

THE SUPREME COURT OF SOUTH CAROLINA  
RICKY DARRÉN SANDERS RESPONDANT

RECEIVED

APR 26 2012

S.C. SUPREME COURT

THE STATE

PETITIONER

THE HONORABLE R. FERRELL COTHRAN, JR.  
SUMTER COUNTY  
TRIAL COURT CASE NO. 2006-GS-43-00336

CERTIFICATE OF SERVICE

RE: ABOVE STATED RESPONDANT  
RICKY DARRÉN SANDERS #327835  
IS FILING A MOTION AND PETITION  
TO APPELLANT DEFENSE ATTORNEY ELIZABETH FRANKLIN  
TO HONOR HIS NUMEROUS MOTIONS FOR FILING OF  
APPELLANT BAIL PURSUANT TO COURT RULES 227 (K)

I RICKY DARRÉN SANDERS HEREBY AM FILING A MOTION AND PETITION  
TO MY LEGAL COUNCIL ELIZABETH FRANKLIN, PERTAINING TO RESPONDANT'S  
LEGAL AND CONSTITUTIONAL RIGHT TO HAVE A MOTION FOR BAIL PURSUANT  
TO RULES OF THE COURT 227 (K) BE FILED IN BEHALF OF MR. SANDERS R.D.  
THIS IS RESPONDANT'S FOURTH ATTEMPT TO TRY TO HAVE HIS COUNCIL  
ELIZABETH FRANKLIN - BEST MOTION FOR BAIL IN RESPONDANT'S BEHALF.  
IN THE PAST YEAR RICKY DARRÉN SANDERS HAS VERBALLY REQUESTED FOR  
COUNCIL TO FILE MOTION FOR BAIL PURSUANT TO RULE 227 (K) ON THREE OCCASIONS  
AND NOW THIS IS THE FOURTH IN FORM OF ABOVE STYLED MOTION AND PETITION.  
IM FILING THIS MOTION AND PETITION CERTIFICATE OF SERVICE TO THE FOLLOWING  
ELIZABETH FRANKLIN - BEST, DANIEL E. STEARHOUSE CLERK OF COURT AND TO  
THE SUPREME COURT OF S.C. FOR FILING PURPOSES AND IM MOTIONING  
FOR APPELLANT ATTORNEY TO FILE MOTION AND RESPOND WITHIN  
TEN (10) DAYS RESPECTFULLY!

RESPECTFULLY  
Ricky D Sanders

COLUMBIA, S.C.  
APRIL 9, 2012

CC: ELIZABETH FRANKLIN - BEST (APPELLANT DEFENDER)  
DANIEL E STEARHOUSE (CLERK OF COURT)  
THE SUPREME COURT OF S.C.

On the 19th day of April, 2012  
Susan A. Frye

RICKY DARREN SANDERS, SR. #327835  
WATER UNIT, Rm 185  
1460 BROADRIVER ROAD  
COLUMBIA, S.C. 29210



**RECEIVED**

APR 25 2012

BRCI  
MAILROOM

THE SUPREME COURT OF S.C.  
DANIEL E. STEAROUSE, CLERK OF COURT  
POST OFFICE BOX 11330  
COLUMBIA, S.C. 29211

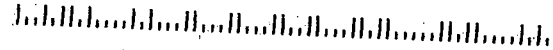
SCDC

JUN 30 2012

MAIL ROOM

**WATEREE UNIT**

29211133030



# The Supreme Court of South Carolina

The State,

Petitioner,

v.

Ricky Darren Sanders,

Respondent.

The Honorable R. Ferrell Cothran, Jr.

