



RECEIVED

JUN 30 2011

S.C. Supreme Court

ALAN WILSON
ATTORNEY GENERAL

June 30, 2011

Tricia A. Blanchette, Esquire
Post Office Box 12725
Columbia, South Carolina 29211

Re: Julius Powell v. State of South Carolina

Dear Ms. Blanchetter:

Enclosed please find two (2) copies of the Brief of Respondent Pursuant to White v. State along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott
Assistant Deputy Attorney General

SWE/ab
Enclosures

cc: The Honorable Daniel E. Shearouse
(original & 14 enclosed)
Ms. Trisha Allen

ALAN WILSON
ATTORNEY GENERAL



June 30, 2011

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JUN 30 2011

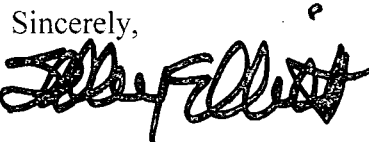
S.C. Supreme Court

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

RE: Julius Powell v. State of South Carolina
2007-CP-32-4377

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,


Salley W. Elliott
Assistant Deputy Attorney General

SWE/ab
Enclosures

cc: Tricia A. Blanchette, Esquire (2 copies)

The Supreme Court of South Carolina

Julius Powell,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Lawton McIntosh
Lexington County
Trial Court Case No. 2007-CP-32-04377

ORDER

For good cause shown, the request for an extension until June 30, 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 Brenda J. Shealy
Clerk

Columbia, South Carolina *Chief Deputy*

June 2, 2011

cc: Tricia A. Blanchette, Esquire
Assistant Deputy Attorney General Salley W. Elliott



ALAN WILSON
ATTORNEY GENERAL

May 31, 2011

RECEIVED

MAY 31 2011

S.C. Supreme Court

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

Re: Julius Powell v. State of South Carolina
2007-CP-32-4377

Dear Mr. Shearouse:

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

This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

Salley W. Elliott
Assistant Deputy Attorney General

SWE/ab

cc: Tricia A. Blanchette, Esquire

The Supreme Court of South Carolina

Julius Powell,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Lawton McIntosh
Lexington County
Trial Court Case No. 2007-CP-32-04377

ORDER

The request for an extension until May 31, 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

Chief Deputy
Columbia, South Carolina

May 2, 2011

cc: Tricia A. Blanchette, Esquire
Assistant Deputy Attorney General Salley W. Elliott



ALAN WILSON
ATTORNEY GENERAL

April 29, 2011

RECEIVED

APR 29 2011

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

S.C. Supreme Court

Re: Julius Powell v. State of South Carolina
2007-CP-32-4377

Dear Mr. Shearouse:

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

This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

Salley W. Elliott
Assistant Deputy Attorney General

SWE/ab

cc: Tricia A. Blanchette, Esquire



LAW OFFICE OF TRICIA A. BLANCHETTE

February 25, 2011
VIA HAND DELIVERY

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

RECEIVED

FEB 25 2011

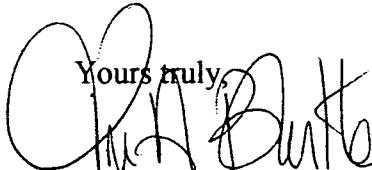
S.C. Supreme Court

RE: Julius Powell v. State, 2007-CP-32-4377

Dear Sir:

For filing, attached please find an unbound original and six copies of an Amended Petition for Writ of Certiorari and an Initial Brief of Appellant Pursuant to White v. State. Also attached please find the original Certificate of Service and an unbound original and one copy of a Supplemental Appendix, along with two stickers for the previously filed Appendix.

Thank you for your assistance with this matter. Please contact my office with any questions.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: A. West Lee, Assistant Attorney General
Julius Powell

The Supreme Court of South Carolina

Julius Powell,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Lawton McIntosh
Lexington County
Trial Court Case No. 2007-CP-32-04377

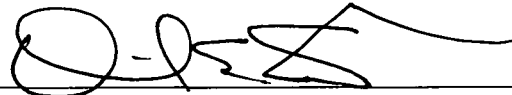
ORDER

For good cause shown, the request for an extension to serve and file the Amended Petition for a Writ of Certiorari, Appendix and the White v. State brief in the above entitled matter is granted and extended until February 28, 2011. Any further extension request must show the existence of extraordinary circumstances and state what actions are being taken to insure that no further extension will be required.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

January 28, 2011

cc: Tricia A. Blanchette, Esquire
Assistant Attorney General A. West Lee



LAW OFFICE OF TRICIA A. BLANCHETTE

January 21, 2011

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

RECEIVED

JAN 27 2011

S.C. Supreme Court

RE: Julius Powell v. State

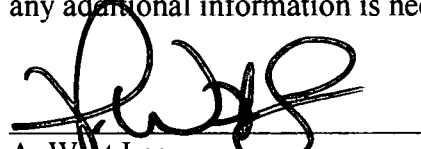
Dear Sir:

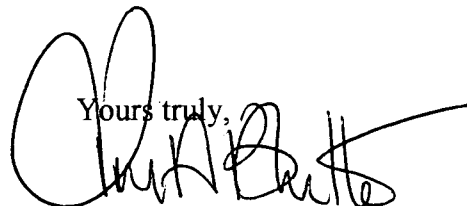
I am in receipt of notice of the Court's Order dated December 23, 2010, which set the filing date as January 28, 2011 for the substituted Petition for Writ of Certiorari and White v. State Brief. I am respectfully requesting my third extension of thirty days.

