

The Supreme Court of South Carolina

Demarcus Kentrail Bussey, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable G. Edward Welmaker
Greenville County
Trial Court Case No. 2010-CP-23-05349

ORDER

For good cause shown, the request for an extension until May 9, 2012 to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 10, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Karen Ratigan

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
G. Edward Welmaker, Circuit Court Judge

RECEIVED

APR 9 2012

S.C. Supreme Court

DEMARCUS KENTRAIL BUSSEY,

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 9, 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 tomorrow, April 10, 2012. Additionally, Counsel is filing the petition for writ of certiorari and accompanying appendix in the case of Albert

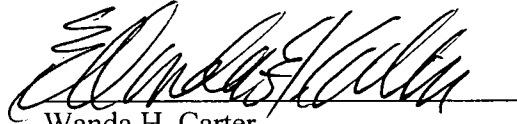
C. Smith, II v. State in the Supreme Court today, April 9, 2012. Counsel filed the petition for rehearing in the case of State v. Lewis D. Williams in the Court of Appeals on March 30, 2012. Counsel had an oral argument in the case of Brian Gebhard v. State in the Court of Appeals on March 29, 2012. 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 Pernell 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.

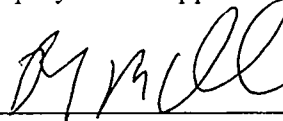
4. As indicated by her consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final thirty-day extension, until May 9, 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

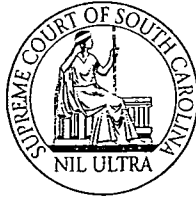


Robert M. Dudek
Chief Appellate Defender

April 9, 2012

I DO NOT OPPOSE:


Karen Ratigan



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRÉNDÁ F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 9, 2012

Deputy Chief Appellate Defender Wanda H. Carter
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: Bussey, Demarcus Kentrail v. The State

Dear Counsel:

The following Order has been endorsed on your Petition for Order to Reconstruct the Record of Petitioner's Probation Revocation Hearing in the above entitled case on appeal.

"Petition denied.

s/ Jean H. Toal C.J.
For the Court

March 9, 2012."

Please be advised the Petition for Writ of Certiorari and Appendix should be served and filed within thirty (30) days of the date of this letter.

Very truly yours,



CLERK

DES/jj

cc: Assistant Attorney General Karen Ratigan

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

JAN 27 2012

S.C. Supreme Court

DEMARCUS KENTRAIL BUSSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR ORDER
TO RECONSTRUCT THE RECORD OF
PETITIONER'S PROBATION REVOCATION HEARING

Pursuant to Rule 224 of the South Carolina Appellate Court Rules, the undersigned counsel would request an order requiring the parties to reconstruct the record of petitioner's probation revocation hearing that was held on March 19, 2010, at the Greenville County General Sessions Court before Judge Charles B. Simmons. In support of this petition, counsel would submit the following information.

1.) Petitioner was convicted of carjacking and two counts of robbery during the July 2006 term of the Greenville County General Sessions Court and sentenced to ten years, suspended on the service of five years and four years probation on one robbery conviction, five years suspended during probation on his second robbery conviction, and

ten years suspended during probation on his carjacking conviction. Petitioner did not enjoy the benefit of a direct appeal in the case.

2.) On March 19, 2010, petitioner's probation sentences were revoked pursuant to a hearing held before Judge Simmons at the Greenville County General Sessions Court. Petitioner was sentenced to four years and eighty-three days for each of his robbery convictions, and nine years and eighty-three days for his carjacking conviction.

3.) On June 30, 2010, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court alleging that his probation revocation attorney was ineffective in his representation on his probation revocation case. On May 11, 2011, a PCR hearing was held at the Greenville County Courthouse before Judge Edward Welmaker. During that hearing, petitioner testified that his probation revocation attorney was ineffective as he failed to appeal the probation revocation¹ and because he failed to argue against the revocation on the ground that the charges presented in support of the revocation were only pending charges for which he had not been convicted.²

4.) On July 1, 2011, Judge Welmaker issued an order of dismissal denying petitioner's allegations of ineffective assistance of his probation revocation counsel. Petitioner appealed Judge Welmaker's order.