Sumter County

Trial Court Case No. 2006-GS-43-00336

---

## ORDER

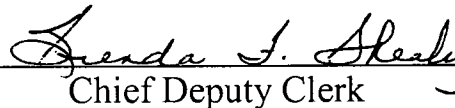
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For good cause shown, the request for an extension to serve and file the Brief of Respondent is granted and extended until May 7, 2012. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions 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

  
Chief Deputy Clerk

Columbia, South Carolina

April 6, 2012.

cc: Assistant Attorney General William M. Blich, Jr.  
Ernest Adolphus Finney, III, Esquire  
Appellate Defender Elizabeth A. Franklin-Best  
Mr. Ricky Darren Sanders, #327835

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_

Certiorari to Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

\_\_\_\_\_

Opinion No. 2010-UP-362 (S.C. Ct. App. filed 7/12/2010)

06-GS-43-0336

\_\_\_\_\_

RECEIVED

APR - 6 2012

S.C. Supreme Court

(3)

THE STATE,

RESPONDENT,

V.

RICKY DARREN SANDERS,

APPELLANT

\_\_\_\_\_  
PETITION FOR EXTENSION OF TIME  
IN WHICH TO FILE BRIEF OF RESPONDENT  
\_\_\_\_\_

Counsel for Ricky Darren Sanders respectfully petitions this Court for a **final 30 days, until May 6, 2012**, to file the brief of respondent on behalf of her client. In support of this petition, counsel shows:

1. The petition brief of respondent is due today. The Court has granted two previous extensions.
2. Counsel respectfully submits that good cause exists to warrant the granting of an additional extension of time.

3. Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. *See* Evitts v. Lucey, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair). *See also* Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); South Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA maximum caseload standards of 25 appeals). *See generally* Polk County v. Dodson, 454 U.S. 312 (1981); Gideon v. Wainwright, 372 U.S. 335 (1963). Counsel has prioritized her caseload to complete the cases with the largest number of extensions first.

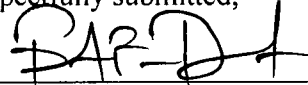
4. Counsel diligently works to keep up with her case load. Counsel filed the petition for writ of certiorari from the Court of Appeals in State v. James P. Austin with this Court on March 28, 2012. Counsel also filed the petition for writ of certiorari from the Court of Appeals in State v. Michael D. Jackson with this Court on March 28, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Cedric Flood with the Court of Appeals on March 27, 2012. Counsel also filed the petition for writ of certiorari in Reina Garrido v. State with this Court on March 27, 2012. Counsel filed the petition for writ of certiorari from the Court of Appeals in State v. Reico Lamont Welch with this Court on March 19, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Marquis Breeland with the Court of Appeals on March 14, 2012. Counsel also filed the initial brief of appellant and designation of matter in State v. Ervin Outz with the Court of Appeals on March 14, 2012. Counsel filed the

initial brief of appellant and designation of matter in State v. Anthony Hackshaw, which included seven issues on appeal, with the Court of Appeals on March 8, 2012.

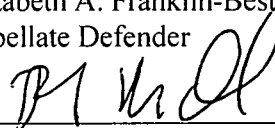
5. In the month of April, counsel is assigned to file 24 briefs and writ of certioraris.
6. As indicated by the signature below, the Attorney General's Office does not oppose the request.
7. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a **final 30 day extension, until May 6, 2012** in which to file her client's brief of respondent.

Respectfully submitted,



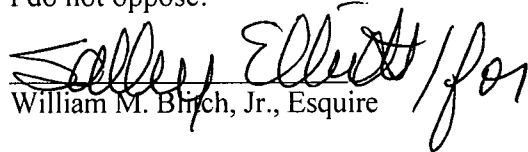
Elizabeth A. Franklin-Best  
Appellate Defender



Robert M. Dudek  
Chief Appellate Defender

April 6, 2012

I do not oppose:



William M. Birch, Jr., Esquire

# The Supreme Court of South Carolina

The State,

Petitioner,

v.

Ricky Darren Sanders,

Respondent.

The Honorable R. Ferrell Cothran, Jr.  
Sumter County  
Trial Court Case No. 2006-GS-43-00336

---

## ORDER


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For good cause shown, the request for an extension to serve and file the Brief of Respondent is granted and extended until April 6, 2012. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

March 9, 2012

cc: Assistant Attorney General William M. Blich, Jr.  
Ernest Adolphus Finney, III, Esquire  
Mr. Ricky Darren Sanders, #327835  
Appellate Defender Elizabeth A. Franklin-Best

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

\_\_\_\_\_  
Opinion No. 2010-UP-362 (S.C. Ct. App. filed 7/12/2010)  
06-GS-43-0336  
\_\_\_\_\_

RECEIVED  
MAR 7 2012  
S.C. Supreme Court  
(2)

THE STATE,

PETITIONER,

v.

