

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Larry R. Patterson, Circuit Court Judge

RECEIVED

JUN 24 2011

S.C. SUPREME COURT

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Case No. 2004-CP-23-5954

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Fredrick Jermaine Harris.....Appellant,

v.

State of South Carolina.....Respondent.

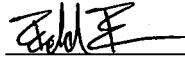
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**NOTICE OF APPEAL**

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Appellant Fredrick Jermaine Harris appeals the Order of the Honorable Larry R. Patterson, dated May 17, 2005 and filed May 18, 2005, which dismissed Appellant's Application for Post-Conviction Relief, attached as Exhibit 1. Appellant filed a subsequent Application for Post-Conviction Relief, seeking leave to file a belated appeal, pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). By order signed June 13, 2011, attached as Exhibit 2, the Honorable G. Edward Welmaker granted leave to file this belated appeal. Appellant received written notice of entry of this order on June 20, 2011.

June 22 2011



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Bradd W. Bunce  
BRADD BUNCE, ATTORNEY AT LAW, LLC  
Post Office Box 2  
Newberry, SC 29108  
Phone: (803) 944-1610  
Fax: (803) 937-3331  
BraddWBunce@gmail.com  
Attorney for Appellant

Other Counsel of Record:

Karen C. Ratigan, Esq.  
Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211-1549  
803-734-3970

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Larry R. Patterson, Circuit Court Judge

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Case No. 2004-CP-23-5954

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Fredrick Jermaine Harris.....Appellant,

v.

State of South Carolina.....Respondent.

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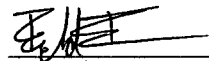
**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on Karen C. Ratigan, Esquire, by depositing a copy of the same in the United States Mail, postage prepaid, on June 22, 2011, addressed to the attorney of record at the address indicated below:

Karen C. Ratigan, Esq.  
Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211-1549

June 22 2011



---

Bradd W. Bunce  
BRADD BUNCE, ATTORNEY AT LAW, LLC  
Post Office Box 2  
Newberry, SC 29108  
Phone: (803) 944-1610  
BraddWBunce@gmail.com  
Attorney for Appellant

# **EXHIBIT 1**

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE )

2004-CP-23-5954

Frederick J. Harris,  
S.C.D.C. No. 267210 )

Applicant, )

ORDER OF DISMISSAL

v. )

State of South Carolina, )

ENTERED COMPUTER

Respondent. )

FILED CLERK OF COURT  
GREENVILLE COUNTY  
2005 MAY 18 A 11:41  
AD

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 10, 2004. The Respondent made its return on December 14, 2004. An evidentiary hearing into the matter was convened on April 8, 2005 at the Greenville County Courthouse. The Applicant was present at the hearing and was represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

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

**PROCEDURAL HISTORY**

The Applicant is presently confined in the McCormick Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant at the January

AS

2002 term of General Sessions for conspiracy (2002-GS-23-0397), first-degree burglary (2002-GS-23-0406), and two counts of armed robbery (2002-GS-23-0404, -405). Andrew Mackenzie, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty as indicted. On December 3, 2002, the Honorable John W. Kittredge sentenced the Applicant to concurrent sentences of five (5) years for conspiracy, twenty-seven (27) years for first-degree burglary, and twenty-seven (27) years on each of the two armed robbery counts.

A timely Notice of Appeal was filed on Applicant's behalf. An appeal was subsequently perfected – in the nature of an Anders<sup>1</sup> brief – by Aileen P. Clare, Esquire of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Harris, Op. No. 2004-UP-224 (S.C. Ct. App. filed March 30, 2004).

#### ALLEGATIONS

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

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of appellate counsel.
3. Subject matter jurisdiction.
4. Judicial errors of law.

At the PCR hearing, the Applicant proceeded on the allegations of ineffective assistance of trial counsel.

#### 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

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<sup>1</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

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

**Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC).

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, 80 L. Ed. 2d 674 (1984); Sanchez v. State, 351 S.C. 270, 274-75, 569 S.E.2d 363, 365 (2000). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). Where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (citations omitted); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992).

The Applicant testified trial counsel was not prepared for his case and did not receive full discovery until five (5) days before trial. The Applicant testified plea counsel failed to protect his Fourth Amendment rights because he did not move to suppress the guns seized pursuant to a search warrant. The Applicant testified he specifically asked trial counsel to file a motion to suppress this evidence. The Applicant stated the burden of proof shifted to him during the trial because his co-defendants testified and pointed to him as the ringleader. The Applicant also stated trial counsel should have objected to the sentence he received.

