

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

James R. Barber, III, Circuit Court Judge

RECEIVED

APR - 6 2012

S.C. Supreme Court

SHERROD MILLER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

(3)

The undersigned counsel would respectfully request a **final thirty-day extension, until May 7, 2012**, 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 two prior orders of this Court.

2. Counsel is preparing for an oral argument in the case of State v. Kevin J. Williams, Sr. in the Court of Appeals on April 10, 2012. Counsel filed the petition for rehearing in the case of State v. Lewis D. Williams in the Court of Appeals on March 30, 2012. Counsel had an oral argument in the case of Brian Gebhard v. State in the Court of

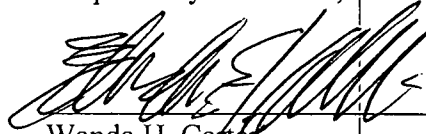
Appeals on March 29, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Lenson Clyburn, Jr. v. State in the Supreme Court on March 26, 2012. Counsel filed petitions for writ of certiorari and accompanying appendices in the cases of Glenn Pernel v. State, Sylvester Toomer v. State and William Gladney Harden v. State in the Supreme Court on March 23, 2012. Counsel had an oral argument in the case of State v. Lewis Williams in the Court of Appeals on March 12, 2012. In February 2012, Counsel had oral arguments in the cases of State v. Otis Lamar Bland and State v. James Babb in the Court of Appeals, as well as an oral argument in the case of Benjamin Green v. State in the Supreme Court. Additionally in February, 2012, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Sherinette Wannamaker v. State, Henry Belton v. State, Tony Drayton v. State, William Hickman v. State and John E. Prigmore v. State. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Lawrence Brown in the Court of Appeals in February, 2012 as well.

3. This request is made in good faith, and not for purposes of delay. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

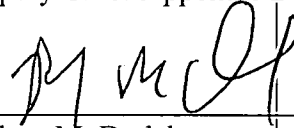
4. As indicated by her consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final thirty-day extension, until May 7, 2012**, 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,



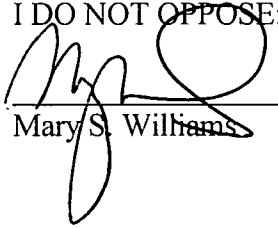
Wanda H. Carter
Deputy Chief Appellate Defender



Robert M. Dudek
Chief Appellate Defender

April 6, 2012

I DO NOT OPPOSE:



Mary S. Williams

The Supreme Court of South Carolina

Sherrod Miller,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable James R. Barber
Aiken County
Trial Court Case No. 2010-CP-02-01941


ORDER

For good cause shown, the request for an extension until April 6, 2012 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

March 8, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Mary S. Williams

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

James R. Barber, III, Circuit Court Judge

RECEIVED
MAR 7 2012

S.C. Supreme Court

SHERROD MILLER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

(2)

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.

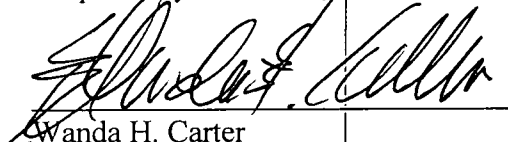
2. Counsel has an oral argument in the case of State v. Lewis Williams in the Court of Appeals on March 12, 2012. Counsel had an oral argument in the case of State v. Otis Lamar Bland in the Court of Appeals on February 29, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Sherinette

Wannamaker v. State in the Supreme Court, and the initial brief of appellant and designation of matter in the case of State v. Lawrence Brown in the Court of Appeals on February 27, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Henry Belton v. State in the Supreme Court on February 24, 2012. Counsel is preparing for an oral argument in the case of Benjamin Green v. State in the Supreme Court on Thursday, February 23, 2012. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Tony Drayton v. State and William Hickman v. State with the Supreme Court on February 16, 2012. Counsel had an oral argument in the case of State v. James Babb in the Court of Appeals on February 14, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of John E. Prigmore v. State with the Supreme Court on February 6, 2012. In January, 2012, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of James Blanding v. State, Trenton Bennett v. State, Bobby Gibson v. State and Jorge Rodriguez v. State.

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

March 7, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

James R. Barber, III, Circuit Court Judge

RECEIVED
MAR 7 2012
S.C. Supreme Court

SHERROD MILLER,

PETITIONER,

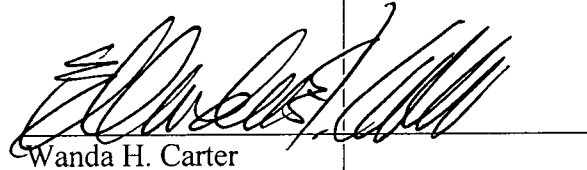
V.

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 Mary S. Williams, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 7th day of March, 2012.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 7th day of March, 2012.