RICKY DARREN SANDERS,

RESPONDENT

\_\_\_\_\_  
PETITION FOR EXTENSION OF TIME  
IN WHICH TO FILE THE BRIEF OF RESPONDENT  
\_\_\_\_\_

Counsel for Ricky Darren Sanders respectfully petitions this Court for an additional 30 days to file the brief of respondent on behalf of her client. In support of this petition, counsel shows:

1. The brief of respondent is due today. The Court has granted one previous extension.
2. Counsel respectfully submits that good cause exists to warrant the granting of an additional extension of time.

3. Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. *See* Evitts v. Lucey, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair). *See also* Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); South Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA maximum caseload standards of 25 appeals). *See generally* Polk County v. Dodson, 454 U.S. 312 (1981); Gideon v. Wainwright, 372 U.S. 335 (1963). Counsel has prioritized her caseload to complete the cases with the largest number of extensions first.

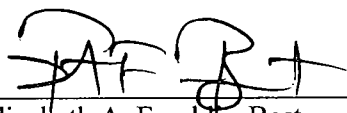
4. Counsel diligently works to keep up with her case load.

5. In the month of March, counsel is assigned to file 22 briefs and writ of certioraris.

6. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a 30 day extension in which to file her client's brief of respondent.

Respectfully submitted,

  
Elizabeth A. Franklin-Best  
Appellate Defender

March 7, 2012

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED  
MAR 7 2012  
S.C. Supreme Court

\_\_\_\_\_  
Certiorari to Sumter County  
R. Ferrell Cothran, Jr., Circuit Court Judge  
\_\_\_\_\_

Opinion No. 2010-UP-362 (S.C. Ct. App. filed 7/12/2010)  
06-GS-43-0336  
\_\_\_\_\_

THE STATE,

PETITIONER,

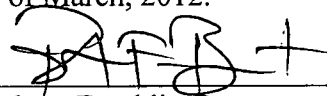
V.

RICKY DARREN SANDERS,

RESPONDENT

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

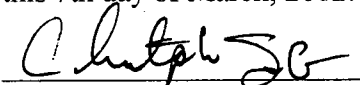
The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the brief of respondent in the above referenced case has been served upon William M. Blicht, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of March, 2012.



\_\_\_\_\_  
Elizabeth A. Franklin-Best  
Appellate Defender

ATTORNEY FOR APPELLANT.

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

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: May 16, 2021





# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

 ORIGINAL

Division of Appellate Defense  
1330 Lady Street, Suite 401  
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

February 6, 2012

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

RECEIVED  
FEB 06 2012  
S.C. Supreme Court

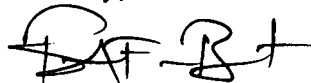
Re: State v. Ricky Darren Sanders

Dear Mr. Shearouse:

The Brief of Respondent is due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the petition.

By copy of this letter, I am informing William M. Blich, Jr., Esquire, of the Attorney General's Office, of my request.

Sincerely,



Elizabeth A. Franklin-Best  
Appellate Defender

EAF/cms

cc: William M. Blich, Jr., Esquire



ALAN WILSON  
ATTORNEY GENERAL

RECEIVED

JAN - 6 2012

S.C. Supreme Court

January 6, 2012

**VIA HAND DELIVERY**

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

Re: The State v. Ricky Darren Sanders

Dear Mr. Shearouse:

Enclosed are the original and fourteen copies of the Brief of Petitioner, with proof of service, in the above-referenced case.

Sincerely,

William M. Blich, Jr.  
Assistant Attorney General

Enclosures

cc: Elizabeth A. Franklin-Best, Esquire (w/ enclosures)  
Victim Services (w/ enclosure)

# The Supreme Court of South Carolina

The State,

Petitioner,

v.