During the first week of January, I completed the move of my office to a new location, and I was unable to work on Mr. Powell's case due to complications with the move. Last week, I had a full day PCR hearing in Richland County, and the Honorable Thomas W. Cooper requested that I prepare a proposed Order. I am also scheduled to appear in three PCR hearings in York and Lexington County during the week of January 31st. Due to my court schedule and requested filings, I will not have an opportunity to complete Mr. Powell's appellate filings prior to January 28th.

While working on Mr. Powell's case, I have discovered that his case involves a novel issue, which requires extensive legal research. Therefore, I am not requesting this extension for the purposes of delay but to ensure that I properly present Mr. Powell's appellate issues.

By his signature below, A. West Lee, Assistant Attorney General, does not object to my request for this extension. Thank you for your assistance with this matter. Please contact me if any additional information is needed.


A. West Lee
Assistant Attorney General

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: A. West Lee, Assistant Attorney General
Julius Powell

Post Office Box 12725 Columbia, South Carolina 29211

Phone: 803-988-0008 Facsimile: 803-988-8070

Email: BlanchetteLaw@Gmail.com

The Supreme Court of South Carolina

Julius Powell,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Lawton McIntosh
Lexington County
Trial Court Case No. 2007-CP-32-04377

ORDER

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

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

December 23, 2010

cc: Tricia A. Blanchette, Esquire
Assistant Attorney General A. West Lee

RECEIVED

DEC 22 2010



S.C. SUPREME COURT

LAW OFFICE OF TRICIA A. BLANCHETTE

December 20, 2010

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

RE: Julius Powell v. State

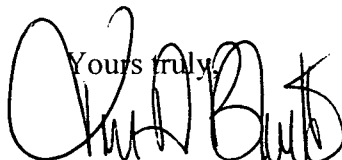
(2)

Dear Sir:

I am in receipt of the Order granting an extension until December 29, 2010 for filing the substituted Petition for Writ of Certiorari and White v. State Brief in the above referenced case. I am writing to respectfully request my second extension of thirty days for filing the substituted Petition for Writ of Certiorari and White v. State Brief.

Over the next two weeks, I will be moving my office to a new location, and I will be going to Chicago for the Christmas holiday. Due to my move and the Christmas holiday, I am concerned that I will not be able to complete Mr. Powell's appellate filings and have the opportunity to meet with him at Lee to adequately review the Petition and Brief. For these reasons, I am respectfully requesting my second thirty day extension. This request is not made for the purposes of delay, but it is made to ensure that all issues are properly presented to the Court.

Thank you for your assistance with this matter. Please contact me if any additional information is needed.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: A. West Lee, Assistant Attorney General
Julius Powell

Post Office Box 12725 Columbia, South Carolina 29211

Phone: 803-988-0008 Facsimile: 803-988-8070

Email: BlanchetteLaw@Gmail.com

The Supreme Court of South Carolina

Julius Powell,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Lawton McIntosh
Lexington County
Trial Court Case No. 2007-CP-32-04377

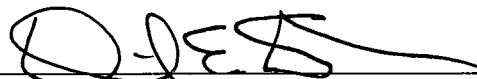
ORDER

The request for an extension until December 29, 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


Clerk

Columbia, South Carolina

November 22, 2010

cc: Tricia A. Blanchette, Esquire
Assistant Attorney General A. West Lee



LAW OFFICE OF TRICIA A. BLANCHETTE

November 19, 2010

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

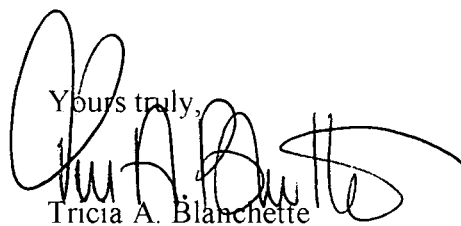
RECEIVED
NOV 22 2010
S.C. SUPREME COURT

RE: Julius Powell v. State

Dear Sir:

I am in receipt of notice of the Court's Order dated October 28, 2010, which set the filing date for the substituted Petition for Writ of Certiorari and White v. State Brief within thirty days of the Order. I am respectfully requesting my first extension of thirty days for filing the substituted Petition for Writ of Certiorari. This request is not made for the purposes of delay, but it is made to ensure that all issues are properly presented to the Court.

Thank you for your assistance with this matter. Please contact me if any additional information is needed.

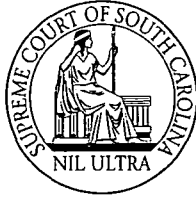
Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: A. West Lee, Assistant Attorney General
Julius Powell

Post Office Box 12725
Columbia, South Carolina 29211

Phone: 803-988-0008 Facsimile: 803-988-8070

Email: BlanchetteLaw@Gmail.com



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

October 28, 2010

Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette, LLC
P.O. Box 12725
Columbia, SC 29211

Re: Powell, Julius v. The State

Dear Ms. Blanchette:

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

By copy of this letter, we are notifying Mr. Pachak that he is relieved in this matter.