Trial counsel testified he met with the Applicant several times and reviewed the discovery with him as he received it. Trial counsel testified he received discovery up until the trial, but that this was not prejudicial in any way. Trial counsel stated the search warrant in this case appeared valid, so he did not file a motion to suppress. Trial counsel also stated the trial judge examined the search warrant at trial and found it was proper. Trial counsel stated the burden was not shifted when the co-defendants testified. Rather, trial counsel stated their testimony involved credibility issues and that he attempted to discredit their testimony by asking them about their plea agreements with the State. Regarding the Applicant's sentence, trial counsel stated it was within the sentencing range and that the Applicant received a higher sentence than his co-defendants because he was convicted of first-degree burglary.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds the Applicant did not carry his burden of proving trial counsel was ineffective in his representation. This Court has examined the search warrant and does not see any irregularities. This Court also notes the trial judge reviewed the search warrant at trial and did not find any problems. (Trial transcript, pp.175-76). This Court finds there was no improper burden-shifting that occurred after the Applicant's co-

defendants testified against him. As trial counsel stated, their testimony went to matters of credibility. This Court further finds the sentences levied by the trial court were within the statutorily mandated range, and thus trial counsel was not ineffective in failing to object. See S.C. Code Ann. § 16-11-311(B) (2003) (first-degree burglary is punishable by a sentence between fifteen years to life imprisonment); S.C. Code Ann. § 16-11-330(A) (2003) (armed robbery is punishable by a sentence between ten years and thirty years imprisonment); S.C. Code Ann. § 16-17-410 (2003) (criminal conspiracy is punishable by a sentence up to five years imprisonment).

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

#### All Other Allegations

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

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing

proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 17 day of May, 2005.

  
Larry R. Patterson  
Resident Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Frederick J. Harris, 267210  
 Plaintiff

v.

State Of South Carolina  
 Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.  
2004-CP-23-5954

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

<b>Plaintiff's Attorney:</b> Caroline Horlbeck, Esquire, Bar No. Address: Post Office Box 2464 Greenville SC 29602 phone: (864) 271-7424 fax: (864) 242-6469 e-mail: other:	<b>Defendant's Attorney:</b> 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)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<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 <i>Karen Ratigan</i>	
<b>SECTION III: Motion Fee</b>	
<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: _____	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE: _____ CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____	Date Filed: _____
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

FILED CLERK  
GREENVILLE  
SOUTH CAROLINA  
APR 21 2005  
2005 MAY 19  
11:44  
Date submitted

# **EXHIBIT 2**

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2010CP2306750

IN THE COURT OF COMMON PLEAS

Frederick J Harris vs. South Carolina State Of

2011 JUN 16 P 02:02  
FILED-CLERK OF COURT  
GREENVILLE, SC 29601  
PAUL B. WILKENS

**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 -

This judgment was entered on the 16th day of June, 2011, and a copy mailed first class this 16th day of June, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

✓ Bradd W Bunce P O Box 2 Newberry, SC 29108

Karen Ratigan

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Fredrick Jermaine Harris, )  
 S.C.D.C. No. 267210, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2010-CP-23-6750

**ORDER OF DISMISSAL  
 GRANTING AUSTIN V. STATE  
 BELATED PCR APPEAL**

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENS  
 2011 JUN 16 PM 1:02

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 17, 2010. An evidentiary hearing into the matter was convened on May 12, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Bradd W. Bunce, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the January 2002 term of the Greenville County Grand Jury for conspiracy (2002-GS-23-0397), two counts of armed robbery (2002-GS-23-0404, -0405), and first-degree burglary (2002-GS-23-0406). He was represented by Andrew R. Mackenzie, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On December 3, 2002, the Honorable John W. Kittredge levied concurrent sentences of five (5) years for conspiracy, twenty-seven (27) years for each count of armed robbery, and twenty-seven (27)

years for first-degree burglary.

A notice of appeal was filed at the South Carolina Court of Appeals. Aileen P. Clare, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders<sup>1</sup> brief. The Court of Appeals dismissed the appeal. State v. Harris, Op. No. 2004-UP-224 (S.C. Ct. App. filed March 30, 2004).

The Applicant filed a PCR application on September 10, 2004 (2004-CP-23-5954). The Applicant raised the following issues:

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of appellate counsel.
3. Subject matter jurisdiction.
4. Judicial errors of law.

An evidentiary hearing was convened on April 8, 2005 at the Greenville County Courthouse. Caroline Horlbeck, Esquire represented the Applicant. The Honorable Larry R. Patterson denied and dismissed the Applicant's application by order filed May 18, 2005. The Applicant did not appeal.