Ricky Darren Sanders,

Respondent.

The Honorable R. Ferrell Cothran, Jr.  
Sumter County  
Trial Court Case No. 2006-GS-43-00336

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## ORDER

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For good cause shown, the request for an extension to serve and file Brief of Petitioner is granted and extended until January 6, 2012. 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 *Juenda J. Shealy*  
*Chief Deputy* Clerk

Columbia, South Carolina

December 8, 2011

cc: Attorney General Alan Wilson  
Chief Deputy Attorney General John W. McIntosh  
Assistant Deputy Attorney General Salley W. Elliott  
Assistant Attorney General William M. Blich, Jr.  
Cecil Kelly Jackson, Esquire  
Mr. Ricky Darren Sanders, #327835  
Appellate Defender Elizabeth A. Franklin-Best

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals

Appeal From Sumter County

Hon. R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED

DEC - 7 2011

S.C. Supreme Court

The State,

Petitioner,

v.

Ricky Darren Sanders,

Respondent.

Opinion No. 2010-UP-362 (S.C. Ct. App. filed July 12, 2010)

**MOTION FOR SECOND EXTENSION OF TIME  
TO SERVE AND FILE BRIEF OF PETITIONER**

Petitioner, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

The Brief of Petitioner was due to be served and filed on December 7, 2011.

II.

Pursuant to RE: Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings: Order of the South Carolina Supreme Court dated March 18, 2009, the State moves for a second extension in the above referenced appeal. Due to work required in other cases pending before this Court and the South Carolina Supreme Court, I am unable to complete this Brief on time. In the past few weeks, the undersigned has submitted Initial Briefs in State v. Webb, State v. Saunders, State v. Kelly, State v. Cameron, State v. Leggette, State v. Harrison, State v. Burton, and State v. Hawes. The undersigned

has completed a Petition for Writ of Certiorari in In the Matter of the Care and Treatment of Way, State v. Watkins State v. Hercheck, and State v. Sawyer, as well as a Return to a Petition for Writ of Certiorari in In the Matter of the Care and Treatment of Thomas Simmons. The undersigned has prepared for and participated in oral argument before the South Carolina Supreme Court in State v. Sterling, State v. Whitner, State v. Latimore, and State v. Binnarr, as well as in the Court of Appeals in State v. Phillip Miller, State v. Harlin, State v. Collins, and In the Matter of the Care and Treatment of Williams. Finally, the undersigned was out of the office for a week as a result of the death of my grandmother and travel for an out of state funeral.

III.

This extension request is not intended for purposes of delay, but rather to ensure that the Brief is properly researched and prepared. I would therefore request a second extension of time within which to serve and file the Brief of Petitioner.

WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion, and extend the deadline for the service and filing of the Brief of Petitioner in this case for thirty (30) days from the date such relief is granted; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

WILLIAM M. BLITCH, JR.  
Assistant Attorney General



WILLIAM M. BLITCH, JR.  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3727

ATTORNEYS FOR PETITIONER

December 7, 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to the Court of Appeals  
Appeal From Sumter County  
Hon. R. Ferrell Cothran, Jr., Circuit Court Judge

The State,

Petitioner,

v.

Ricky Darren Sanders,

Respondent.

\_\_\_\_\_  
Opinion No. 2010-UP-362 (S.C. Ct. App. filed July 12, 2010)

\_\_\_\_\_  
**PROOF OF SERVICE**  
\_\_\_\_\_

I, ELLEN R. DuBOIS, certify that I have served the within Motion for Second Extension of Time to Serve and File Brief of Petitioner on Respondent by depositing copies of the same in the United States mail, postage prepaid, addressed to:

Elizabeth A. Franklin-Best, Esquire  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.  
This 7<sup>th</sup> day of December, 2011



\_\_\_\_\_  
ELLEN R. DuBOIS  
Legal Assistant  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727



ALAN WILSON  
ATTORNEY GENERAL

December 7, 2011

RECEIVED

DEC - 7 2011

S.C. Supreme Court

**VIA HAND DELIVERY**

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

Re: State v. Ricky Darren Sanders

Dear Mr. Shearouse:

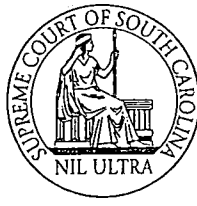
Enclosed please find the original and six (6) copies of the State's Motion for Second Extension of Time to Serve and File Brief of Petitioner along with proof of service for filing in the above-referenced appeal.