Very truly yours,

CLERK

DES/jj

cc: Appellate Defender Robert M. Pachak
Julius Powell #322080
Assistant Attorney General A. West Lee

The Supreme Court of South Carolina

Julius Powell,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER

Petitioner moves for substitution of counsel and substitution of the Petition for a Writ of Certiorari and Anders Brief of Appellant Pursuant to White v. State filed in this case. The State has not filed a return to the motion. The motion to substitute counsel is granted. Robert M. Pachak is hereby relieved as counsel and Tricia A. Blanchette shall be substituted as counsel of record for petitioner in this matter. Petitioner's motion to withdraw the petition for a writ of certiorari and White v. State brief previously filed in this matter is also granted. Ms. Blanchette shall have thirty days from the date of this order to serve and file a substitute petition for a writ of certiorari and White v. State brief.

IT IS SO ORDERED.



FOR THE COURT

C. J.

Columbia, South Carolina

October 28, 2010

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post Conviction Relief

RECEIVED

OCT 14 2010

Honorable R. Lawton McIntosh, Circuit Court Judge

S.C. SUPREME COURT

ORIGINAL

Case No.: 2007-CP-32-4377

Julius Powell,.....Petitioner,

vs.

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

MOTION FOR SUBSTITUTION OF COUNSEL,
SUBSTITUTION OF BRIEF OF APPELLANT
AND SUBSTITUTION OF PETITION FOR
WRIT OF CERTIORARI

This matter is now before the Court pursuant to a Motion for Substitution of Counsel, Substitution of Brief of Appellant, and Substitution of the Petition for Writ of Certiorari in the above referenced case. It is the Petitioner's understanding that a Petition for Writ of Certiorari and an Initial Anders Brief of Appellant Pursuant to White v. State was filed by Robert M. Pachak, Appellate Defender, on July 27, 2010. It is also the Petitioner's understanding that the Respondent has filed an informal response to the Initial Anders Brief and has received an extension through November 10, 2010 to file a formal response.

The Petitioner would respectfully request that this Court allow substitution of counsel and allow substituted counsel to withdraw and substitute the Initial Brief of

Appellant and Petition for Writ of Certiorari filed with this Court. This request is not made for the purposes of delay but to ensure that all issues of merit are properly presented to this Court.

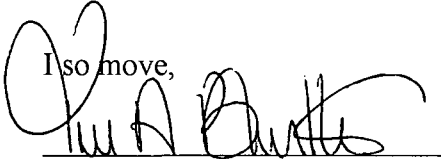
After being served with the Petition for Writ of Certiorari and an Initial Anders Brief of Appellant Pursuant to White v. State, the Petitioner contacted undersigned counsel who served as his appointed PCR counsel and requested that she meet with him to discuss his appeal. After meeting with the Petitioner, it was apparent that the Petition for Writ of Certiorari only addressed the issue regarding the belated appeal and failed to address the meritorious issues presented at the evidentiary hearing and ruled upon by the lower court. Therefore, the Petitioner is respectfully requesting that this Court allow the requested substitution of counsel, substitution of the Initial Brief of Appellant and substitution of the Petition for Writ of Certiorari filed with this Court. This request is made to ensure that the issues presented at the Petitioner's evidentiary hearing are properly addressed before this Court.

Counsel for the Petitioner has consented to Tricia A. Blanchette, Esquire, being substituted in as counsel. The Peitiioner has also consented to the substitution of counsel, substitution of the Initial Brief of Appellant and substitution of the Petition for Writ of Certiorari.

Therefore, based upon the foregoing, the Petitioner would respectfully request that this Court allow substitution of counsel and allow substituted counsel to withdraw and substitute the Initial Brief of Appellant and Petition for Writ of Certiorari filed with this Court on July 27, 2010. This request is not made for the purposes of delay but it is made to ensure that the Petitioner's meritorious issues that were ruled upon by the lower

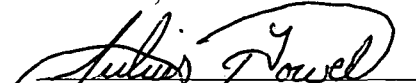
court are properly presented to this Court and to ensure that the Petitioner receives his full bite of the apple.

I so move,



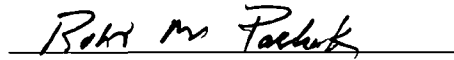
Tricia A. Blanchette
Law Office of Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211

I consent,



Julius Powell
Appellant

I consent,



Robert M. Pachak
Chief Deputy Appellate Defender
PO Box 115893
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No.: 2007-CP-32-4377

RECEIVED

OCT 14 2010

S.C. SUPREME COURT

Julius Powell, Petitioner,

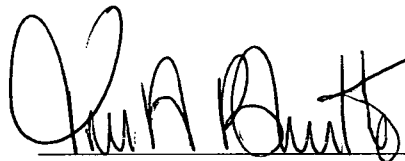
vs.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney at Law, hereby certify that I hand delivered this 14th day of October 2010, a copy of a Motion for Substitution of Counsel and Substitution of Petition for Writ of Certiorari, to A. West Lee of the Attorney General's Office, at:

Office of the Attorney General
ATT: A. West Lee, Esq.
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

October 14, 2010

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address:
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

October 14, 2010
VIA HAND DELIVERY

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

RECEIVED

CCT 14 2010

S.C. SUPREME COURT

RE: Julius Powell v. State

Dear Sir:

For filing, enclosed please find an original and six copies of a Motion for Substitution of Counsel and Substitution of Petition for Writ of Certiorari in the above referenced case.

