



ALAN WILSON  
ATTORNEY GENERAL

September 19, 2011

RECEIVED

SEP 19 2011

S.C. Supreme Court

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

**RE: Travis J. Williams v. State of South Carolina**  
**2008-CP-32-0904**

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,

Kaelon E. May  
Assistant Attorney General

KEM/lp  
Enclosures

cc: Wanda H. Carter, Deputy Chief Appellate Defender (2 copies)  
Trisha Allen, Victim Services





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AUG 19 2011

S.C. Supreme Court

ALAN WILSON  
ATTORNEY GENERAL

August 19, 2011

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

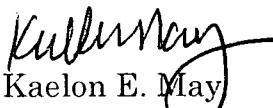
RE: Travis J. Williams v. State of South Carolina  
2008-CP-32-00904

Dear Mr. Shearouse:

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

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

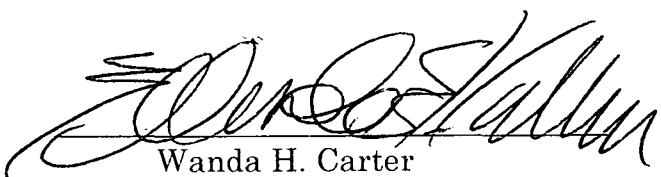
Sincerely,

  
Kaelon E. May  
Assistant Attorney General

In compliance with:

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

  
SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

  
Wanda H. Carter  
Attorney for Petitioner

# The Supreme Court of South Carolina

Travis J. Williams, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Lawton McIntosh  
Lexington County  
Trial Court Case No. 2008-CP-32-00904

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## ORDER

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For good cause shown, the request for an extension until August 19, 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. Stealy  
Clerk

Columbia, South Carolina

July 21, 2011

cc: Deputy Chief Appellate Defender Wanda H. Carter  
Assistant Attorney General Kaelon E. May



RECEIVED

JUL 20 2011

S.C. Supreme Court

ALAN WILSON  
ATTORNEY GENERAL

July 20, 2011

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

RE: Travis Justin Williams v. State of South Carolina  
2008-CP-32-00904

Dear Mr. Shearouse:

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

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

Sincerely,

Kaelon E. May  
Assistant Attorney General

cc: Wanda H. Carter, Attorney for Petitioner

# The Supreme Court of South Carolina

Travis J. Williams, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Lawton McIntosh  
Lexington County  
Trial Court Case No. 2008-CP-32-00904

---

## ORDER

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The request for an extension until July 20, 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

June 21, 2011

cc: Deputy Chief Appellate Defender Wanda H. Carter  
Assistant Attorney General Kaelon E. May



ALAN WILSON  
ATTORNEY GENERAL

June 20, 2011

RECEIVED

JUN 20 2011

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

S.C. Supreme Court

RE: Travis Justin Williams v. State of South Carolina  
2008-CP-32-00904

Dear Mr. Shearouse:

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

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

Sincerely,

Kaelon E. May  
Assistant Attorney General

cc: Wanda H. Carter, Attorney for Petitioner

# The Supreme Court of South Carolina

Travis J. Williams,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Lawton McIntosh  
Lexington County  
Trial Court Case No. 2008-CP-32-00904

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## ORDER

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

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 7, 2011

cc: Deputy Chief Appellate Defender Wanda H. Carter  
Assistant Attorney General A. West Lee

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Lexington County  
R. Lawton McIntosh, Circuit Court Judge

---

RECEIVED

APR - 6 2011

S.C. Supreme Court

TRAVIS J. WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

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

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

1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.