5.) The undersigned counsel represents petitioner on his PCR appeal. Therefore, inasmuch as it was stated on the PCR record that the probation revocation transcript was not transcribed and/or unavailable (App. 18, l. 13 – p. 19, l. 1), and because the entire subject of petitioner's PCR action contained allegations of ineffective assistance from his probation revocation counsel, then a transcript of his probation revocation proceeding is

¹ App. 32, ll. 2-3; App. 36, ll. 9-22.

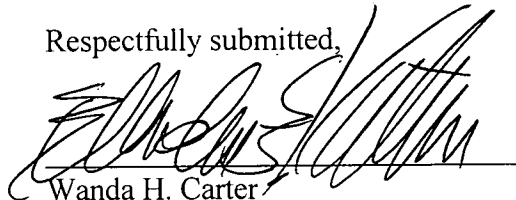
² App. 21, l. 6 – p. 24, l. 6; App. 40, ll. 7-23; App. 43, ll. 2-5.

relevant to the PCR appeal and must be included as part of the lower court record per Rule 227(f), SCACR, in order to perfect the PCR appeal. As a result, counsel would request that a reconstruction hearing of the probation revocation proceeding be ordered in the case.

6.) When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. See Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002), and China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968). See also Deaton v. Leath, 279 S.C. 82, 302 S.E.2d 335 (1983), where the Court granted the appellant's motion to set aside their convictions and remand for a new trial where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal.

WHEREFORE, the undersigned counsel would request that an order for the reconstruction of the record of petitioner's probation revocation proceeding be issued in the case and that the appeal be held in abeyance pending a resolution of this matter.

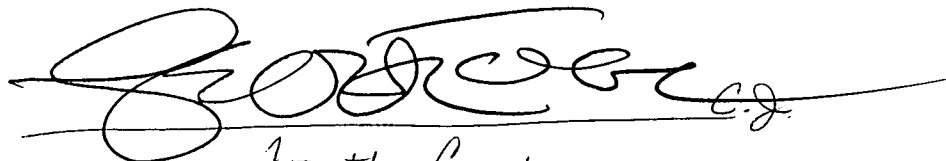
Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

January 27, 2012

Petition denied.



For the Court

March 9, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
G. Edward Welmaker, Circuit Court Judge

DEMARCUS KENTRAIL BUSSEY,

PETITIONER,

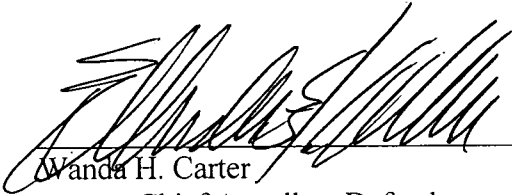
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

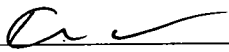
The undersigned attorney hereby certifies the petition for order to reconstruct the record of petitioner's probation revocation hearing in the above referenced case has been served upon Karen Ratigan, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 27th day of January, 2012.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 27th day of January, 2012.



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

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

FEB 06 2012

CERTIORARI TO GREENVILLE COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable D. Garrison Hill, Guilty Plea Judge
The Honorable Charles B. Simmons, Jr., Probation Revocation Judge
The Honorable G. Edward Welmaker, Post-Conviction Relief Judge

Demarcus Kentrail Bussey,.....Petitioner,

v.

State of South Carolina,Respondent.

**RETURN TO PETITION FOR ORDER TO
RECONSTRUCT THE RECORD OF PETITIONER'S
PROBATION REVOCATION HEARING**

Respondent, in its Return to Petition to Reconstruct filed on January 27, 2012, respectfully submits the following in opposition to the Petition:

1. The Greenville Grand Jury indicted Petitioner for two counts of strong arm robbery (2005-GS-23-10187, -10190) and one count of carjacking (2005-GS-23-10189). On July 11, 2006, the Honorable D. Garrison Hill sentenced Petitioner to concurrent terms of ten (10) years suspended on service of five (5) years and four (4) years probation for one count of strong arm robbery, five (5) years suspended during probation for the second count of strong arm robbery, and ten (10) years suspended during probation for carjacking. Petitioner did not

appeal.