Sincerely,

William M. Blich, Jr.  
Assistant Attorney General

Enclosures

cc: Elizabeth A. Franklin-Best, Esquire  
Victim Services



# 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

November 17, 2011

Mr. Ricky Darren Sanders, #327835  
Broad River Correctional Ctr.  
Wateree Unit, Rm 185B  
4460 Broad River Road  
Columbia, SC 29210

Re: The State v. Sanders, Ricky Darren

Dear Mr. Sanders:

This responds to your Motion and Petition of Appellant to Authority to Grant Bail. Since you are represented by counsel in this matter, no action will be taken on your pro se letter. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

Any concerns you have about this matter should be raised to the Division of Appellate Defense. The address for that Office is P.O. Box 11589, Columbia, SC 29211, and their phone number is 803-734-1343.

Very truly yours,

CLERK

DES/lda

cc: Attorney General Alan Wilson  
Chief Deputy Attorney General John W. McIntosh  
Assistant Deputy Attorney General Salley W. Elliott  
Assistant Attorney General William M. Blich, Jr.  
Cecil Kelly Jackson, Esquire  
Appellate Defender Elizabeth A. Franklin-Best

DEAR, CLERK OF COURT PLEASE FILE MOTION FOR BOND  
AND MAIL FILED COPIES BACK TO APPELLANT FOR SERVICING  
FILED COPIES TO ALL PARTIES

APPELLANT HAS MAILED A SELF ADDRESSED ENVELOPE  
FOR FILED COPIES TO BE MAILED AT NO COST  
TO THE COURTS

THANK YOU CLERK OF COURT

X ~~Ricky D. Dandrea~~

RICKY DARREN SANDERS  
 WATERKE UNIT, RM 185B  
 BROADRIVER CORRECTIONAL CTR.  
 COLUMBIA, S.C. 29201

SALLEY W. ELLIOT, ESQUIRE  
 AT REMBERT DENNIS BLDG  
 519, 1000 ASSEMBLY STREET,  
 COLUMBIA, S.C. 29201

**RECEIVED** ATTN: DANIEL E. SHEAROUSE (CLERK OF COURT)

NOV 17 2011

S.C. Supreme Court

RE: S.C. STATE SUPREME COURT

THE MOTIONING AND PETITION OF APPELLANT

RULE 227(K) THE AUTHORITY TO GRANT BAIL WILL BE EXERCISED WITH CAUTION AND IN EXCEPTIONAL CASES IN DECIDING WHETHER TO EXERCISE BAIL WHEN THE PROBABILITY THE APPELLANT WILL PREVAIL ON APPELLANT REVIEW AND THE NATURE OF RELIEF HE OR SHE WILL PREVAIL. REVERENCE UNPUBLISHED OPINION NO. 2010-UP-362

THE APPELLANT RICKY DARREN SANDERS WAS INDICTED BY THE SUMTER COUNTY GRAND JURY OF CRIMINAL SEXUAL CONDUCT, 1ST DEGREE, AND KIDNAPPING (2006-GS-43-336). APPELLANT WAS TRIED BEFORE THE HONORABLE R. FERRELL-COTHRAN, JR. AND A JURY BETWEEN APRIL 14TH AND 17TH 2008. HE WAS REPRESENTED BY ERNEST "CHIP" FINNEY, ESQUIRE. APPELLANT WAS FOUND NOT GUILTY OF KIDNAPPING AND AS A RESULT OF CRITICAL VIOLATIONS AND ERRORS BY COURT GUILTY OF CSC 1ST AND SENTENCED TO 30 YEARS. THE COURT ERRORED 1.) BY NOT HONORING RULE 609 (A)(2) SCRE EVIDENCE THAT ALLEGED VICTIM HAD BEEN CONVICTED OF A CRIME SHALL BE ADMITTED IF IT INVOLVES DISHONESTY OR -