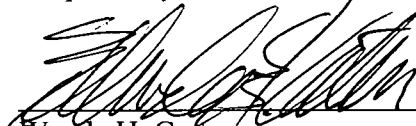
2. Counsel will be filing the petitions for writ of certiorari and accompanying appendices in the cases of Courtney Lyles v. State and Rosemond Jovan Graves v. State today. In addition, Counsel will be filing on the initial briefs of appellant and designations of matter in the cases of State v. Michael Lackey and State v. Melinda Richmond tomorrow, April 7, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Rafael Horlbeck on March 30, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Ronald Jenkins v. State on March 25, 2011. Counsel filed the petition for writ of

certiorari and accompanying appendix in the case of Michael Turner v. State on March 23, 2011. Counsel filed the petition for writ of certiorari in the case of Emmett Kelly v. State Monday, March 21, 2011. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Ernesto Ortiz v. State and Beryl Ray Johnson v. State on March 18, 2011. Additionally, Counsel filed the initial brief of appellant and designation of matter in the case of State v. Kenwood Bright on March 14, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Nicholas Macklen on March 10, 2011. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Devario Marshatt Simpson v. State, Walter Martez Thomas v. State, Vaughn Williams v. State, Terry J. Hardin v. State, and Darrell Keith Emory v. State on Monday, March 7, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of James Matthews v. State on March 2, 2011.

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

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

Respectfully submitted,

  
Wanda H. Carter  
Deputy Chief Appellate Defender

April 6, 2011

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Lexington County  
R. Lawton McIntosh, Circuit Court Judge

---

TRAVIS J. WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

CERTIFICATE OF SERVICE

---

The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon A. West Lee, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 6<sup>th</sup> day of April, 2011.

  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 6<sup>th</sup> day of April, 2011.

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





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

March 7, 2011

RECEIVED

MAR 07 2011

S.C. Supreme Court

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

Re: Travis J. Williams v. State of South Carolina

Dear Mr. Shearouse:

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

By copy of this letter, I am informing A. West Lee, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Wanda H. Carter", is written over a faint, larger version of the signature.

Wanda H. Carter  
Deputy Chief Appellate Defender

WHC/kam

cc: 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

January 5, 2011

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

RECEIVED

JAN 05 2011

S.C. Supreme Court

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.

Travis J. Williams v. State of South Carolina

1/5/2011

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



# 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

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OCT 14 2010

S.C. SUPREME COURT

October 14, 2010

Ms. Carol M. Thueme  
Circuit Court Reporter  
P O Box 1981  
Irmo, SC 29063

Dear Ms. Thueme:

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

Travis J. Williams v. State of South Carolina      Case #:      08-CP-32-00904

County: Lexington      Date of Trial: February 3, 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.

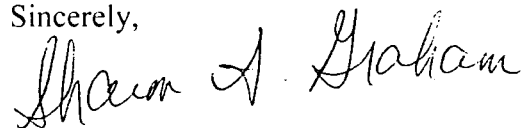
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Carol M. Thueme  
October 14, 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" and "G".

Sharon A. Graham  
Administrative Coordinator

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



RECEIVED

OCT 07 2010

S.C. SUPREME COURT

ORIGINAL

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No.: 2008-CP-32-0904

The State,

v.

Respondent,

Travis J. Williams,

Appellant.

**NOTICE OF APPEAL**

Travis J. Williams appeals the order of the Honorable R. Lawton McIntosh dated September 13, 2010. Appellant received written notice of entry of this order on September 20, 2010.

October 6, 2010



Michael R. Jeffcoat  
MICHAEL R. JEFFCOAT,  
ATTORNEY AT LAW, P.A.  
(4723-A Sunset Boulevard)  
Post Office Box 1860  
Lexington, SC 29071  
Phone: (803) 808-9600  
Facsimile: (803) 808-2240  
Attorney for Appellant

Other Counsel of Record Are:  
A. West Lee  
Office of the Attorney General  
PCR Division  
Post Office Box 11549  
Columbia, SC 29211  
Phone: (803) 734-3970  
Facsimile: (803) 253-6283  
Attorney for Respondent

# ORIGINAL

**RECEIVED**

OCT 07 2010

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No.: 2008-CP-32-0904

The State,

Respondent,

v.

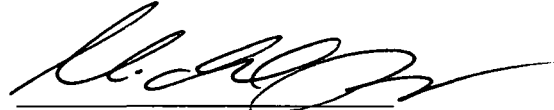
Travis J. Williams,

Appellant.

## PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on October 6, 2010, addressed to the attorney of record, A. West Lee, Office of the Attorney General, PCR Division, P.O. Box 11549, Columbia, SC 29211 and to the lower court, by depositing a copy of it in the United States Mail, postage prepaid, on October 6, 2010, addressed to Beth Carrigg as Clerk of Court for Lexington County, 205 East Main St., Lexington, SC 29072

October 6, 2010



Michael R. Jeffcoat  
MICHAEL R. JEFFCOAT,  
ATTORNEY AT LAW, P.A.  
(4723-A Sunset Boulevard)  
Post Office Box 1860  
Lexington, SC 29071  
Phone: (803) 808-9600  
Facsimile: (803) 808-2240  
Attorney for Appellant

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT  
Case No.: 2008-CP-32-0904

Travis J. Williams, # 321552,

Applicant,

v.

State of South Carolina,

Respondent.

**ORIGINAL**

**ORDER OF DISMISSAL**

WH

BETH A. CARRICO  
CLERK OF COURT  
LEXINGTON, SC

2010 SEP 13 P 12:18

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 27, 2008. The Respondent made its return on or about May 6, 2008. An evidentiary hearing into the matter was convened on February 3, 2010, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Brad Bunce, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Respondent presented testimony from the Applicant's Plea Counsel, Nathaniel Roberson, Esquire. This Court also had before it a copy of the transcript from the Applicant's guilty plea proceedings, the records of the Lexington County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Application for Post-Conviction Relief, the State's Return, and evidence presented during the hearing.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was

AIR COPY  
Lex. Co. C.C.C.P., G.S. & P.C.  
Lex. Co. C.C.C.P., G.S. & P.C.

indicted at the October 2006 term of the Lexington County Grand Jury for two counts of criminal sexual conduct with a minor-2<sup>nd</sup> degree, child 11-14 years of age (2006-GS-32-3275, -3276). Nathaniel Roberson, Esquire, represented him. On April 30, 2007, Applicant pled guilty to one count of criminal sexual conduct-2<sup>nd</sup> degree. He was sentenced by the Honorable William P. Keesley to confinement for twenty (20) years. Applicant did not appeal his conviction or sentence.

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

- 1) Ineffective Assistance of Counsel
  - a. "I was not informed that I could appeal. Attorney never informed me."
  - b. "Counsel failed to investigate."
- 2) Involuntary Guilty Plea
  - a. "Coerced into pleading guilty."

Subsequently, the Applicant's attorney filed an amended application for post-conviction relief, which made the following additional claims:

- 3) Applicant's defense counsel failed to adequately investigate Applicant's case;
- 4) Counsel guaranteed Applicant that he would not receive maximum sentence;
- 5) Counsel advised Applicant that he was subject to the death penalty;
- 6) Counsel failed to discuss in good faith defenses available to the Applicant;
- 7) Counsel advised Applicant that he would refuse to call a key witness that would recant her earlier statement to investigators and refuse the accusation against the Applicant;
- 8) Applicant's plea of guilty was not knowingly and intelligently entered, inasmuch as:
  - a. Counsel failed to advise Applicant of his rights as a criminal case defendant;
  - b. Counsel affirmatively misstated the possible penalties for all of the charges he faced;
  - c. Counsel failed to advise Applicant as to how he might be sentenced at the conclusion of the plea hearing;
  - d. Counsel failed to advise Applicant that he could withdraw his plea prior to the court accepting the plea;
  - e. Counsel failed to discuss in good faith defenses available to the Applicant;
  - f. Counsel advised the Applicant that he would refuse to call a witness that would recant her earlier statement to investigators and would refute the accusation against Applicant;
  - g. Applicant would not have pled guilty if he had the true facts before him; and

- h. Applicant would have withdrawn his plea before the court accepted the plea if his counsel had advised him that was possible;
- 9) Counsel failed to properly explain Applicant's appellate rights to him;
- 10) Counsel failed to file a timely notice of appeal when directed to do so by the Applicant.

## APPLICABLE LAW

### *Ineffective Assistance of Counsel*

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of Counsel is alleged as a ground for relief, the Applicant must prove that "Counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of Counsel. First, the Applicant must prove that Counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386

S.E.2d at 625. With respect to guilty Plea Counsel, the Applicant must show that there is a reasonable probability that, but for Counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

An Applicant who enters a plea on the advice of Counsel may only attack the voluntary and intelligent character of the plea by showing that trial Counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial Counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of Counsel, and it will be treated as such.