2. On March 19, 2010, the Honorable Charles B. Simmons, Jr. revoked Petitioner's probation and levied concurrent sentences of four (4) years and eighty-three (83) days for each count of strong arm robbery and nine (9) years and eighty-three (83) days for carjacking. Petitioner did not appeal.

3. Petitioner filed an application for post-conviction relief (PCR) on June 30, 2010 (2010-CP-23-5349). An evidentiary hearing was convened on May 13, 2011. The Honorable G. Edward Welmaker denied relief in an order dated July 6, 2011.

4. Petitioner filed a "Petition for Order to Reconstruct the Record of Petitioner's Probation Revocation Hearing" on January 27, 2012. Respondent received this petition on January 30, 2012. Petitioner argues the matter should be remanded to the circuit court in order to reconstruct the March 19, 2010 probation revocation hearing.

5. Respondent asserts this matter should not be remanded for a reconstruction of the probation revocation hearing.

6. While Respondent has not had an opportunity to review the transcript from the PCR hearing, the record should reflect that an effort was made to order the probation revocation transcript, but that Respondent was informed by Judge Simmons' office that a court reporter was not present that day. The record should also reflect that Petitioner's probation revocation attorney testified: (1) he argued against Petitioner's probation being revoked based solely upon the fact that he had pending charges and (2) he did not believe Judge Simmons committed any legal errors during the revocation hearing.

7. Respondent submits Petitioner failed to argue at the PCR hearing that his case was prejudiced by the lack of a probation revocation transcript. Respondent submits Petitioner has failed to argue a cognizable reason that this transcript is necessary for proper appellate review. Respondent would also submit that it would be improper to remand for a reconstruction hearing of the probation revocation because it is axiomatic that this document would not have been before the PCR judge when he evaluated the evidence and issued the order of dismissal.

WHEREFORE, as a reconstruction of the revocation hearing is unnecessary to the disposition of this PCR appeal, Respondent requests this Court deny the "Petition for Order to Reconstruct the Record of Petitioner's Probation Revocation Hearing."

Respectfully submitted,


ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: 

ATTORNEYS FOR RESPONDENT

February 6, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
)
)
DEMARCUS KENTRAIL BUSSEY)
)
)
Applicant,)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

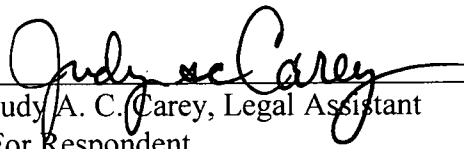
2010-CP-23-5349

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Petition for Order to Reconstruct the Record of Petitioner's Probation Revocation Hearing** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Wanda H. Carter, Deputy Chief Appellate Defender
SC Commission of Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia SC 29211-1589**

DATED this 6th day of February, 2012.



Judy A. C. Carey, Legal Assistant
For Respondent



ALAN WILSON
ATTORNEY GENERAL

February 6, 2012

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

RECEIVED

FEB 06 2012

Re: Demarcus Kentrail Bussey v. State of South Carolina
2010-CP-23-5349

S.C. Supreme Court

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the **Return to Petition for Order to Reconstruct the Record of Petitioner's Probation Revocation Hearing** in the above case.

Sincerely,

Karen C. Ratigan
Assistant Deputy Attorney General

KCR/jacc
Enclosures

cc: Wanda H. Carter, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 27, 2012

RECEIVED

JAN 27 2012

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

S.C. Supreme Court

Re: Demarcus Kentrail Bussey v. State of South Carolina

Dear Mr. Shearouse,

Enclosed please find the original and six copies of the petition for order to reconstruct the record of petitioner's probation revocation hearing in the above case.