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

The Supreme Court of South Carolina

Sherrod Miller,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable James R. Barber
Aiken County
Trial Court Case No. 2010-CP-02-01941

ORDER

The request for an extension until March 7, 2012 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 *Lunden J. Shealy*
Clerk

Columbia, South Carolina *Chief Deputy*

February 8, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Mary S. Williams



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

February 6, 2012

RECEIVED

FEB 06 2012

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

(1)

S.C. Supreme Court

Re: Sherrod Miller 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 Mary S. Williams, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/kam

cc: Mary S. Williams



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

December 8, 2011

RECEIVED

DEC - 8 2011

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

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.

Sherrod Miller v. State of South Carolina

12/8/2011

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

RECEIVED

October 19, 2011

OCT 19 2011

S.C. Supreme Court

Ms. Cheri L. Young
Circuit Court Reporter
P O Box 1154
Aiken, SC 29802

Dear Ms. Young:

Please provide us with the following transcript:

Sherrod Miller v. State of South Carolina Case #: 10-CP-02-01941

County: Aiken Date of Trial: July 13, 2011

Presiding Judge: James R. Barber, III

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include 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.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Sharon A. Graham
Administrative Coordinator

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



LAW OFFICES OF TANYA D. JEFFORDS AND ASSOCIATES, PC

437 Walker Street
Augusta, GA 30901
706-722-3019

JACQUE D. HAWK
of Counsel

Licensed in GA & SC
td.jeffords@comcast.net
Fax: 706-724-5418

October 10, 2011

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

RECEIVED

OCT 12 2011

S.C. SUPREME COURT

Re: Sherrod Miller v. State of South Carolina

Dear Mr. Shearouse:

We are requesting a certified clocked copy of the Notice of Appeal and Proof of Service of Notice of Appeal filed with your office in the above listed case. Enclosed please find a self-addressed, stamped envelope for return mailing.

If you have any questions, please contact my office.

With kind regards, I remain,

Tanya D. Jeffords

Tanya D. Jeffords

Enclosure

*Mailed copy of
NOA & POS on 10/12/11.
JJ*



LAW OFFICES OF TANYA D. JEFFORDS AND ASSOCIATES, PC

437 Walker Street
Augusta, GA 30901
706-722-3019

JACQUE D. HAWK
of Counsel

Licensed in GA & SC
td.jeffords@comcast.net
Fax: 706-724-5418

September 7, 2011

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

RE: Sherrod Miller, #340737, Appellant, v. State of South Carolina,
Respondent, Case No. 2010-CP-02-01941

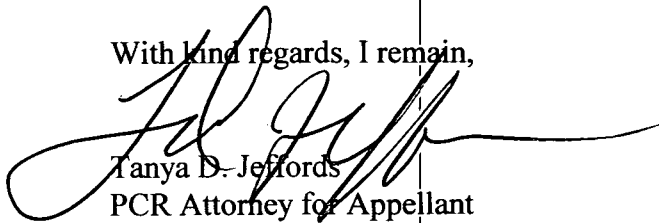
Dear Mr. Shearouse:

Enclosed for filing is the Notice of Appeal in the above referenced case.
Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the Respondent.
- (2) A copy of the Order which is to be challenged on appeal.
- (3) A filing fee of \$100.*
- (4) This appeal is being filed with the Supreme Court because a final decision entered under the Post-Conviction Relief Act shall be reviewed by the Supreme Court pursuant to South Carolina Appellate Court Rule 243.

If you have any questions, please contact me.

With kind regards, I remain,


Tanya D. Jeffords
PCR Attorney for Appellant

cc: Robert D. Corney
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970
Attorney for Respondent

RECEIVED

SEP 12 2011

S.C. SUPREME COURT

* Under Rule 203(d)(1)(B)(iii) and (d)(2)(B)(iii), SCACR, a filing fee is not required if the appeal is from a criminal case including juvenile delinquency matters, or if the appeal is taken by the State of South Carolina, its departments or agencies. Further, no filing fees are required in post-conviction relief cases. Rule 240(d), SCACR.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

Case No. 2010-CP-02-1941

Sherrod Miller, # 340737,

Appellant,

v.

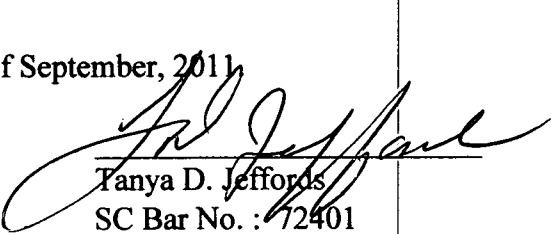
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Sherrod Miller appeals the order of the Honorable James R. Barber, III, dated August 17, 2011 and filed on August 26, 2011. Appellant received written notice of entry of this order on August 30, 2011.