Thank you for your assistance with this matter. Should you have any questions or need any additional information, please do not hesitate to contact me.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: A. West Lee, Assistant Attorney General
Robert M. Pachak, Appellate Defender
Julius Powell

Phone: 803-988-0008 Facsimile: 803-988-8070

Email: BlanchetteLaw@Gmail.com

The Supreme Court of South Carolina

Julius Powell,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Lawton McIntosh
Lexington County
Trial Court Case No. 2007-CP-32-04377

ORDER

For good cause shown, the request for an extension until November 10, 2010 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 *Aronda J. Shealy*
Clerk

Columbia, South Carolina *Chief Deputy*

October 1, 2010

cc: Appellate Defender Robert M. Pachak
Assistant Attorney General A. West Lee

STATE OF SOUTH CAROLINA
In The SUPREME COURT

RECEIVED

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

OCT 12 2010

The Honorable Lawton McIntosh, Circuit Court Judge **S.C. SUPREME COURT**

Case No. 2007-CP-32-04377

JULIUS POWELL,.....Petitioner,

v.

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

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

COMES NOW the Respondent above named, by and through the undersigned counsel, making its motion to Relax Rule 243(g), SCACR, would show unto this Court:

I.

An extension request was previously granted giving Respondent until October 11, 2010 to serve and file the Return to Petition for Writ of Certiorari.

The Respondent respectfully requests another extension to file the Return to Petition for Writ of Certiorari. The Respondent has been working diligently to properly handle all (non-capital) PCR matters on behalf of the State for the 10th and 11th circuits. The Respondent is also in Court today for several hearings concerning pending PCR matters.

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

II.

In view of the foregoing, it is respectfully requested that this Court relax Rule 243(g), SCACR, and allow the Respondent another extension of time to file the Return to the Petition for Writ of Certiorari.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

A. West Lee
Assistant Attorney General

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

By:  _____
ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina
October 11, 2010

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

SEP 29 2010

Certiorari to Lexington County

S.C. SUPREME COURT

Honorable R. Lawton McIntosh, Circuit Court Judge

Julius Powell Petitioner,

v.

State of South Carolina Respondent.

Motion for Extension

(2)

The Respondent would show this Court:

The Return to Petition for Writ of Certiorari was due to be filed today, September 29, 2010. However, due to an unusually heavy workload, Respondent now moves for a thirty-day extension to file its Return. Respondent notes that this is the second extension request. This extension request is not made for the purposes of delay.

The Return requires extensive research as the Petitioner presents issues which are new to the undersigned in terms of research. The undersigned assures the Court that he is currently working on the research and writing of this Return. The undersigned has given the completion of this brief a high priority status and will work to complete it in a timely manner.

The Respondent therefore requests that this Court grant an extension of thirty (30) days in which to file its Return.

WHEREFORE, for these reasons, the Respondent respectfully requests that this Court grant an extension of thirty (30) days in which to file its Return.

Respectfully submitted,

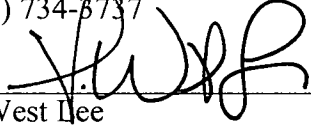
HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-6737

By: 
A. West Lee
Assistant Attorney General

Attorneys for the Respondent

Columbia, South Carolina
September 29, 2010



HENRY MCMMASTER
ATTORNEY GENERAL

September 29, 2010

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

RECEIVED

SEP 29 2010

S.C. SUPREME COURT

RE: Julius Powell v. State of South Carolina
Case #2007-CP-32-04377

Dear Mr. Shearouse:

The Return to Petition for Writ of Certiorari in the above appeal is due to be served and filed on September 29, 2010. However, this is to respectfully request an additional 30-day extension in which to serve and file this Return.

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

Sincerely,

A. West Lee
Assistant Attorney General

AWL:las

cc: Robert M. Pachak, Esquire; SC Office of Appellate Defense

The Supreme Court of South Carolina

Julius Powell,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Lawton McIntosh
Lexington County
Trial Court Case No. 2007-CP-32-04377

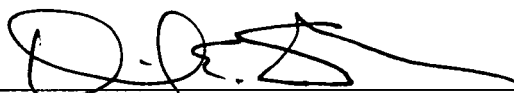
ORDER

The request for an extension until October 11, 2010 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

August 31, 2010

cc: Appellate Defender Robert M. Pachak
Assistant Attorney General A. West Lee



HENRY McMASTER
ATTORNEY GENERAL

August 30, 2010

RECEIVED

AUG 30 2010

S.C. SUPREME COURT

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

RE: Julius Powell v. State of South Carolina
Case #2007-CP-32-04377

Dear Mr. Shearouse:

The Return to Petition for Writ of Certiorari in the above appeal is due to be served and filed on September 10, 2010. However, this is to respectfully request a 30-day extension in which to serve and file this Return.

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

Sincerely,

A. West Lee
Assistant Attorney General

AWL:las

cc: Robert M. Pachak, Esquire; SC Office of Appellate 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

July 28, 2010

Julius Powell #322080
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Powell, Julius v. The State

Dear Mr. Powell:

Regarding the White v. State review of your direct appeal issues [Rule 227 (g), SCACR], your attorney has submitted a brief indicating that there are no meritorious direct appeal issues. See Anders v. California, 386 U.S. 738 (1967). Our records reflect that your attorney sent you a copy of this brief on July 27, 2010.

You may, within forty-five (45) days of the date of this letter file with this Court a pro se response to the brief filed by your counsel. In this response, you may raise and argue any direct appeal issues which you believe the Court should consider. Upon receipt of your pro se response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

Very truly yours,



CLERK

DES/jj

cc: Appellate Defender Robert M. Pachak
Assistant Attorney General A. West Lee



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 3, 2010

RECEIVED

JUN - 3 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.