FALSE STATEMENT REGARDLESS OF THE PUNISHMENT.  
2.) § 5-8.1 RELATED OFFENSES OF AND STATUTES (ANNOTATIONS)  
ELEMENTS. PRIOR FALSE ALLEGATIONS (ACCUSATIONS)  
THE CIRCUMSTANCES UNDER WHICH PRIOR FALSE ALLEGATIONS  
BY THE COMPLAINANT ARE ADMISSIBLE WERE DISCUSSED IN  
STATE VS. BOITER 302 S.C. 381, 396 S.E. 2d 364 - (1990)  
WHICH CONSTITUTES CLEARLY AN ELEMENT IN A CSC<sup>1ST</sup> TRIAL  
ESPECIALLY SINCE THE CASE WAS MERELY HE SAY / SHE SAY.

3.) COURT REFUSED TO CHARGE THE JURY WITH CONSENT  
WHICH IS CLEARLY AN ELEMENT OF CSC<sup>1ST</sup>, THE COURT TOTALLY  
DISREGARDED CONSENT AS AN ISSUE, ATTORNEY ERNEST FINNEY  
REPEATEDLY MOTIONED FOR JUDGE TO CHARGE THE ELEMENT  
OF CONSENT TO JURY WHICH REPEATEDLY ASKED COURT TO  
CHARGE STATUTES AND ELEMENTS OF CSC<sup>1ST</sup> TO JURY AND  
JUDGE REFUSED! 4.) JURY FOUND APPELLANT NOT GUILTY  
OF KIDNAPPING WHICH CLEARLY IS A VITAL ELEMENT OF  
CSC<sup>1ST</sup>, BECAUSE THEY WERE PROPERLY CHARGED ON THE  
KIDNAPPING ELEMENTS AND ONE MUST KIDNAP TO COMMIT  
CSC<sup>1ST</sup> BECAUSE IT WOULD BE AGAINST ONE'S WILL, SO THEREFORE  
CONSENT WAS NEVER CHARGED SO COUNTO BE WIEGHTED.

5.) SOLICITOR IN CLOSING ARGUMENTS SHIFTED BURDEN OF  
PROOF ON APPELLANT BY SAYING IT WASNT CONSENTUAL,  
BUT COURT WOULDN'T ALLOW APPELLANT TO USE CONSENT  
AS DEFENSE NOR CHARGE JURY WITH CONSENT AS ELEMENT.  
THIS WAS A CLEAR HE SAY SHE SAY CASE WITH A CONVICTED PERJURER  
AND LYER TO LAW ENFORCEMENT AND THE MEDICAL EXAMINER  
TESTIFIED SHE FOUND NOTHING WRONG WITH ALLEGED VICTIM  
THIS IS AN EXCEPTIONAL CASE!

IN THE COURT OF APPEALS

(S.C. STATE SUPREME COURT)

(MOTION / PETITION FOR APPELLANT BAIL)

APPEAL FROM SUMTER COUNTY

R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

RECEIVED

NOV 17 2011

S.C. SUPREME COURT

THE STATE RESPONDANT

V.S.

RICKY DARREN SANDERS APPELLANT

CERTIFICATE OF SERVICE

THE UNDERSIGNED APPELLANT HEREBY CERTIFIES THAT A COPY OF THE MOTION / PETITION FOR APPELLANT BAIL AND DESIGNATION OF ABOVE MATTER HAS BEEN SERVICED TO THE FOLLOWING 1.) ATTORNEY SALLEY W. ELLIOT, ESQUIRE AT REMBERT DENNIS' BLDG, RM 519, 1000 ASSEMBLY ST. COLUMBIA, S.C. 29201. 2.) ATTORNEY ELIZABETH A. FRANKLIN-BEST APPELLANT DEFENDER. 3.) SUPREME COURT DANIEL E SHEAROUSE CLERK OF COURT, POST OFFICE BOX 11330, COLUMBIA, S.C. 29211

SUBSCRIBED AND SWORN TO BE BEFORE ME

THIS DAY July 13, 2009.