#### *Involuntary Guilty Plea*

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975) *overruled on other grounds by U.S. v. Whitley*, 759 F.2d 327 (4th Cir.1985). This Court finds that Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

#### SUMMARY OF TESTIMONY PRESENTED AT HEARING

Lisa Williams, Sister of Applicant

Ms. Williams testified that she lived in the same house with the Applicant at the time of the incident. She testified that she, along with the Applicant, met Counsel two or three times

before the plea and on the day of the plea. She also stated that she and Counsel spoke several times by phone. She testified that never during the course of those meetings, or during the course of her conversations with the Applicant, did the Applicant tell her he wanted to plead guilty. In fact, she stated, the idea of entering a guilty plea never came up prior to their last meeting, which she thought was to be about preparing for trial.

Ms. Williams testified that she told Counsel she would testify on the Applicant's behalf. She asserted that on the morning of the alleged incident, contrary to statements made initially which asserted that Applicant was not wearing pants when he came back in from allegedly being outside the house, that Applicant was fully dressed. She also asserted that the victim's mother would testify at a new trial that she wiped the semen on the child herself and framed the Applicant as a result of some relationship problems she and the Applicant were having.

Ms. Williams went on to testify that Counsel asked her to seek out witnesses on the Applicant's behalf and have them fill out affidavits, but added that Counsel did not explain to her what affidavits were. At any rate, she testified, she located a witness, the caretaker of the mobile home park, who would testify that she woke up to the barking of her dog, looked outside, and saw Applicant outside at the time of the alleged incident. She stated that she relayed this information to Counsel, but that he never followed up on it. Williams also testified that there were other witnesses who were also willing to testify on the Applicant's behalf, specifically alleging that a couple of said witnesses would testify that the victim herself told them that the incident did not happen. She stated that she relayed this information to Counsel as well, but again added that he did not follow up on it.

It was Williams's testimony that Counsel's attitude towards the Applicant's case had

been more cooperative until it became apparent that Applicant's family could not pay him. She stated that at that point, he became much less willing to explore possible witnesses or defenses on the Applicant's behalf. Further, she testified that on the day of the plea agreement, Counsel approached the Applicant and stated that he had worked out a plea agreement with a possible sentencing range of 0-20 years, but insisted that the Applicant would not receive a sentence of more than ten years. She stated that there were several other family members around at the time of this exchange. Finally, Williams testified that Counsel did not explain how the plea proceeding would work, or that the Applicant could seek to have another attorney appointed if he wished to proceed to trial.

Crystal Hoover, Victim's Mother

Crystal Hoover, the victim's mother, also testified at the PCR Hearing. It was her testimony that she was the person who called the police on the Applicant, went to two separate police stations to file reports, and took her child to the hospital to do a rape kit, but that she was doing so only in an attempt to frame the Applicant. She testified that she wiped the semen on the child, and that she informed Counsel of this. Hoover further testified that she also met with Counsel on several occasions, adding that she also gave Counsel information regarding alibi witnesses. She also stated that the statement she initially gave was correct.

Tina Mitchell

Tina Mitchell testified that the alleged victim in the case told her on three different occasions that the incident did not occur. She further testified that she was never contacted by Counsel regarding the case.

Sara Williams, Step-Mother

Sara Williams testified that at the conclusion of the guilty plea proceedings, the Applicant and his family were desirous of an appeal. She stated that Counsel's response was one of shock. She admitted that she could not recall if Applicant said anything about wanting an appeal.

Williams also testified that on the day of the plea hearing, Counsel informed them there was an plea deal where the State would drop one charge and the Applicant would receive a sentence in the range of 0-20 years. She admitted, however, that Counsel did not guarantee anything. She stated that the family then went to breakfast, discussed the matter, and came back and agreed to enter a guilty plea.

Williams further testified that the victim's mother told her the whole thing was made up, and added that she relayed this information to Counsel. She went on to testify that Counsel was originally more willing to assist them, but when it became apparent that the family could not pay for his services, his attitude towards the Applicant's case changed.