Julius Powell v. State of South Carolina

6/3/2010

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,

Sharon A. Graham
Administrative Coordinator



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

March 30, 2010

RECEIVED

MAR 30 2010

S.C. SUPREME COURT

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

Dear Ms. Thomas:

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

Julius Powell v. State of South Carolina

Case #:

07-CP-32-04377

County: Lexington

Date of Trial: February 5, 2010

Presiding Judge: R. Lawton McIntosh

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

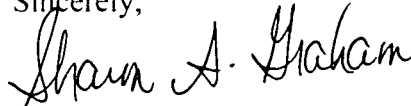
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Rema Gantt Thomas
March 30, 2010
Page Two

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

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Sharon A. Graham". The signature is written in a cursive style with a large initial 'S'.

Sharon A. Graham
Administrative Coordinator

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

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address:
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

March 15, 2010
VIA HAND DELIVERY

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

RECEIVED

MAR 15 2010

S.C. SUPREME COURT

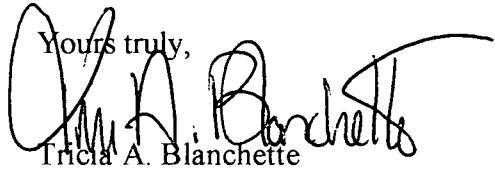
RE: Julius Powell v. State, 2007-CP-32-4377

Dear Sir:

For filing, enclosed please find an original Notice of Intent to Appeal, with a Certificate of Service attached. Also, attached please find a copy of the Order of Dismissal.

By way of this letter, I am sending a copy of these documents to Appellate Defense since I was appointed to handle this PCR Application.

Thank you for your assistance with this matter. Please contact my office with any questions.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: A. West Lee, Assistant Attorney General
Office of Appellate Defense
Julius Powell

Phone: 803-988-0008 Facsimile 803-988-8070

Email: BlanchetteLaw@Gmail.com

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No.: 2007-CP-32-4377

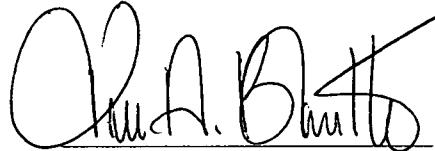
Julius Powell,.....Petitioner,

vs.

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

NOTICE OF APPEAL

On March 3, 2010, the Honorable R. Lawton McIntosh issued an Order Denying Post Conviction Relief and Granting White v. State Appeal. This Order was filed by the Lexington County Clerk of Court on March 5, 2010. Julius Powell, through undersigned appointed counsel, received written notice of the entry of this Order on March 11, 2010. Julius Powell, through undersigned appointed counsel, is appealing this Order and pursuing his White v. State Appeal.



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Attorney for the Petitioner

Other Counsel of Record:

A. West Lee
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

RECEIVED

MAR 15 2010

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAR 15 2010

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No.: 2007-CP-32-4377

Julius Powell,.....Petitioner,

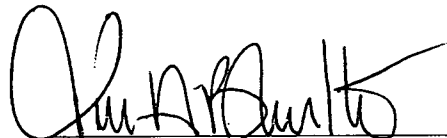
vs.

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

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, appointed PCR counsel, hereby certify that I placed in the United States Mail on this 15th day of March 2010, a copy of the Notice of Appeal and Final Order, with postage prepaid and the return address clearly shown on said envelope to the Office of the Attorney General at:

Office of the Attorney General
ATT: A. West Lee, Esq.
P.O. Box 11549
Columbia, SC 29211



Tricia A. Blanchette
P.O. Box 12725
Columbia, SC 29211
(803) 988-0008
Appointed PCR Counsel

March 15, 2010

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF LEXINGTON

CASE NO: 2007CP3204377

IN THE COURT OF COMMON PLEAS

Julius Powell vs. State of South Carolina

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), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other:
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____

IT IS ORDERED AND ADJUDGED:

- See attached order;
- Statement of Judgment by the Court:

PRESIDING JUDGE -

This judgment was entered on the 5th Day of March 2010, and a copy mailed first class this 8th Day of March 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Sandra Lynn Burr Burr & Associates LLC 140
 Stoneridge Dr., Ste. 450 Columbia, SC 29210
Tricia A. Blanchette Law Office of Tricia A
 Blanchette P O Box 12725 Columbia, SC 29211

Henry Dargan McMaster S.C. Attorney
 General's Ofc. P.O. Box 11549 Columbia, SC
 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

Beth A. Carrigg - Clerk of Court

SCRPC APP-24/FORM 4

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Julius Powell, 322080,)
Applicant,)
v.)
State of South Carolina,)
Respondent,)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

DOCKET NO: 2007-CP-32-4377

ORDER DENYING POST CONVICTION
RELIEF APPLICATION AND
GRANTING WHITE V. STATE APPEAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post Conviction Relief filed on December 4, 2007. The State submitted a Return on or about May 1, 2008. The Applicant, through appointed counsel, submitted an Amendment to Application for Post Conviction Relief on January 20, 2010, which added the following specific allegations to his original allegation of "ineffective assistance of counsel" and "guilty pleas were not knowing, voluntary and intelligent" and specifically requested a belated direct appeal:

1. Ineffective assistance of trial counsel and involuntary guilty plea, specifically but not limited to the following grounds:
 - a. Failure to properly prepare and investigate the case.
 - i. Counsel failed to thoroughly review the discovery with the Applicant prior to his plea.
 - ii. Counsel failed to meet with the Applicant and properly prepare for trial and/or plea.
 - iii. Counsel failed to conduct an independent investigation or speak with any witnesses.
 - iv. Counsel failed to utilize the investigative work conducted by Lee Connelly and obtain additional funding for her to complete her investigation.