*[Signature]*

*Ricky Sanders*

*[Signature]*

My Commission Expires August 25, 2015

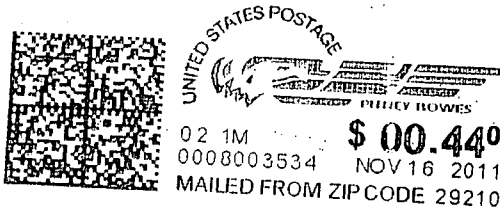
THE COURT OF APPEALS

REFERENCE UNPUBLISHED OPINION NO. 2010-UP-362

SUBMITTED JUNE 1, 2010 - FILED JULY 12, 2010

RICKY DARREN SANDERS, SR. # 327835  
WAT. UNIT RM 185  
4460 BROADRIVER ROAD  
COLUMBIA, S.C. 29210

THE SUPREME COURT OF S.C.  
CLERK OF COURT  
P.O. BOX 11330  
COLUMBIA, S.C. 29211

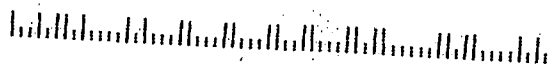


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# The Supreme Court of South Carolina

The State,

Petitioner,

v.

Ricky Darren Sanders,

Respondent.

The Honorable R. Ferrell Cothran, Jr.  
Sumter County  
Trial Court Case No. 2006-GS-43-00336

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## ORDER

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The request for an extension to Brief of Petitioner and additional copies of the Appendix is granted and extended until December 7, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

November 10, 2011

cc: Attorney General Alan Wilson  
Chief Deputy Attorney General John W. McIntosh  
Assistant Deputy Attorney General Salley W. Elliott  
Assistant Attorney General William M. Blich, Jr.  
Cecil Kelly Jackson, Esquire  
Appellate Defender Elizabeth A. Franklin-Best



ALAN WILSON  
ATTORNEY GENERAL

November 9, 2011

**VIA HAND-DELIVERY**

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

1  
**RECEIVED**  
NOV -9 2011  
S.C. Supreme Court

Re: State v. Ricky Sanders

Dear Mr. Shearouse:

The Brief of Petitioner in the above appeal was due to be served and filed November 7, 2011. However, due to a heavy workload, I am requesting a 30-day extension to file this document out of time. This is the first extension request at this stage in the process, and it is not intended for the purpose of delay.

I appreciate your consideration of this request and ask that you hold the filing time in abeyance during the time in which this request is pending.

By copy of this letter, I am informing counsel for Appellant of this extension request.

Sincerely,

William M. Blich  
Assistant Attorney General

WMB/erd

cc: Elizabeth A. Franklin-Best, Esquire  
Victim Services



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
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October 6, 2011

Attorney General Alan Wilson  
Chief Deputy Attorney General John W. McIntosh  
Assistant Deputy Attorney General Salley W. Elliott  
Assistant Attorney General William M. Blicht, Jr.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Re: The State v. Sanders, Ricky Darren

Dear Counsel:

Enclosed is the Order granting your Petition for Writ of Certiorari in the above entitled matter.

It will be necessary for you to furnish this office with an additional thirteen (13) copies of the appendix within thirty (30) days from the date of this letter.

Brief of Petitioner should be served and filed on or before November 7, 2011. The brief is not properly filed until we have proof of service.

Brief of Respondent should be served and filed within thirty (30) days after petitioner's brief is filed. We must have proof of service. Any reply brief should be served and filed within ten (10) days after filing of respondent's brief.

Very truly yours,



CLERK

DES/lda

cc: Cecil Kelly Jackson, Esquire  
Appellate Defender Elizabeth A. Franklin-Best  
The Honorable Tanya Gee

# The Supreme Court of South Carolina

The State,

Petitioner,

v.