### ALLEGATIONS

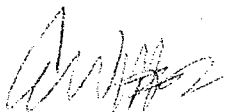
In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Procedural error.
2. Ineffective assistance of appellate counsel.
3. Ineffective assistance of PCR counsel:
  - a. Failed to file an appeal from denial of first PCR application.

The Respondent filed a return and partial motion to dismiss on December 20, 2010. The Respondent argued the statute of limitations and the presumption against successive PCR

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<sup>1</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).



applications barred the litigation of all of the Applicant's issues except for that of a belated PCR appeal.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record and has heard the arguments presented at the PCR hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

After consulting with the Applicant's prior PCR attorney, counsel for Respondent consented to the Applicant's request for a belated appeal from the denial of his first PCR application.

This Court finds that any allegation other than the belated PCR appeal allegation is successive and therefore denied. Successive applications for post-conviction relief are clearly disfavored. See S.C. Code Ann. § 17-27-90 (2003); Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991); Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980).

This Court also finds the Applicant's allegation that he is entitled to a belated appeal due to his prior PCR attorney's failure to perfect an appeal on his behalf is not procedurally barred and is meritorious. Where a post-conviction relief judge determines the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).<sup>2</sup> See also King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).

This Court further finds the Applicant did not knowingly and voluntarily waive his right

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<sup>2</sup> Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the Applicant must petition the Supreme Court for a belated review. Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

to appellate review and is therefore entitled to a belated review of the denial of his first PCR application. See Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002). The Applicant's denial of an appeal can be remedied by a petition for belated review by his current PCR attorney pursuant to Austin v. State. See id.

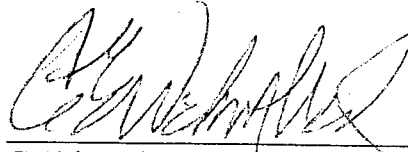
### CONCLUSION

All allegations except the belated appeal pursuant to Austin v. State are barred because they are successive. The Applicant has proven by a preponderance of the evidence that he did not knowingly and voluntarily waive the direct appeal of the denial of his first PCR application. Any grounds for relief that are not specifically addressed in this Order are denied for failure to meet the requisite burden of proof.

### **IT IS THEREFORE ORDERED:**

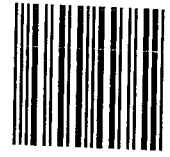
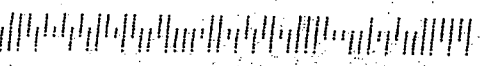
1. That the application for post-conviction relief be denied and dismissed with prejudice;
2. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate appellate review of the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR for the appropriate procedure for a belated appeal.

AND IT IS SO ORDERED this 13<sup>th</sup> day of June, 2011.



G. Edward Welmaker  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.



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Bradd W. Bunce  
Bradd Bunce Attorney at Law  
Post Office Box 2  
Newberry, SC 29108

*Fredrick  
Germane  
Harris*

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

Bradd Bunce, Attorney at Law, L.

---

Bradd W. Bunce  
Admitted in SC & GA

June 22, 2011

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

**RE: Fredrick Jermaine Harris vs. State of South Carolina  
Case No.: 04-CP-23-5954**

Dear Mr. Shearouse:

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

- (1) Proof of Service of the Notice of Appeal on the Respondent;
- (2) Order of Dismissal from Mr. Harris's PCR (Exhibit 1); and
- (3) Order granting belated appeal (Exhibit 2).

Mr. Harris is an indigent party and Appellate Defense has been notified and will assume responsibility for his case.

Respectfully Submitted,

Bradd W. Bunce

enclosures

**RECEIVED**

JUN 24 2011

**S.C. SUPREME COURT**

Post Office Box 2 • Newberry, SC 29108  
(803) 944-1610  
(803) 937-3331 fax  
BraddWBunce@gmail.com



# 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

July 26, 2011

**RECEIVED**

JUL 26 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:

Frederick Jermaine Harris v. State of South Carolina      Case #:      10-CP-23-06750

County: Greenville      Date of Trial: May 12, 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,

  
Lorraine French  
Legal Services Coordinator

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



# 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

July 26, 2011

Ms. Mary E. DiGirolamo  
Circuit Court Reporter  
PO Box 171  
Reidville, SC 29375

**RECEIVED**

JUL 26 2011

**S.C. Supreme Court**

Dear Ms. DiGirolamo:

Please provide us with the following transcript:

Frederick Jermaine Harris v. State of South Carolina      Case #:      10-CP-23-06750

County: Greenville      Date of Trial: April 8, 2005

Presiding Judge: Larry R. Patterson

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,

  
Loriene French  
Legal Services Coordinator

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



# 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

DEC 15 2011

S.C. Supreme Court

December 15, 2011

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.