Travis Williams, Applicant

Applicant testified that Counsel only met with him three times prior to entry of the guilty plea. He testified that Counsel's attitude towards his case changed when it became apparent Applicant's family could not pay him. He testified that when they could not pay Counsel, they asked the court to appoint him, but added that after he was appointed he was not as willing to assist them.

Applicant testified that there were several witnesses who would have testified on his behalf at trial, but that Counsel did not contact them. He also testified that the alleged victim was in a relationship with another boy who was living in the same house, and that any sexual

relations that were occurring were between them. He went on to say that Counsel did not discuss defenses that were available to him.

Applicant further testified that he did not want to plead, but that Counsel told him that he had no defense and if he did not plead he would receive a sentence of sixty years to life in prison.

He testified that Counsel subsequently approached him on the day of the plea hearing and said he had secured a plea offer where the State would drop one charge, and give him a sentence somewhere between zero and twenty years. He asserted Counsel told him he would not receive more than ten years. Applicant also stated there was an earlier plea offer of one to ten years that was not accepted.

Applicant went on to testify that Counsel did not explain to him how the plea hearing would work. He testified he was not told he could withdraw his plea prior to the court accepting it. He also testified that the plea deal presented to the court was not accurate. He then stated that he told Counsel he wanted to appeal his guilty plea.

Nathaniel Roberson, Counsel

Counsel testified that one of the Applicant's relatives first contacted him about the case when he was in magistrate's court for bond hearings one morning. He stated that Applicant's relative saw him there and asked if he could take the case. He testified that he did not agree to assume representation at that point, but that he agreed to meet with the family to discuss the possibility of representation. He asserted that in that meeting he informed them of what his rate would be, and that they subsequently informed him they could not pay. Therefore, he testified, this was not a situation where he started to represent the Applicant, and then the Applicant could not pay; instead, this was a situation where he never undertook representation of the Applicant.

Counsel testified that Applicant's relatives subsequently approached the administrative judge for Lexington County, informed him that they could not afford to retain Counsel, and specifically asked if the court would appoint Mr. Roberson as counsel. Counsel further asserted that being appointed versus being retained did not change his attitude towards the case.

Counsel testified that he met with the Applicant and his family on several occasions, adding that he also had numerous phone conversations with the Applicant's family regarding the case. He testified that during those meetings he reviewed the charges, the elements of and possible punishments associated with those charges, and the Applicant's constitutional rights. He stated that they went over possible witnesses, possible defenses, and the State's evidence in the case. Further, Counsel testified that he went over the Applicant's right to appeal on at least three different occasions.

Counsel testified that the State's evidence in the case consisted of statements from both the victim and the victim's mother, semen and pubic hair found on the victim's stomach, which was a 1 in 250,000 match to the Applicant, DNA found on the victim's bedding, which was a 1 in 17 quintillion match to the Applicant, the Applicant's boxers, which were found at the foot of the Applicant's bed, and so on. He testified that the State did a pubic hair swab, a blood analysis, and a DNA analysis on DNA found on the boxers and the fitted sheets from the victim's bed. Moreover, Counsel testified that he had an independent DNA analysis done, which basically corroborated the findings of the State's analysis. He testified that he reviewed this evidence with the Applicant, and that as a result of this review came to the opinion that the State would likely be able to prove the Applicant's guilty beyond a reasonable doubt. He further testified that he relayed this information to the Applicant.


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Counsel testified that Applicant and member's of the Applicant's family told him about alibi witnesses prior to the plea date, but that they either could not or would not provide him with specific information, such as addresses or telephone numbers, by which he could contact them. Counsel stated that he asked Applicant's family to obtain affidavits from these witnesses, since he had no way to contact them, adding that he even provided blank affidavits to Applicant's family to fill out. However, none were returned. Counsel further testified that he was never informed prior to the plea hearing that the victim would recant her accusation.

