greenville, SC 29601

Date: October 18, 2010

Other Counsel of Record: Karen Ratigan, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE SUPREME COURT

Rafeal Escalante,)
)
)
Appellant,)

C.A. No. 2009-CP-23-2315

-vs-)

CERTIFICATE OF SERVICE

State of South Carolina,)
)
)
Respondent.)

This is to certify that I am an employee in the law office of Lawrence W. Crane, attorneys for Appellant, and that I have this day caused to be served upon the person(s) named below Appellant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French
S.C. Office of Appellate Defense
1205 Pendleton St., Suite 306
Columbia, SC 29201

Karen Ratigan, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211



Caroline M. Horlbeck

Greenville, South Carolina

October 18, 2010

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2009CP2302315

IN THE COURT OF COMMON PLEAS

Rafeal Escalante vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRC P; Rule 41(a), SCRC P (Vol. Nonsuit);
 - Rule 43(k), SCRC P (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRC P; Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 - Affirmed; Reversed; Remanded;
 - Other: _____

2010 OCT -5 PM 4:20
 COURT REPORTER

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 5th day of Oct, 2010, and a copy mailed first class this 5th day of Oct, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Caroline M.W. Horlbeck Law Offices Of Lawrence
W. Crane 101 Whitsett Street Greenville, SC 29601

Karen Ratigan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Rafael Escalante,)
a/k/a Rafael Mendoza Escalante,)
a/k/a Victor Hugo Perez,)
a/k/a Rafael Escalange Placencia,¹)
S.C.D.C. No. 306027,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No. 2009-CP-23-2315

ORDER OF DISMISSAL

2010 OCT -5 P 4:20

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 20, 2009. The Respondent made its return on May 12, 2009. An evidentiary hearing into the matter was convened on August 27, 2010 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Richard H. Warder, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

¹ The Applicant submitted his PCR application under the name Rafael Escalante while the South Carolina Department of Corrections lists his name as Rafael Escalange Placencia.

127
R/H

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the July 2005 term of the Greenville County Grand Jury for leaving the scene of an accident resulting in death (2005-GS-23-5305), reckless homicide (2005-GS-23-5306), and escape (2005-GS-23-5307). He was represented by Richard H. Warder, Esquire.

The State called the case to trial on October 9, 2006. Prior to commencement of trial, however, trial counsel successfully moved to sever the escape charge. The Applicant then pled guilty to reckless homicide and the Honorable John C. Hayes levied a sentence of ten (10) years imprisonment. The Applicant proceeded to trial on the charge of leaving the scene of an accident resulting in death and was found guilty. On October 10, 2006, Judge Hayes levied a concurrent sentence of twenty-five (25) years imprisonment.²

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders³ brief. The Court of Appeals dismissed the appeal. State v. Escalante, Op. No. 2008-UP-714 (S.C. Ct. App. filed December 18, 2008).

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to strike juror number 56.
 - b. Failed to strike juror number 202.

² The Applicant pled guilty to the escape charge on May 1, 2007 and the Honorable Michael G. Nettles levied a concurrent sentence of five (5) years imprisonment. The Applicant did not file an appeal.

³ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

297
RH

- c. Conceded the Applicant's guilt to the jury.
2. Denial of 6th and 14th Amendments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Ineffective Assistance of Counsel

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

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

3 & 7
A/H

The Applicant stated he only had two (2) meetings with counsel before trial. The Applicant stated he and counsel discussed both his version of events and the discovery materials (which included witness statements and police reports). The Applicant stated he wanted to plead guilty to both the reckless homicide and leaving the scene of an accident charges. The Applicant stated trial counsel "sprung" it on him that he would plead guilty to one charge and have a jury trial on the other. The Applicant testified he ended up going to trial because he thought he would be found not guilty. The Applicant testified he asked counsel's investigator to interview witnesses but that he never reviewed potential witnesses with counsel. The Applicant testified trial counsel should have objected to jurors 56 and 202 because they had relatives who were attorneys. The Applicant testified counsel's opening statement hurt his case because he admitted the Applicant left the scene. The Applicant testified counsel failed to explain to the jury that he only left the scene in order to get help.

Trial counsel testified he had several meetings with the Applicant. Trial counsel testified they reviewed the discovery materials and the impact the eyewitnesses' statements would have upon their case. Trial counsel testified he contacted several witnesses but that they were not helpful to the defense case. Trial counsel testified he explained this to the Applicant. Trial counsel testified he attempted to obtain a plea recommendation from the State but was unsuccessful. Trial counsel stated that, if the Applicant pled guilty to all the charges, the State said they would seek the maximum possible sentence. Trial counsel stated the Applicant knew his case was going to trial that day. Trial counsel stated his theory of the case at trial involved the definition of the accident scene and arguing the Applicant was found close to the accident. Trial counsel stated there was no reason to strike jurors 56 and 202. Trial counsel stated he admitted during his closing argument that the Applicant left the immediate scene of the accident

487
JH

because it was part of their theory that he left only in order to get help for the victim.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant did not meet his burden of proving trial counsel failed to interview or present witnesses. Trial counsel testified he spoke to several witnesses but that their testimony would not have been beneficial to the defense case. Regardless, as these alleged witnesses did not testify at the evidentiary hearing, this Court finds that any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the inclusion of jurors 56 and 202 on the jury. This Court finds the Applicant failed to articulate a compelling reason why these jurors should not have been included on his jury. This Court notes the Applicant has failed to produce any testimony from these jurors that their deliberations on his case were influenced by having an attorney as a family member. See id.

This Court finds the Applicant failed to meet his burden of proving trial counsel should not have made this statement during opening argument: "There's no question that initially my client when he got out of his car went and looked at the victim and took off and ran." (Trial

587
HIT

transcript, p.41, lines 15-17). Trial counsel testified, however, that the defense strategy at trial was to argue that the Applicant never left the scene when he ran to get help for the victim. This strategy was made clear in the sentences of opening argument that immediately follow the one complained of by the Applicant. Trial counsel tells the jury that the Applicant never left the scene of the accident. (Trial transcript, p.41, lines 18-23). This Court finds, therefore, that trial counsel's comment in opening argument was merely strategic in nature. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

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

687

[Handwritten signature]

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1st day of OCTOBER, 2010.



D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

Lawrence W. Crane

Attorney At Law

101 WHITSETT STREET
GREENVILLE, SOUTH CAROLINA 29601



Via Regular Mail

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

Rafael
Eschante