Frederick Jermaine Harris v. State of South Carolina

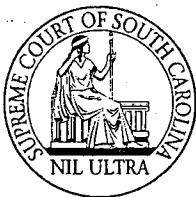
12/15/2011

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,

Loriene French  
Legal Services Coordinator



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 9, 2012

Frederick Jermaine Harris #267210  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, SC 29669

Re: Harris, Frederick Jermaine v. The State

Dear Mr. Harris:

Your counsel has submitted a Petition for Writ of Certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition & Appendix on February 8, 2012.

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

If you do decide to file a pro se response, the response must be either typewritten or legibly hand printed, and must have at least a one inch margin on all sides. Further, you will need to only submit one copy of your response, and this copy **should not** be stapled or bound in any manner.

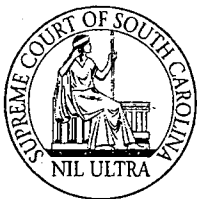
Very truly yours,

*Daniel E. Shearouse*  
65

CLERK

DES/jj

cc: Appellate Defender Robert M. Pachak  
Assistant Attorney General Karen Ratigan



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 20, 2012

Frederick Jermaine Harris #267210  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, SC 29669

Re: Harris, Frederick Jermaine v. The State

Dear Mr. Harris:

This will acknowledge receipt of your *pro se* Motion to Enlarge Time & Motion for Leave to Supplement Record in the above entitled matter.

By copy of this letter, opposing counsel and Mr. Pachak are requested to file an original and six (6) copies of a return to this motion no later than March 30, 2012, pursuant to Rule 240(e). Upon receipt of the returns, the matter will be taken under consideration and you will be notified as soon as action has been taken.

The time limits for perfecting the appeal will be held in abeyance pending the Court's decision.

Very truly yours,

*Daniel E. Shearouse*  
CLERK

DES/jj

cc: Appellate Defender Robert M. Pachak  
Assistant Attorney General Karen Ratigan

STATE OF SOUTH CAROLINA  
In The Supreme Court

CERITORARI TO GREENVILLE COUNTY

Honorable G. Edward Wellmaker, Circuit Court Judge

Case No. 2010-CP-23-6750

Fredrick J. Harris, #267210, ..... Appellant,

v.

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

RECEIVED

FEB 29 2012

MOTION FOR ENLARGEMENT OF TIME

S.C. SUPREME COURT

COMES NOW, Petitioner in the above-captioned case, pursuant SCACR, Rule 234, hereby requesting leave of this Honorable Court to grant an extension of forty-five (45) days time within which to file his, pro se, documents and/or legal briefs. Below are reasons and basis for this motion:

- Appointed counsel was inadequate in preparing a complete Appendix for review by the Supreme Court.
- Petitioner was notified on February 8, 2012, that appellate counsel filed a Johnson Petition and Motion to be Relieved.
- Petitioner is further hindered by the complexity of this case wherein his PCR transcript is allegedly unavailable with which to prepare pro se documents in a timely fasion.

Respetfully submitted,

*Fredrick J. Harris*

Fredrick J. Harris, #267210  
Perry C.I. / Q4B-114  
430 Oaklawn Road  
Pelzer, SC 29669

Date: 2/24/2012

Greenville County  
RECEIVED

FEB 29 2012

S.C. SUPREME COURT

April 18, 2012

*Motion Granted*  
*For the Court*  
*Justice John W. Kittredge, not participating*

STATE OF SOUTH CAROLINA

In The Supreme Court

---

CERTIORARI TO GREENVILLE COUNTY

Honorable G. Edward Wellmaker, Circuit Court Judge

---

Case No. 2010-CP-23-6750

---

Fredrick J. Harris, #267210, ..... Appellant,

v.

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

---

MOTION FOR LEAVE TO  
SUPPLEMENT RECORD

---

Petitioner, in the above-captioned matter, pursuant to SC Appellate Court Rules (SCACR), Rule 212(b); "Supplement Record by Party," herein seeks leave to supplement the incomplete Appendix, produced, published, and filed by petitioner's appellate counsel, Mr. Robert Pachak, of which accompanied his filed Johnson Petition for Writ of Certiorari. Having been notified, petitioner thus understands that appellate counsel has further filed Motion to be Relieved, that any further litigation upon the Petition for Writ of Certiorari is to be conducted from a pro se posture.

Wherefore, Petitioner requests that this Honorable Court, in the interest of justice, issue a formal order directing and/or requiring appellate counsel to compile and submit a completed and compliant supplemental Appendix reflecting the ENTIRE record of ALL lower court proceedings to include ALL missing documents outlined, infra, and provide petitioner with copies of the same

to assist him towards any pro se response he may present.