Counsel testified that after review of the evidence and numerous conversations with the Applicant and his family, he felt like a guilty plea would be in the Applicant's best interests. He testified that he engaged in plea negotiations with the solicitor on the Applicant's behalf. He stated that the State agreed to drop one of the charges and make no recommendation with regard to a sentence. Counsel testified that he relayed this information to the Applicant. Counsel further testified that he never told the Applicant he would only receive a sentence of ten years, insisting that he was clear with the Applicant in telling him he could receive up to twenty years. Counsel further testified that he never told the Applicant if he went to trial he would receive from sixty years to life in prison, nor did he ever tell Applicant he would be subject to the death penalty. Moreover, Counsel testified that he never pressured or coerced the Applicant into pleading guilty, adding that the choice to enter a guilty plea was the Applicant's entirely. He stated that he could not recall ever telling the Applicant he could withdraw his guilty plea prior to the court accepting it. Finally, Counsel testified that Applicant did not ask him to file an appeal.

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## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-25-80 (2003).

### *Involuntary Guilty Plea*

With respect to this claim, this Court finds that the Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony that he fully informed the Applicant of the charges, the possible punishments, his constitutional rights, and the consequences of entering a guilty plea to be credible, while simultaneously finding that Applicant's testimony and the Applicant's family's testimony on these issues is not credible. This finding is made based upon a full review of the record, which includes the guilty plea transcript.

At the guilty plea hearing, the Applicant testified that he was not under the influence of any medicine, alcohol or drugs, and that he did not have any physical or mental problems that affected his thinking. (Tr. p. 4, lines 7-13). Further, the Applicant testified that he was clear headed and knew what he was doing. (Tr. p. 4, lines 14-16).

The plea court explained to the Applicant his constitutional rights, including the right to a jury trial, and further explained that by entering a guilty plea the Applicant was giving up his constitutional rights. The plea court also informed the Applicant that by entering a guilty plea he waived any defenses he may have had, any challenges to the evidence, and moreover admitted his guilt. The Applicant replied that he understood. (Tr. p. 4, line 17 – p. 5, line 17).

The Applicant stated that he did not want a jury trial. (Tr. p. 5, lines 18-19). The Solicitor read the plea agreement into the record, stating that it was a most serious offense, an 85% offense, which would require mandatory sex-offender registration. (Tr. p. 5, line 21 – p. 6, line 5). The Applicant admitted he was guilty of the offense. (Tr. p. 9, line 24 – p. 10, line 1). The Applicant stated that no one had forced, threatened, or coerced him in any way to get him to plead guilty. (Tr. p. 10, lines 2-4).

The plea court explained to the Applicant that any plea bargains must be put on the record or they would be lost, and the Applicant replied that he understood. The Applicant then testified that other than what was put on the record, no one had promised him anything in order to secure his guilty plea. (Tr. p. 10, lines 11-17). Applicant testified that he was fully satisfied with his attorney, that there was nothing else he wanted his attorney to do, that there were no witnesses he wanted his attorney to speak with, or any investigation that he wanted his attorney to do. (Tr. p. 10, line 18 – p. 11, line 10).

The plea court explained to the Applicant that the charge carried up to twenty years in prison, and the Applicant replied that he understood. (Tr. p. 11, lines 14-17). Applicant testified that he understood everything the plea court told him, that he was certain he wanted to give up his rights and plead guilty, and that he made the decision of his own free will. (Tr. p. 13, lines 17-25). Finally, Applicant again asserted that he was pleading guilty because he was, in fact, guilty of the charge. (Tr. p. 14, lines 1-3).

Based upon a full review of the testimony presented at the PCR Hearing and the record before this Court, this Court finds that there is ample evidence that the Applicant's guilty plea

was knowingly, intelligently, freely and voluntarily entered. Accordingly, this charge is denied and dismissed.

*Failure to Investigate*

With respect to this claim, this Court again finds that the Applicant has failed to meet his burden of proof. This Court finds that Counsel's testimony that he met with the Applicant several times to discuss the case, talked with the Applicant's family, sought out witnesses on the Applicant's behalf, obtained discovery in the case and discussed possible defenses, and had an independent DNA analysis done to be credible. Moreover, this Court finds Applicant's testimony that Counsel did not perform an adequate investigation, and that if he did an investigation he would have found several witnesses who would testify to the Applicant's innocence, not to be credible. Therefore, this Court finds that Applicant has not shown that Counsel provided ineffective assistance. Further, this Court notes that the victim in the case did not testify at the PCR Hearing, so statements made by other witnesses regarding her desire to recant her accusation are speculative at best. In addition, there was ample evidence of the Applicant's guilt in the case, and this Court has also found the Applicant's guilty plea to be freely and voluntarily entered. As such, even if the Applicant could prove that Counsel provided ineffective assistance, Applicant would be unable to show resulting prejudice. Here, neither prong of the Strickland analysis is satisfied. Accordingly, this allegation is denied and dismissed.