Respectfully submitted this 8th day of September, 2011.


Tanya D. Jeffords
SC Bar No. : 72401

The Law Offices of Tanya D. Jeffords and
Associates, P.C.
437 Walker Street
Augusta, Georgia 30901
(706) 722-3019
PCR Attorney for Appellant

Other Counsel of Record:
Robert D. Corney
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970
Attorney for Respondent

RECEIVED

SEP 12 2011

S.G. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

Case No. 2010-CP-02-1941

Sherrod Miller, #340737,

Appellant,

v.

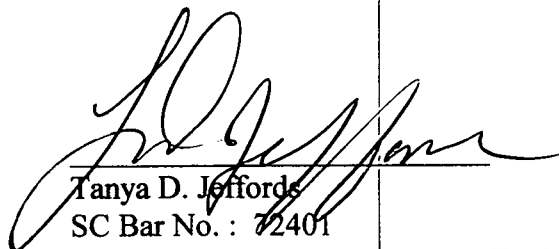
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on September __, 2011, addressed to Assistant Attorney General Robert D. Corney, Post Office Box 11549, Aiken, South Carolina 29211-1549.

This 8th day of September, 2011.



Tanya D. Jeffords
SC Bar No. : 72401
The Law Offices of Tanya D. Jeffords and
Associates, P.C.
437 Walker Street
Augusta, Georgia 30901
(706) 722-3019
PCR Attorney for Appellant

RECEIVED

SEP 12 2011

S.C. Supreme Court

RECEIVED
BY [Signature] DATE 8/30/11

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2010-CP-02-1941

Sherrod Miller, # 340737,

Applicant,

AMENDED
ORDER OF DISMISSAL

State of South Carolina,

Respondent.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Gedard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

26 day of August 2011

[Signature]
Liz Gedard
C.C.P. & G.A., Aiken County, S.C.

Deputy Clerk

FILED 26 August 2011
[Signature]
1:30 [Signature] am
pm Deputy Clerk

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 17, 2010. The Respondent made its Return on December 16, 2010. An evidentiary hearing into the matter was convened on Wednesday, July 13, 2011, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Tanya Jeffords, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, C. David Hayes, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Aiken County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted for Entering a Bank, Depository, or Building and Loan Association with Intent to Steal (2010-GS-02-0142). Applicant was represented by C.

David Hayes, Esquire. On April 19, 2010, the Applicant pled guilty before the Honorable Edgar W. Dickson. Applicant was sentenced to eighteen (18) years imprisonment. Applicant's appeal was dismissed by the South Carolina Court of Appeals on July 19, 2010, and the Remittitur was sent on August 4, 2010.

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

1. Ineffective assistance of counsel.
 - a. "...advising the defendant to plead guilty without informing the defendant that if he went to trial, he could have requested a jury charge on a lesser offense and might have been convicted of the lesser offense."

Applicant amended his application on July 11, 2011, adding the following additional allegations:

1. "Counsel was ineffective because he failed to investigate his case...Counsel failed to investigate or interview any witnesses in this case. If the Defendant had been advised of all possible defenses and motions he could have filed to show weaknesses in the State's case, he would have elected to go to trial and to confront the witnesses against him... Counsel's failure to investigate and file motions in this case fell below the standard of reasonableness in a serious case like this..."
2. "...plea was not freely and voluntarily given with a knowing waiver of his Constitutional rights under Boykin v. Alabama"; "The record in this case... is silent as to whether or not Defendant understood he was knowingly and

voluntarily waiving the important constitutional right to confront witnesses against him and the right against self-incrimination.”

3. “...Defendant was prejudiced by Counsel’s failure to advise him of the jury’s ability to find him guilty of common law robbery under the facts...”

~~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. §17-27-80 (1985).

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). In PCR cases, a defendant asserting 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). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those

statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Ineffective Assistance of Counsel

The allegations made in the application and at the hearing all come down to the claim of ineffective assistance of counsel. First, the Applicant alleges that his plea was not entered voluntarily and knowingly under the standards set forth in Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). As stated above, an Applicant in PCR that pleads guilty on counsel's advice may only collaterally attack the voluntary and knowing nature of his guilty plea by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe, supra. Therefore, this allegation is essentially a claim of ineffective assistance of counsel that rendered a guilty plea involuntary. Applicant has also alleged counsel failed to properly investigate his case in not interviewing potential witnesses and investigating possible defenses/lesser offenses.

At the PCR hearing, Applicant testified counsel never informed him of his constitutional rights, his right to testify at trial or of any potential lesser offenses that may have been available for a plea or at trial. Applicant alleged after counsel requested a plea offer from the solicitor, counsel told Applicant he "wasn't going to talk to the solicitor anymore about a plea offer because [he] had to work with [the solicitor] in the future." Finally, Applicant alleges if he had known of his ability to request a lesser offense jury charge at trial, he would not have pled guilty but rather would have proceeded to trial.