Petitioner respectfully presents, inclusive to this Motion to Supplement, the provisions and authorities relied upon as being, SCACR, Rule 227(e); "Content of Appendix", which states at subsection (1); "The entire lower court record is to be included in the Appendix." The rule further requires at subsection (3); "The Appendix shall be in accordance with SCACR, Rule 210(E)" which state in pertinent part;

"(E) Index. Every record on appeal shall contain an index to the principle matters therein to include orders, judgements, pleadings, pretrial matters, opening statement, testimony, motions, closings arguments, jury charges, post trial motions and exhibits..."

Petitioner therefore, would now direct the Court's attention to those specific, material items, missing from the Appendix compiled by appellate counsel, Mr. Robert Pachak:

- Transcript of Record from Petitioner's original, first PCR - Evidentiary Hearing [2004-CP-23-1954], held before the Honorable Larry R. Patterson, April 8, 2005.

Petitioner furthermore directs the Court's attention to appellate counsel's apparent contradiction and falsehood, wherein, on one hand, counsel asserts in his Johnson petition, page 4, at footnote [1]; that "Because of the substantial delay between petitioner's first PCR hearing and granting of the belated appeal, a transcript IS NOT AVAILABLE for the first PCR hearing." (emphasis added)

Then, on the other hand, he seemingly reverses himself and declares on page 7, at line 2, that; "He has REVIEWED the records and TRANSCRIPT of petitioner's post-conviction relief hearing which was HELD ON APRIL 8, 2005. In his opinion seeking certiorari from the order of dismissal is without merit." (Emphasis added) Both statements simply cannot be true and it

appears that counsel attempts to mislead the Court concerning the availability of the transcript from the Petitioner's first PCR trial. The Court must not allow this blatant disregard of safeguards and requirements of our Court's rules and procedures; certainly this Court will not allow counsel's dishonesty continue unchecked!

CONCLUSION

Petitioner therefore, humbly requests that this Honorable Court, in consideration of the facts and circumstances herein above, arrive at a determination/ruling directing and/or requiring appellate counsel to complete the record, and thereby bring the Appendix into proper conformity which is preferred. However, in the alternative, the Court may grant petitioner leave to attempt assembly and submission of a Supplemental Record, pro se.

Respectfully submitted,

Date: 2/24/2012  
Greenville County

Fredrick J. Harris  
Fredrick J. Harris, #267210  
Perry C.I. Q4B-114  
430 Oaklawn Road  
Pelzer, SC 29669

*Motion denied.*

*[Signature]*  
For the Court  
Justice John W. Kettledge, not participating  
April 18, 2012

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

CERITORARI TO GREENVILLE COUNTY

Honorable G. Edward Wellmaker, Circuit Court Judge

---

Case No. 2010-CP-23-6750

---

Fredrick J. Harris, #267210, ..... Appellant,

v.

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

---

**CERTIFICATE OF SERVICE**

---

I HEREBY CERTIFY that on this day, I filed/served the foregoing document(s); Motion(s) to Supplement Record and Enlargement of Time, upon the individuals below by placing copies of the same in the U.S. Mail, postage prepaid, addressed to their last known address below:

SC Supreme Court  
Daniel E. Shearouse  
Post Office Box 11330  
Columbia, SC 29211-1330

SC Attorney General Office  
Karen C. Ratigan  
Post Office Box 11549  
Columbia, SC 29211-1549

SWORN AND SUBSCRIBED TO before me, this

24th day of February, 2012

Steve T. Munday

Notary Public for South Carolina

My Commission Expires: January 7, 2016

Fredrick J. Harris  
Fredrick J. Harris, #267210  
Perry C.I. / Q4B-114  
430 Oaklawn Road  
Pelzer, SC 29669



ALAN WILSON  
ATTORNEY GENERAL

March 23, 2012

RECEIVED

MAR 23 2012

S.C. Supreme Court

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

**Re: Frederick J. Harris v. State**

Dear Mr. Shearouse:

I am in receipt of a letter from this Court, dated March 20, 2012, requesting a Return to the Appellant's pro se Motion to Enlarge Time and Motion for Leave to Supplement Record in the above-captioned case. Please accept this letter in lieu of a formal Return. The Respondent takes no position on whether or not the Court should grant these Motions, but rather submits that they are matters for the sound discretion of this Court.

If there are any questions or comments, please do not hesitate to contact me at any time.