FILED

2010 MAR -5 A 11: 17

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

- v. Counsel failed to look into the Applicant's alibi defense or speak with his alibi witness.
 - vi. After informing the Applicant that his co-defendant's would testify against him, counsel failed to prepare for potential impeachment of the Applicant's co-defendants
- b. Failure to provide effective assistance of counsel during the plea phase.
- i. Counsel advised the Applicant that he could plead no contest but the plea was a straight up guilty plea.
 - ii. Counsel did not properly prepare himself or the Applicant for mitigation.
2. The Applicant is also alleging that counsel failed to file a direct appeal as was requested by the Applicant. Therefore, the Applicant is requesting a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

An evidentiary hearing into the matter was held on February 5, 2010 at the Lexington County Courthouse in front of the Honorable R. Lawton McIntosh. The Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. The Respondent was represented by A. West Lee, Assistant Attorney General.

At the beginning of the hearing, Applicant's counsel called Lee T. Connelly, Private Investigator, to the stand. The Applicant testified on his own behalf and PCR counsel admitted eleven exhibits. Plea counsel, Lowell Bernstein, Esquire, also testified during the evidentiary hearing. This Court also had before it a copy of the Application, the Respondent's Return, the Applicant's Amendment, the records of the Lexington County Clerk of Court concerning the subject conviction, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. The Applicant was indicted for Burglary, First Degree (2007-GS-32-1126), Kidnapping

(2007-GS-32-1127) and Armed Robbery (2007-GS-32-1128) during the April 2007 term of the Lexington County Grand Jury.

On May 24, 2007, the Applicant entered a guilty plea to Burglary, Second Degree, Kidnapping and Armed Robbery in front of the Honorable L. Casey Manning. The Applicant was represented by Lowell Bernstein, Esquire. The Honorable L. Casey Manning sentenced the Applicant to concurrent terms of fifteen (15) years for Burglary, Second Degree, eighteen (18) years for Kidnapping and eighteen (18) years for Armed Robbery. The Applicant did not appeal his plea or sentence.

APPLICABLE LAW

In a PCR Action, the “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) (citing Rule 71.1(e), SCRCP).

A. Ineffective Assistance of Counsel and/or Involuntary Guilty Plea

It is well established that a guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). In South Carolina, the courts have consistently held that that a defendant must have a full understanding of the consequences of his plea and the charges against him. Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997), Simpson v. State, (317 S.C. 506, 455 S.E.2d 175 (1995).

In PCR, an Applicant alleging a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Therefore, an Applicant that entered a plea on the advice of counsel may only attack the voluntary nature of that plea by showing that counsel’s representation fell

below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the Applicant would not have pled guilty and insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985), Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000).

More recently, in Stalk v. Sate, 383 S.C. 559, 681 S.E.2d 592 (2009), the South Carolina Supreme Court clarified the prejudice requirement set forth in Hill. The Court reasoned that an Applicant must show that something would have affected counsel's advice for the Applicant to accept the plea bargain offered or that would have caused the Applicant to decline to accept the plea in order to meet the prejudice requirement.

B: Belated Direct Appeal

Pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), the Applicant has requested a belated direct appeal. In Jones v. State, 382 S.C. 589; 677 S.E.2d 20 (2009), the South Carolina Supreme Court cited to Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) and held:

[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.

The Supreme Court also noted that absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. See Jones, 382 S.C. at 596, 677 S.E.2d at 20 (citing Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008)). "One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea

would arise when the defendant inquires about an appeal.” See Id. (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED
AT POST CONVICTION RELIEF HEARING

A. Testimony of Julius Powell

When he was called to the stand, the Applicant testified that he filed the present Application and Amendment alleging involuntary guilty, ineffective assistance of counsel and requesting a belated direct appeal. The Applicant also acknowledged that he was indicted for Burglary, First Degree, Kidnapping and Armed Robbery in Lexington County and that he entered a plea to Burglary, Second Degree, Kidnapping and Armed Robbery on May 24, 2007 in front of the Honorable L. Casey Manning at the Richland County Courthouse. The Applicant testified that he received a total sentence of eighteen (18) years.

The Applicant recalled that he was arrested on July 11, 2006 and that he appeared at a bond hearing where bond was denied. He further recalled that Stanley Myers, Esquire, was appointed to his case approximately one month after his arrest. The Applicant remembered that Mr. Myers was actively preparing his case for trial, and he obtained indigent funds for Lee T. Connelly, Private Investigator, to work on the Applicant’s case. The Applicant recalled meeting with Ms. Connelly two times and going over the discovery and case documents with her. He further recalled providing her with a timeline of his activities at or around the time of the alleged crime. Applicant’s Exhibit #1. He also recalled providing her with the name and contact information for his alibi witness, Deborah Stephenson. Applicant’s Exhibit #2.