If you have any questions concerning this matter, please contact me.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/kam

Enclosures

The Supreme Court of South Carolina

Demarcus Kentrail Bussey, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable G. Edward Welmaker
Greenville County
Trial Court Case No. 2010-CP-23-05349

ORDER

For good cause shown, the request for an extension until February 2, 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 Brenda J. Shealy
Chief Deputy Clerk

Columbia, South Carolina

January 4, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Karen Ratigan

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

JAN - 3 2012

S.C. Supreme Court

DEMARCUS KENTRAIL BUSSEY,

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:

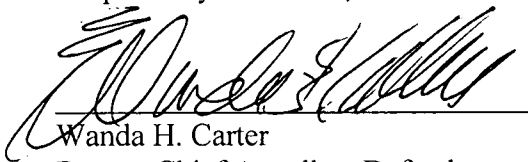
1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.
2. Counsel is filing the petition for writ of certiorari and accompanying appendix in the case of Jorge Rodriguez v. State with this court today, January 3, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Jonathan Vick v. State with this court, as well as the initial briefs of appellant and

designations of matter in the cases of John Henry Stokes v. State and Lewis C. Landreth v. State with the Court of Appeals on December 19, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of John Lewis Mills v. State with the Supreme Court on December 15, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Mark Daniel Cureton v. State in the Supreme Court on December 9, 2011. Counsel filed the brief of petitioner in the case of Tommy Novack Lloyd v. State in the Supreme Court on December 2, 2011. In November 2011, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Leonard G. Stanfield v. State, William Avinger v. State, Mark Bolte v. State and Stanley DeHart v. State, as well as the initial brief of appellant and designation of matter in the case of State v. Randy Edward Anderson.

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

January 3, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

DEMARCUS KENTRAIL BUSSEY,

PETITIONER,

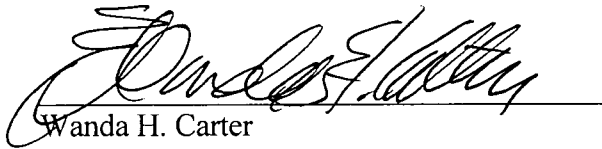
V.

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 Karen Ratigan, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 3rd day of January, 2012.



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 3rd day of January, 2012.

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

The Supreme Court of South Carolina

Demarcus Kentrail Bussey, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable G. Edward Welmaker
Greenville County
Trial Court Case No. 2010-CP-23-05349

ORDER

The request for an extension until January 3, 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 *Wanda J. Shealy*
Chief Deputy Clerk

Columbia, South Carolina

December 5, 2011

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Karen Ratigan

ORIGINAL



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

December 2, 2011

RECEIVED

DEC - 2 2011

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

S.C. Supreme Court

(1)

Re: Demarcus Kentrail Bussey 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 Karen Ratigan, 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: Karen Ratigan



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

RECEIVED

OCT - 3 2011

October 3, 2011

S.C. Supreme Court

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

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Demarcus Kentrail Bussey v. State of South Carolina

10/3/2011

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,

Loriène French
Legal Services Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

RECEIVED

July 21, 2011

JUL 21 2011

S.C. Supreme Court

Ms. April P. Herron
Circuit Court Reporter
P O Box 17675
Greenville, SC 29606

Dear Ms. Herron:

Please provide us with the following transcript:

Demarcus Kentrail Bussey

Case #:

10-CP-23-05349

County: Greenville

Date of Trial: May 13, 2011

Presiding Judge: G. Edward Welmaker

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,


Lorie French
Legal Services Coordinator

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

RICHEY AND RICHEY

ATTORNEYS AT LAW

A Professional Association

Rodney W. Richey
Lola S. Richey

24 Vardry Street, Suite 301
Greenville, South Carolina 29601

Mailing Address:
Post Office Box 10916
Greenville, South Carolina 29603

(864) 467-0503
(864) 467-0646 (Fax)

Offices:
Greenville/Spartanburg

Website:
www.richeyandrichey.com

July 12, 2011

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

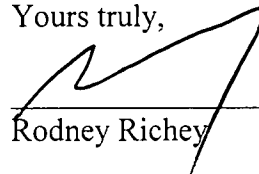
Re: Demarcus Bussey, SCDC 316432 vs. State of South Carolina
Case No: 2010-CP-23-5349

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/tlg
enclosures
cc: Karen Ratigan, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE G. EDWARD WELLMAKER

2010-CP-23-5349

DEMARCUS BUSSEY, SCDC#: 316432,

APPELLANT,

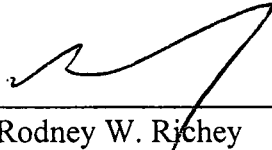
against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Demarcus Bussey appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable G. Edward Wellmaker, Circuit Judge on May 13, 2011 and Order issued on July 1, 2011 and filed on July 6, 2011. The Appellant received notice of the judgment on July 11, 2011.