Sincerely,

  
Karen C. Ratigan  
Assistant Deputy Attorney General

cc: Robert M. Pachak, Esquire  
Frederick J. Harris, #267210



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

 ORIGINAL

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

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

March 27, 2012

**RECEIVED**

MAR 27 2012

S.C. Supreme Court

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

Re: Harris, Frederick Jermaine v. The State

Dear Mr. Shearouse:

Please accept this letter in lieu of a formal return to Mr. Harris's pro se Motion to Enlarge Time & Motion for Leave to Supplement Record. Appellate counsel does not oppose petitioner's Motion to Enlarge Time. Appellate counsel does oppose petitioner's Motion for Leave of Supplement Record which specifically requests the transcript from petitioner's first PCR hearing held before the Honorable Larry R. Patterson on April 8, 2005. The Order of Dismissal from this case was dated May 17, 2005. Petitioner did not file his second application for post-conviction relief until August 17, 2010, over five (5) years after the dismissal of his first application for post-conviction relief. This was well past the time the court reporter was required to keep tapes from the first PCR hearing. To be on the safe side, our office emailed the court reporter, Mary DiGirolamo, on February 2, 2012, to see if she by chance still had the tapes. She replied on February 3<sup>rd</sup> that she did not have the records and that she only had to keep them through 2007. Hence, it is impossible to comply with petitioner's request to supplement the record with the transcript of the first PCR hearing. Petitioner has not offered an explanation as to why he has waited over five (5) years to seek a belated appeal of the denial of his first application for post-conviction relief. Therefore, petitioner's Motion for leave to Supplement Record should be denied.

Sincerely,

Robert M. Pachak  
Appellate Defender

RMP/fkb

Fredrick J. Harris, #267210  
Perry C.I. / Q4B-114  
430 Oaklawn Road  
Pelzer, SC 29669

Febraury 24, 2012

SC Supreme Court  
Daniel E. Shearouse  
Post Office Box 11330  
Columbia, SC 29211-1330

Re: Filing pro se Motions

Dear Honorable Shearouse,

In response to appellate counsel's Johnson petition, please find enclosed two (2) pro se motions I'm filing in court today.

As shown within the proof of service, attorney for Respondent has been served.

In advance, thank you for your assistance in this matter.

Sincerely,

Fredrick Harris

cc: Karen C. Ratigan, A.A.G.

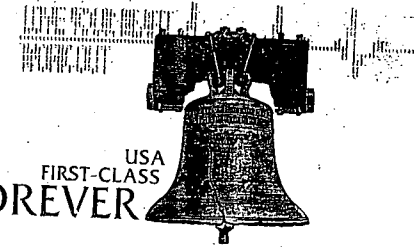
File

RECEIVED

FEB 29 2012

S.C. SUPREME COURT

Fredrick Harris, #267210  
Perry C.I. / Q4B-114  
430 Oaklawn Road  
Pelzer, SC 29669



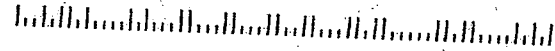
**RECEIVED**

FEB 27 2012

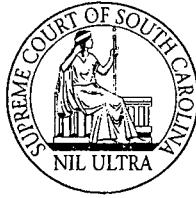
P.C.I. MAILROOM

S.C. Supreme Court  
Daniel E. Shearouse  
Post Office Box 11330  
Columbia, SC 29211-1330

29211+1330



20



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 18, 2012

Frederick Jermaine Harris #267210  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, SC 29669

Re: Harris, Frederick Jermaine v. The State

Dear Mr. Harris:

The following Order has been endorsed on your Motion for Leave to Supplement Record in the above entitled case on appeal.

“Motion denied.

s/ Jean H. Toal C.J.

For the Court

Justice John W. Kittredge, not participating

April 18, 2012.”

The following Order has been endorsed on your Motion for Enlargement of Time in the above entitled case on appeal

“Motion denied.

s/ Jean H. Toal C.J.

For the Court

Justice John W. Kittredge, not participating

April 18, 2012.”

The Court has, however, agreed to give you fifteen (15) days from the date of this letter in which to file any pro se response you wish to make to the Johnson Petition for Writ of Certiorari filed by your counsel.