Counsel testified that he met with Applicant roughly six times prior to the entry of this plea. Counsel also testified that Applicant made clear from their first meeting that he wanted to pursue a plea rather than proceed to trial on the charge. Counsel went on to say during their

initial meeting, he reviewed the indictments, elements of the offenses and potential sentences with Applicant. After his discussions with Applicant, counsel spoke with the chief investigator on the case as well. Counsel then researched the law based on the facts of Applicant's case and determined that "strong arm robbery" was a lesser included offense that could be argued in the case. Counsel stated that at that time, he entered into negotiations with the solicitor where he requested a strong arm robbery plea offer; however, the solicitor rejected the request instead only offering Applicant the options to go to trial, plea "straight up" to the charge, or enter a plea for a twenty (20) year cap sentence. Counsel went on to say that although he did not interview any eye witnesses from the incident, he reviewed the discovery, which included two separate 911 calls and a surveillance videotape of the incident that counsel testified "clearly identified Mr. Miller". Additionally, counsel went over the consequences of a violent versus non-violent crime, reviewed the discovery with Applicant, reviewed the still-frame photographs from the surveillance video with Applicant, advised Applicant of the no-parole status of the charge he was facing as indicted and, after speaking with Applicant's federal parole officer, discussed the potential parole consequences of entering this plea. Counsel testified Applicant admitted his guilt to the charge throughout his representation and, although common-law robbery was a lesser included offense that may have fit the facts, Applicant made the decision to enter the plea rather than risk the potential consequences of a trial. Counsel articulated the case was set on the trial roster, as it had been for three straight months, and he was in fact prepared to proceed to trial had Applicant wished to go forward; however, it was Applicant's decision to waive his right to that trial and to voluntarily enter the plea.

This Court finds Counsel's testimony to be credible. Conversely, I find Applicant's testimony to not be credible. Counsel advised Applicant of all relevant issues regarding the

charges he was facing, including his constitutional rights, the indictments, the elements of the offenses, potential sentences he was facing and potential parole consequences. Additionally, counsel reviewed all available discovery and evidence with Applicant after thorough investigation, and gave Applicant the information and advice to make an intelligent decision for himself on whether to enter this plea. Based on the facts above, I find that Applicant did not

prove by a preponderance of the evidence that counsel was ineffective. Further, Applicant has failed to prove prejudice from any alleged deficiency in counsel's representation. The Supreme Court of South Carolina has repeatedly held "a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (S.C. 1998), *quoting* Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998); "...mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540. Applicant failed to present testimony from any witnesses at the PCR hearing; therefore, Applicant has failed to prove prejudice from any alleged deficiency by counsel in failing to interview witnesses in preparation for trial.

Finally, I find that Applicant's guilty plea was entered knowingly and voluntarily after being fully and adequately advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases.

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed in its entirety.

CONCLUSION

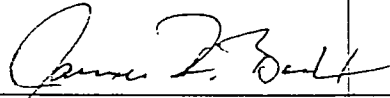
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) 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), SCRPC, 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 243 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 17 day of August, 20 11.



James R. Barber, III
Presiding Judge
Second Judicial Circuit

_____, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Sherrrod Miller, 340737)

Plaintiff)

v.)

State Of South Carolina)

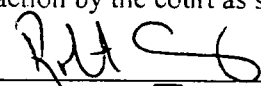
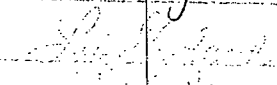
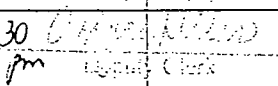
Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-02-1941

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Tanya Jeffords, Bar No. Address: 437 Walker Street Augusta GA 30901 phone: fax: e-mail: other:	Defendant's Attorney: Robert Corney, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	August 8, 2011 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____	Date Filed: FILED <u>26 August 2011</u> 
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	<u>1:30 PM</u>  Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP0201941

Sherrod J Miller vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ~~**DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.~~
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), 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: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

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

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

Dated at Aiken, South Carolina, this 26th day of August 2011.

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 26th day of August 2011, and a copy mailed first class this 26th day of August 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Sherrod Miller #340737
Ashley B26 L.C.I.
PO Box 205
Ridgeville, SC 29472

Robert Corney Attorney General Po Box 11549 Columbia,
SC 29211 Via Email

Tanya D. Jeffords 437 Walker Street Augusta, GA 30906


ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

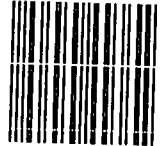
Liz Godard by Angel Miles
Liz Godard - Clerk of Court

f Tanya D. Jeffords
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Marion Miller

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