Rodney W. Richey
Attorney for the Appellant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503

Other Counsel of Record:
Karen Ratigan, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE G. EDWARD WELLMAKER

2010-CP-23-5349

DEMARCUS BUSSEY, SCDC#: 316432,

vs

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 copy of it in the United States Mail, postage prepaid, on July 12, 2011, addressed to their attorney of record, Karen Ratigan, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: July 12, 2011

RICHEY & RICHEY, P.A.



Rodney W. Richey
Attorney for the Appellant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP2305349

CLERK OF COURT
GREENVILLE CO. S.C.
JUL 6 3 44 PM '11

Demarcus Bussey 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 Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE - G. Edward Wellmaker

This judgment was entered on the 6th day of July, 2011, and a copy mailed first class this 6th day of July, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Demarcus Bussey Broad River Corr Instit 4460
Broad River Road Columbia, SC 29210
Sidney Alfred Wike Jr. Law Office of Sidney Wike,

LLC 311 Pettigru St. Greenville, SC 29601
Rodney Wade Richey Richey & Richey, PA P.O.
Box 10916 Greenville, SC 296030916

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Demarcus Bussey, 316432)

Plaintiff)

v.)

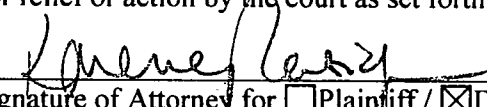
State Of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2010-CP-23-5349

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Rodney W. Richey, Esquire, Bar No. Address: Post Office Box 10916 Greenville SC 29603 phone: (864) 467-0503 fax: (864) 467-0646 e-mail: other:	Defendant's Attorney: Karen C. Ratigan, 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	June 24, 2011 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT:	
(check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <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, SCRPC) <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: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	Date Filed: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Demarcus Kentrail Bussey,)
 S.C.D.C. No. 316432,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-5349

ORDER OF DISMISSAL

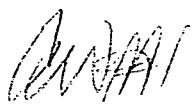
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 GREENVILLE CO., S.C.
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This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 30, 2010. The Respondent made its return on December 16, 2010. An evidentiary hearing into the matter was convened on May 13, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's probation revocation counsel, Michael S. Cullinan, Esquire. The Court had before it the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return. There is no transcript of the probation revocation hearing.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. On July 11, 2006, the Applicant pled guilty to two (2) counts of strong arm robbery (2005-GS-23-10187, -10190)

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and one (1) count of carjacking (2005-GS-23-10189). He was represented by Thomas M. Creech, Jr., Esquire. The Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of ten (10) years suspended on service of five (5) years and four (4) years probation for one count of strong arm robbery,¹ five (5) years suspended during probation for the second count of strong arm robbery,² and ten (10) years suspended during probation for carjacking. The Applicant did not appeal.

On March 19, 2010, the Applicant appeared in court pursuant to a probation citation. He was represented at the probation revocation hearing by Michael S. Cullinan, Esquire. The Honorable Charles B. Simmons, Jr. revoked the Applicant's probation and levied concurrent sentences of four (4) years and eighty-three (83) days for each count of strong arm robbery and nine (9) years and eighty-three (83) days for carjacking. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of probation revocation counsel:
 - a. Failed to advise about an appeal.
 - b. Failed to file an appeal after requested to do so.
 - c. Failed to investigate and prepare meaningful defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

¹ 2005-GS-23-10190.

² 2005-GS-23-10187.