*Failure to Discuss Viable Defenses*

With respect to this claim, this Court again finds that the Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony that he discussed possible defenses with the Applicant and that it was the Applicant's position that he did commit the crime and was in

fact outside at the time to be credible, while simultaneously finding the Applicant's testimony on this issue not to be credible. As such, this Court finds that the Applicant is unable to show ineffective assistance of counsel. Furthermore, this Court finds that there was ample evidence of the Applicant's guilt and the fact that the Applicant's guilty plea was knowingly and voluntarily entered. Therefore, even if the Applicant could show ineffective assistance of Counsel, he could not show resulting prejudice. Accordingly, this allegation is denied and dismissed.

*Counsel's 'Guarantee' that Applicant Would Not Receive Maximum Sentence*

Applicant also alleged that Counsel guaranteed him that he would not receive the maximum sentence of twenty years in persuading Applicant to plead guilty. With respect to this claim, this Court finds that the Applicant has again failed to meet his burden of proof. This Court finds that Counsel's testimony that he fully apprised Applicant of the possible sentences associated with the guilty plea, including a possible sentencing range of zero to twenty years, to be credible, while simultaneously finding Applicant's testimony on the issue not to be credible. As such, this Court finds that Applicant is unable to show Counsel provided him ineffective assistance. However, even if Applicant could show that Counsel advised him incorrectly that he would not receive the maximum possible sentence, this Court notes that the plea court informed the Applicant that he could potentially be sentenced up to twenty years. Therefore, even if Counsel failed to tell Applicant, Applicant knew. As such, he would be unable to show resulting prejudice. Accordingly, this claim is denied and dismissed.

*Counsel Incorrectly Advised Applicant That He Would be Subject to Death Penalty if He*

*Proceeded to Trial*

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This Court finds that this claim is without merit. This Court finds that Counsel's testimony that he never instructed the Applicant that he would be subject to the death penalty to be credible, while finding that the Applicant's testimony on the issue is not credible. This Court notes that the Applicant was indicted on two charges of Criminal Sexual Conduct in the Second Degree, the maximum sentence for which is twenty years. If the Applicant had gone to trial on both of the charges, the longest sentence he could have received would have been forty years if the sentences were run consecutively. Also, the Applicant had no prior criminal record. Therefore, it is highly unlikely that Counsel ever thought that the Applicant faced exposure to the death penalty. Nor does it stand to reason that Counsel so instructed the Applicant. This Court finds that the Applicant has not proven that Counsel provided ineffective assistance. Accordingly, this claim is denied and dismissed.

*Counsel's 'Refusal' to Call Key Witness*

With respect to this claim, this Court again finds that the Applicant has failed to meet his burden of proof. The Applicant testified that Counsel blatantly refused to call the victim's mother as a witness if they proceeded to trial. Applicant testified at the PCR Hearing, as did the victim's mother, that she was trying to frame the Applicant and that the incident did not occur. Applicant testified that when he presented this information to Counsel, Counsel stated that he would not call the victim's mother to the witness stand.

Counsel testified that this was not the case. He testified that when the 'set-up' story was first presented to him, he thought it sounded rather unbelievable. He testified that he relayed his feelings towards the story to the Applicant and the Applicant's family. He added that he did not refuse to call her to the stand, but was unsure of the story's veracity and asked the victim's

mother to fill out a notarized affidavit saying the same before he would put her on the stand. He testified that this was never done.