While on the stand, the Applicant identified a letter dated November 22, 2006 between the Solicitor's Office and Mr. Myers. Applicant's Exhibit #7. The Applicant explained that Mr. Myers found out he was going to be deployed, so he tried to obtain a favorable plea for the Applicant prior to his deployment. As indicated in the letter, the State refused to go below ten years, so Mr. Myers filed a Motion to be Relieved, which was granted. Thereafter, Lowell Bernstein, Esquire, was appointed to the Applicant's case.

The Applicant testified that Mr. Bernstein worked on his case for approximately two months. During that time, the Applicant remembered meeting with him two times. The Applicant was adamant that he asked Mr. Bernstein about Ms. Connelly's investigation and requested that he work with her on his case, but counsel failed to do so. He also recalled informing counsel about his alibi witness and Ms. Connelly's meeting with her, but counsel failed to follow up with his alibi witness or Ms. Connelly regarding the matter.

The Applicant also testified that counsel failed to review the discovery with him. Specifically, the Applicant testified about the Lexington County Sheriff's Office Investigative Report dated July 5, 2006. Applicant's Exhibit #5. The Applicant pointed out that the report contained the following information, which he asked counsel to further investigate:

1. A size 9-10 Fila shoe print was obtained from the back door of the victim's residence;
2. The victim saw a white station wagon parked down the road after the robbery and at the neighbor's house (residence of Freddie Henderson and Donna Powell);
3. The taller suspect yelled "Shawn or Deshawn let's go;"
4. Officers spoke to Christina at the neighbor's home about her white station wagon;

5. Officers received information from the victim that Vicki Amick, friend of victim's wife, kept her children at John Vesey's home. Ms. Amick was informed that Mr. Vesey was approached by a black male about purchasing a hand gun and he referred him to "Big John's Pawn Shop" to sell the gun;
6. Officers went to the pawn shop and obtained records that established that Freddie Henderson had pawned the weapon stolen from the victim's residence;
7. Henderson was arrested and gave a statement that implicated the Applicant.

The Applicant testified that counsel failed to look into any of the information contained in the investigative report. The Applicant also indicated that he asked counsel to look into the information contained in the victim's statement, but he did not. Applicant's Exhibit #10. Finally, the Applicant testified that he asked counsel to determine if results were obtained for the shoe print lifted from the victim's residence and the shoe's taken from Henderson's residence, but counsel failed to investigate this matter. Applicant's Exhibit #9.

The Applicant remembered that counsel informed him that his co-defendant's would testify against him at trial. The Applicant testified that counsel did not investigate his co-defendants or prepare for potential impeachment of their testimony.

The Applicant recalled receiving only one plea offer, and counsel informed him that the State would allow him to plead no contest. The Applicant testified that it was his understanding that the Judge would only accept a straight up guilty plea. Plea Transcript p. 30. The Applicant recalled informing the Judge that he had undergone alcohol treatment for six months, but he had relapsed. He also recalled apologizing, and he explained that counsel had told him to prepare a written apology statement on the day of his plea. Applicant's Exhibit #11. He further recalled the Court advising him about his

right to appeal, and the Applicant testified that he requested that counsel file an appeal for him.

B. Testimony of Lee T. Connelly

When called to the stand, Lee T. Connelly explained that she worked as a private investigator and that she had the opportunity to work with Stanley Myers, Esquire, on the Applicant's case. She recalled meeting with the Applicant at Lexington County Detention Center and preparing a report, which contained a timeline of his activities at the time of the alleged crime. Applicant's Exhibit #1. She further recalled that the Applicant informed her that he was at his sister Donna Powell's home, in the same neighborhood as the victim, on July 4th to bring her a rent payment since she was facing eviction. Therefore, Ms. Connelly obtained eviction documents from Lexington County to verify the information she obtained from the Applicant. Applicant's Exhibit #3.

Ms. Connelly also remembered that the Applicant informed her that he was at the home of Deborah Stephenson during the time of the alleged crime. She testified that she had the opportunity to meet with Ms. Stephenson one time at Olive Garden and she prepared a report dated November 1, 2006. Applicant's #2. Ms. Connelly testified that she did not conduct any further investigation because she contacted Mr. Myers office and found out he had been deployed. She also testified that she never heard from Mr. Bernstein regarding the Applicant's case.

Ms. Connelly testified that PCR counsel contacted her about the PCR Application and obtained indigent funds for her to follow up on her original investigation of the case. Ms. Connelly explained that she tried to locate Ms. Stephenson to further investigate the Applicant's alibi defense, but she discovered that Ms. Stephenson was deceased. Ms.

Connelly identified probate documents she obtained from Richland County, which reflected Ms. Stephenson's date of death as October 6, 2007. Applicant's Exhibit #4.

Due to the information contained in the police reports and at PCR counsel's request, Ms. Connelly also explained that she went to Big John's Pawn Shop and obtained records pertaining to Freddie Henderson. She testified that the records reflected that Freddie Henderson came to the pawn shop three times and only pawned one gun, the gun at issue in the case. She also found out that Lexington County Sheriff's Department took the gun on July 10, 2006, but it was unknown if they took a copy of the video surveillance.

Also at counsel's request, she testified that she met with John Vesey. Ms. Connelly explained that Mr. Vesey remembered taking a black male to the junk yard and the black male told him that his son had gotten a gun from his neighbor and he was afraid his son would hurt himself with the gun. She further explained that Mr. Vesey did not remember anyone named Vicki Amick. Ms. Connelly noted that her attempts to locate Ms. Amick were unsuccessful.