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

Ineffective Assistance of Counsel

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

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). Allegations of ineffective assistance of probation revocation counsel are evaluated under the Strickland standard. See, e.g., United States v. Wren, 682 F. Supp. 1237 (S.D. Ga. 1988). However, since a probation hearing is not a formal adversarial proceeding, “the Court must review counsel’s performance in light of the particular type of proceeding involved.” Id. at 1241-42.

The Applicant stated he was alleged to have committed additional crimes while he was on probation. The Applicant stated he told counsel he was not guilty of these charges and that he could not have been involved in the armed robbery because he was on crutches at the time (and a videotape of the crime showed the suspects running away). The Applicant stated counsel did not obtain either this videotape or his medical records. The Applicant stated counsel failed to object to the probation agent’s statement that he admitted he was guilty of the pending charges. The Applicant stated counsel failed to object to several conditions noted on the revocation order that were not included in the probation warrant. The Applicant stated counsel said he would file an

appeal but did not do so.

Counsel testified he represented the Applicant at the probation revocation hearing and on his pending charges. Counsel testified he and the Applicant reviewed the probation violations. Counsel testified that, aside from the pending charges, there were numerous other violations (admitted drug use, failure to inform of change of address, failure to follow instructions of agent). Counsel testified he had spoken to the Applicant about his medical records but was concerned about further exploring the pending charges at the revocation hearing. Further, counsel stated the Applicant had a gunshot injury and that he told the Applicant this might not help his case. Counsel testified he was late to the revocation hearing (as he was in bond court) and missed the judge's announcement that there would not be a court reporter that day. Counsel testified he argued to the court that the Applicant's probation should not be revoked based on pending charges. Counsel testified he did not recall the agent saying the Applicant had admitted he was guilty of the pending charges. Counsel testified he did not believe the probation revocation judge committed any legal errors, but that he would have filed an appeal if he had been asked to do so.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding counsel's testimony is credible.

This Court finds the Applicant failed to meet his burden of proving probation revocation counsel was ineffective. The Applicant asserts counsel should have introduced his medical records³ at the revocation hearing and argued his injury precluded his involvement in the pending

³ This Court notes the Applicant introduced these records at the PCR hearing and they were admitted as Exhibit 1.

armed robbery charges. Counsel, however, provided valid reasons for not introducing evidence of the Applicant's gunshot wound, given that he was not made aware of all the details and felt it could have actually done more harm than good for his client. Given the certain stigma attached to gunshot wounds, this Court finds counsel made a reasonable strategic decision. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel).

This Court finds the Applicant failed to meet his burden of proving he is entitled to a belated appeal from his probation revocation hearing. This Court notes there was conflicting testimony as to whether the Applicant requested an appeal and as to whether there were any non-frivolous grounds on which to file an appeal. Finding no extraordinary circumstances in the Applicant's probation revocation proceeding, counsel was not required to inform the Applicant of the right to appeal. See Turner v. State, 384 S.C. 451, 682 S.E.2d 792 (2009). This Court also notes there were various violations of probation in this case and finds that the absence of a transcript from the revocation hearing would not change the outcome in the case at bar.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

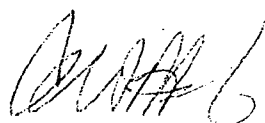
All Other Allegations

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his probation revocation hearing. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

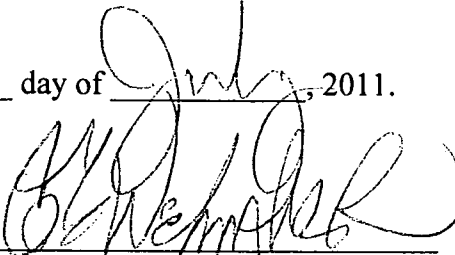
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate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

A handwritten signature in black ink, appearing to be "C. H. H. 6", is written over the page number.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1 day of July, 2011.



G. Edward Welmaker
Resident Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.



Richey & Richey, PA
Attorneys at Law
Post Office Box 10916
Greenville, South Carolina 29603

*Christopher
E. Stroppe,
Kenneth Whitmore,
Demarcus Bussey*

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