This Court finds Counsel's testimony on the issue to be credible, while simultaneously finding that the Applicant's testimony on the issue is not credible. This Court also finds that the victim's mother's testimony on this issue is not credible, as it is in direct contradiction to her prior statement to authorities. This Court notes that Counsel simply tried to take steps to assure the veracity of the victim's mother's recantation, and that his requests were not heeded. Therefore, Applicant is unable to show that Counsel provided him ineffective assistance. Moreover, this Court also notes that although the victim's mother testified at the PCR Hearing that she would recant her statement, the actual victim, though present in the courtroom, did not take the stand to say she would recant her statement. As such, this Court finds that Applicant would likewise be unable to show resulting prejudice. Accordingly, this claim is denied and dismissed.

*Failure to Inform Applicant of Right to Appeal/Failure to File and Appeal After Being Requested*

*To Do So*

Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. However trial counsel has a constitutionally imposed duty to consult with his client about an appeal when there is reason to think either (1) that a rational defendant would want to appeal or (2) that the particular defendant reasonably demonstrated to counsel that he was interested in appealing. Jones v. State, 382 S.C. 589, 677 S.E.2d 20 (2009).

With respect to this claim, this Court finds that the Applicant has again failed to meet his burden of proof. This Court finds Counsel's testimony that he informed the Applicant of his right to appeal on at least three different occasions to be credible, while simultaneously finding Applicant's testimony that he was not so informed not to be credible. Furthermore, this Court notes that the plea court informed Applicant of his right to appeal at the close of the guilty plea hearing. Therefore, this Court finds that the Applicant is unable to show ineffective assistance of Counsel for failure to inform him of his right to appeal. And even if Applicant could show he was not informed of his right to appeal, the fact that he entered a guilty plea waived all non-jurisdictional defenses. Therefore, this Court finds that it would not be obvious from the circumstances that a rational defendant would want to appeal.

With regard to the assertion that an appeal was requested, thus evidencing a reasonable desire for appeal, this Court finds Counsel's testimony that the Applicant did not request that he file an appeal to be credible, while finding the Applicant's testimony on the issue not to be credible. Therefore, this Court finds that Applicant has neither shown ineffective assistance of counsel nor resulting prejudice. Accordingly, this allegation is denied and dismissed.

*Failure to Inform Applicant He Could Withdraw his Guilty Plea Prior to the Court Accepting It*

With respect to this charge, this Court again finds that the Applicant is unable to meet his burden of proof. Applicant testified that if he had known he could withdraw his guilty plea prior to it being accepted by the court, he would have done so. Counsel testified that he could not specifically remember telling the Applicant he could withdraw his guilty plea. However, even assuming that Counsel provided ineffective assistance in failing to explain this point to the Applicant, this Court finds that there was ample evidence of the Applicant's guilt, and has

previously found that the Applicant's guilty plea was knowingly, intelligently, freely and voluntarily entered. As such, there is little reason to believe that the Applicant would have decided to withdraw his guilty plea, proceed to trial, and abandoned the benefit of his bargain. Therefore, this Court finds that even if the Applicant could prove ineffective assistance of counsel, he cannot show resulting prejudice. Accordingly, this allegation is denied and dismissed.

#### *All Other Claims*

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 413 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

#### **CONCLUSION**

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30)

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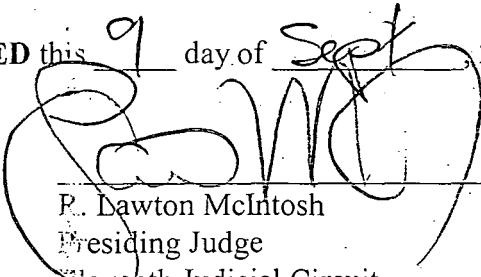
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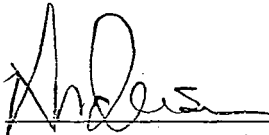
days from the receipt by Counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate Counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR Counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

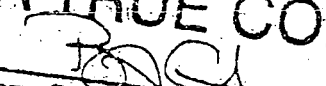
AND IT IS SO ORDERED this 9 day of Sept, 2010.

  
R. Dawton McIntosh  
Presiding Judge  
Eleventh Judicial Circuit

  
South Carolina

FILED  
2010 SEP 13 P 12:49  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

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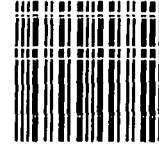
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Lexington, SC 29071-1860

*Travis J. Williams*

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The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
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Columbia, South Carolina 29211