Very truly yours,

  
CLERK

DES/jj

cc: Appellate Defender Robert M. Pachak  
Assistant Attorney General Karen Ratigan



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

July 11, 2013

Mr. Robert M. Pachak  
1330 Lady St., Ste 401  
Columbia SC 29201

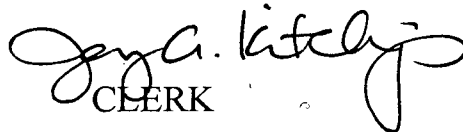
Ms. Karen Christine Ratigan  
PO Box 11549  
Columbia SC 29211

Re: Frederick Jermaine Harris v. State  
Appellate Case No. 2011-194532

Dear Counsel:

At this time the Court is requesting that each party submit memoranda within thirty days addressing whether it is necessary for this court to remand this case to reconstruct the record of the first PCR hearing, held on April 8, 2005, before Judge Larry R. Patterson, given that counsel for Petitioner filed a petition for a writ of certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

Very truly yours,

  
CLERK

cc: Frederick Jermaine Harris, 00267210

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Greenville County

Honorable G. Edward Welmaker, Circuit Court Judge

---

FREDERICK JERMAINE HARRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2011-194532

---

MOTION IN SUPPORT TO REMAND  
PETITIONER'S CASE TO RECONSTRUCT  
THE RECORD OF HIS FIRST PCR HEARING  
HELD ON APRIL 8, 2005

---

On July 11, 2013, the Court requested the parties submit memoranda addressing whether it is necessary for the Court to remand this case to reconstruct the record of petitioner's first PCR hearing held on April 8, 2005, before Judge Larry R. Patterson. This PCR was denied and dismissed by order dated May 17, 2005. There was no appeal so no transcript was ever ordered.

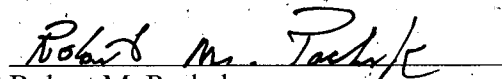
Petitioner filed a second PCR on August 17, 2010. After an evidentiary hearing held on May 12, 2011, before the Honorable G. Edward Welmaker, the Assistant Attorney General, Karen

C. Ratigan, consented to a belated appeal of the denial of petitioner's first application for post-conviction relief. On June 13, 2011, Judge Welmaker issued an order granting petitioner a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1996). Appellate counsel filed a petition for writ of certiorari on February 8, 2012, addressing the belated appeal issue. On that same date, appellate counsel also filed a Johnson petition pursuant to the Austin v. State grant of a belated appeal. Counsel noted that because of the delay in filing for a second PCR and the granting of the belated appeal, no transcript was available of the first PCR hearing. Generally, a record should be attempted to be reconstructed when the court reporter records are unavailable. China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002). However, in State v. Ladson, 373 S.C. 320, 326, 644 S.E.2d 271, 274 (Ct.App. 2007), this Court wrote:

“It is simply unrealistic and unreasonable to think that a trial judge and counsel can — under these circumstances [the passage of fourteen months] — reconstruct a proper record that will permit meaningful appellate review, especially in light of our issue preservation rules.”

In petitioner's case, it has been over eight years since his first PCR hearing. If this Court remands the case to reconstruct the record, local counsel should be appointed to represent petitioner. If the record cannot be reconstructed, a new PCR hearing should be held.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

Attorney for Petitioner

This 17th day of July, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Greenville County

Honorable G. Edward Welmaker, Circuit Court Judge

RECEIVED

JUL 17 2013

SC Court of Appeals

\_\_\_\_\_  
FREDERICK JERMAINE HARRIS,

PETITIONER,

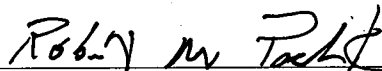
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

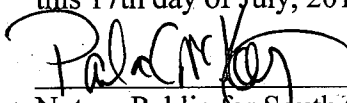
The undersigned attorney hereby certifies that a true copy of the Memorandum in Support to Remand Petitioner's Case to Reconstruct the Record of His First PCR Hearing Held on April 8, 2005 in the above referenced case has been served upon opposing counsel, Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Frederick Jermaine Harris, #267210 at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 17th day of July, 2013.



\_\_\_\_\_  
Robert M. Pachak  
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me  
this 17th day of July, 2013.

 (L.S.)  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022



ORIGINAL

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

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

July 17, 2013.

RECEIVED  
JUL 17 2013  
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Frederick Jermaine Harris v. State of South Carolina

Dear Ms. Kitchings:

Enclosed are an original and six copies of the Memorandum in Support to Remand Petitioner's Case to Reconstruct the Record of His First PCR Hearing Held on April 8, 2005, in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,

Robert M. Pachak  
Appellate Defender

RMP/pcm

Enclosure

cc: Karen Ratigan, Esquire  
Mr. Frederick Jermaine Harris



ALAN WILSON  
ATTORNEY GENERAL

July 26, 2013

Honorable Jenny A. Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: **Frederick Jermaine Harris v. State**  
**Appellate Case No. 2011-194532**

RECEIVED

JUL 26 2013

SC Court of Appeals

Dear Ms. Kitchings:

I am in receipt of a letter from this Court, dated July 11, 2013, requesting a memorandum for the above-captioned case which addresses whether the Court should remand this case for a reconstruction of the 2005 post-conviction relief (PCR) hearing.