Finally, Ms. Connelly explained that she contacted the Lexington County Sheriff's Department to look into the matter involving the shoe print and confiscated shoes. Ms. Connelly identified and counsel admitted the response Ms. Connelly received indicating that the evidence was destroyed. Applicant's Exhibit #6.

C. Testimony of Lowell Bernstein

After PCR counsel called him to the stand, Mr. Bernstein testified that he had spent three years of his career as an attorney at the Lexington County Solicitor's Office and he had spent twelve years in the area of civil litigation. He recalled that he was

appointed to the Applicant's case since Mr. Myers was being deployed. He further recalled speaking with Mr. Myers about the case and receiving a complete copy of his file. He remembered representing the Applicant for approximately four months and meeting with him six times. He also remembered exchanging numerous phone calls with the Applicant and his wife.

When asked if he was aware of Ms. Connelly's investigation, he indicated that he would have seen and reviewed her reports in Mr. Myers file. He explained that he determined that it was not necessary to further use her services since it was a "plea case." He further explained that he talked with the Applicant about everything in the case and advised him that a plea was best due to the overwhelming evidence. When asked by PCR counsel about the overwhelming evidence, counsel replied that he was also concerned about the mandatory sentences and potential of life without parole hanging over the Applicant's head.

Mr. Bernstein further recalled reviewing the discovery and the evidence in the Applicant's case. He testified that he thought there was a report regarding the footprint lifted from the scene, but he could not locate the report. He also testified that he would have developed possible defenses and investigated the co-defendants if the case was headed to trial, but he did not since it was on a plea track. He also testified that he did not speak with Ms. Stephenson, but he found the Applicant's alibi to be weak.

Regarding the plea, Mr. Bernstein testified that there were many negotiations but only one offer. He could not specifically remember the plea or advising the Applicant to prepare a written apology. He did recall that he did not force or coerce the Applicant to

take the plea. He also could not recall the Applicant requesting a direct appeal, but he did recall that he did not file an appeal on the Applicant's behalf.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the entire record and has heard the testimony and arguments as presented at the hearings. This Court has also had the opportunity to observe each witness and pass upon his/her credibility. This Court has weighed the testimony accordingly. This Court finds the testimony of the Applicant to be credible regarding his request for a belated appeal. This Court also finds the testimony of Lee T. Connelly and Lowell Bernstein, Esquire, to be credible. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Based upon the testimony and arguments presented at the evidentiary hearing, this Court finds and concludes that plea counsel provided effective assistance to the Applicant in regards to preparation and investigation prior to the entry of the Applicant's plea. Plea counsel testified that he obtained the Applicant's file, fully reviewed it and met with the Applicant a number of times. He also testified that he determined that further investigation and the use of an investigator were not needed since he was not preparing the case for a trial. Even though Ms. Connelly conducted further investigation for PCR counsel, this Court is not persuaded that Mr. Bernstein's decision to not further utilize her services was in error since he explained that he was not preparing the case for trial.

The Court further finds that the Applicant has failed to establish that he was prejudiced as a result of counsel failure to properly prepare and investigate his case prior

to his plea. Despite PCR counsel's argument that the alibi defense could not be fully explored since the alibi witness is deceased, this Court finds that the Applicant's alibi defense was not solid, and he was not prejudiced by plea counsel's failure to contact Ms. Stephenson prior to her death. This Court also finds that the Applicant has failed to show prejudice resulting from the destruction of the evidence and the possible failure to test the footprint obtained from the crime scene. In all, this Court finds that the Applicant has not made a showing of actual prejudice resulting from the counsel's preparation and investigation of his case prior to the entry of his plea.

As to the plea, this Court has reviewed the plea transcript and heard the testimony of the witnesses. As a result, this Court finds that plea counsel did not provide ineffective assistance of counsel during the plea phase of the Applicant's case. This Court finds that the Applicant has not made a showing of actual prejudice resulting from the counsel's representation during the entry of his plea.

This Court finds and concludes that the Applicant has established that he requested that counsel file his direct appeal, which amounts to an extraordinary circumstance warranting a belated direct appeal. See Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). This Court further finds that plea counsel was unable to recall the plea or the Applicant's request for a direct appeal, so the Applicant's testimony was not refuted.

Therefore, based upon the foregoing, this Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal. This Court concludes that the Applicant is entitled to a belated review of his conviction. The

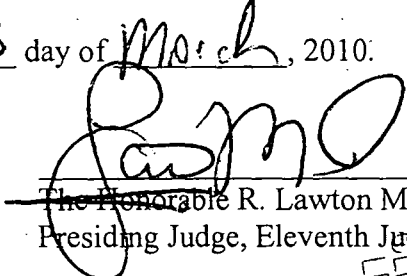
Applicant's lack of a direct appeal can be remedied by a petition for belated review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

This Court further finds that no other allegations beyond those addressed herein were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

IT IS THEREFORE ORDERED:

1. The post-conviction relief application is denied and dismissed with prejudice, but the Applicant is entitled to a belated direct appeal of his conviction pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).
2. Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicants' conviction. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 243(i) for the appropriate procedure for securing belated appellate review.
3. The Applicant is remanded to the custody of the Respondent.

AND IT IS SO ORDRED this 3 day of March, 2010.


The Honorable R. Lawton McIntosh
Presiding Judge, Eleventh Judicial Circuit

Anderson, South Carolina

2010
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

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FILED