I.

Harris was found guilty after a jury trial on charges of conspiracy, first-degree burglary, and two counts of armed robbery. On December 3, 2002, the Honorable John W. Kittredge levied a twenty-seven (27) year sentence. This Court dismissed his appeal (filed pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967)) on March 30, 2004.

II.

Harris filed his first PCR application on September 10, 2004 (2004-CP-23-5954). A hearing was held on April 8, 2005 and the Honorable Larry W. Patterson issued an order of dismissal that was filed on May 18, 2005. Neither a post-trial motion nor a notice of appeal were filed.

Harris filed his second PCR application on August 17, 2010 (2010-CP-23-6750). A hearing was held on May 12, 2011 and the Honorable G. Edward Welmaker issued an order granted a review of the issues related to the first PCR application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). This order was filed on June 16, 2011.

III.

On February 8, 2012, opposing counsel filed the following documents with the South Carolina Supreme Court: (1) a petition for writ of certiorari and (2) a Johnson<sup>a</sup> petition for writ of certiorari pursuant to Austin v. State.

IV.

The State submits the matter does not need to be remanded in order to reconstruct the 2005 PCR hearing. Initially, it should be noted that opposing counsel filed a Johnson petition from the order in the 2005 PCR hearing. As such, the implication is that there were no meritorious issues in the order of dismissal from that case. In addition, as a motion to alter or amend judgment pursuant to Rule 59(e), SCRPC was not filed, the presumption must be that the order of dismissal addressed all of the issues raised at the PCR hearing. As the order of dismissal contains both a recitation of the testimony from the hearing and rulings upon the issues, it should be viewed to be the best evidence of what transpired at the PCR hearing.

As the PCR hearing was held more than eight (8) years ago, it is doubtful either that the parties and witness would recall what transpired at the hearing or would have notes documenting the hearing. Further, the issues addressed in the order of dismissal are extremely straightforward and, in large part, refuted by the trial transcript and various statutes. The State submits a reconstructed transcript would not be beneficial in determining whether there was merit to these issues.

Accordingly, the State's position is that this matter should not be remanded to reconstruct the April 8, 2005 PCR hearing. If there are any questions or comments, please do not hesitate to contact me at any time.

Sincerely,

  
Karen C. Ratigan  
Assistant Deputy Attorney General

cc: Robert M. Pachak, Esquire

---

<sup>a</sup> Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

# The South Carolina Court of Appeals

Frederick Jermaine Harris, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-194532

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## ORDER

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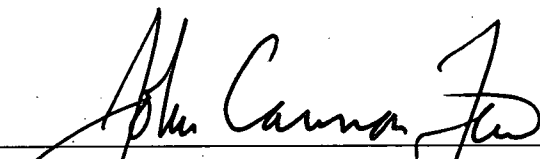
We deny Petitioner's motion to remand for reconstruction of the record from his first post-conviction relief (PCR) hearing because the materials in the appendix are sufficient for us to conduct a meaningful review of the first PCR court's order, pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988). See *Koon v. State*, 358 S.C. 359, 595 S.E.2d 456 (2004) (denying the petitioner's request to remand to reconstruct the record of the PCR hearing because the information before the court was sufficient to resolve the issues raised by the petitioner), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).


Petitioner's application for PCR was denied by Judge Larry R. Patterson. No notice of appeal was filed. Petitioner now seeks a writ of certiorari from an order issued by Judge G. Edward Welmaker granting Petitioner a belated review of Judge Patterson's order pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

We grant the petition for a writ of certiorari from Judge Welmaker's order, dispense with further briefing, and proceed with an *Austin* review of Judge Patterson's order.

Petitioner's counsel asserts the petition is without merit and requests permission to withdraw from further representation. Petitioner has filed a pro se petition.

After careful consideration of the entire appendix as required by *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition from Judge Patterson's order and grant counsel's request to withdraw.

  
\_\_\_\_\_ C.J.

  
\_\_\_\_\_ J.

  
\_\_\_\_\_ J.

Columbia, South Carolina

cc: Robert M. Pachak  
Karen Christine Ratigan  
Frederick Jermaine Harris

**FILED**

12/18/13



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

January 03, 2014

The Honorable Paul B. Wickensimer  
Courthouse  
305 E North St  
Greenville SC 29601-2121

## REMITTITUR

Re: Frederick Jermaine Harris v. State  
Lower Court Case No. 2010CP2306750  
Appellate Case No. 2011-194532

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

Enclosure

cc: Robert M. Pachak, Esquire  
Karen Christine Ratigan, Esquire  
Frederick Jermaine Harris, 00267210  
The Honorable G. Edward Welmaker