Ricky Darren Sanders,


Respondent.


---

## ORDER

---

We grant the petition for a writ of certiorari to review the Court of Appeals' decision in State v. Sanders, Op. No. 2010-UP-362 (S.C. Ct. App. filed July 12, 2010). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

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

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

Columbia, South Carolina

October 6, 2011

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals  
Appeal From Sumter County  
Hon. R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED

SEP 27 2010

S.C. SUPREME COURT

The State,

Petitioner,

v.

Ricky Darren Sanders,

Respondent.

Opinion No. 2010-UP-362 (S.C. Ct. App. filed July 12, 2010)

**PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS**

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JOHN W. McINTOSH  
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ATTORNEYS FOR PETITIONER

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## **CERTIFICATION OF COUNSEL**

Counsel for Petitioner hereby certifies that a Petition for Rehearing was filed in the South Carolina Court of Appeals and denied by Order filed August 27, 2010.

### **STATEMENT OF QUESTIONS PRESENTED**

- I. The Court of Appeals erred in finding the trial court abused its discretion in excluding a remote conviction.
  
- II. The Court of Appeals failed to address the issue of whether the trial court properly charged the jury on the law of the case. Because this Court should reverse the decision of the Court of Appeals regarding the excluded prior conviction, the trial court's jury charge should be addressed and affirmed.

## STATEMENT OF THE CASE

Respondent was indicted on charges of criminal sexual conduct in the first degree and kidnapping. Respondent case was called for trial April 14, 2008. Prior to trial, the State sought to exclude a remote conviction for filing a false police report. The conviction occurred in 1997. (R.2).

The trial court found the conviction was more than ten years old at the time of trial and, therefore, was a remote conviction. The court indicated it would not allow the conviction to be used for impeachment purposes. The trial court found it would allow convictions within the ten year time limit, but did not believe the remote convictions should be admitted. (R.4-5; 7; 10-12). The trial court allowed the victim to be impeached by convictions which fell within the ten year time limit of Rule 609(b), such as the victim's shoplifting charge. (R.10-12). Respondent filed a timely appeal.

The South Carolina Court of Appeals reversed the trial court's decision excluding the remote conviction. State v. Sanders, Op. No. 2010-UP-362 (S.C. Ct. App. filed July 12, 2010). The State served and filed a Petition for Rehearing on July 19, 2010, and the Court of Appeals denied the Petition on August 27, 2010. This Petition for Writ of Certiorari follows.

## ARGUMENT

### **I. The Court of Appeals erred in finding the trial court abused its discretion in excluding a remote conviction.**

The Court of Appeals erred in finding the trial court abused its discretion in excluding Respondent's remote 1997 conviction for filing a false police report. The issue was not properly preserved. Further, the conviction was properly excluded under Rule 609(b), and Respondent never argued it fell within the exception to that Rule. Finally, the trial court never wavered from its finding that the conviction was too remote for admission.

#### **Preservation**

First, the issue as raised by Respondent to the Court of Appeals was not properly preserved for review on appeal. Respondent's argued at trial that the ten-year rule should begin in 2005 when Respondent was arrested and not in 2008 when the trial occurred. (R.3-5; 8-9). He never maintained the trial court should allow the remote convictions into the record based on the "interest of justice" exception to Rule 609(b), SCRE as he argued on appeal. Once the court acknowledged the ten-year time limit and found the convictions were remote in time, Respondent never contend the convictions were admissible under Rule 609(b)'s exception to the ten-year rule. Because Sanders merely argued the ten-year time limit should start at a time other than trial, any argument that the conviction should be admitted in the "interest of justice" under the Rule 609(b) exception is not properly before this Court. See State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (defendant may not argue one ground below and another on appeal); State v. Byram, 326 S.C. 107, 485

S.E.2d 360 (1997) (party cannot argue one ground below and then argue different ground on appeal).

**Rule 609(b), SCRE**

The admission or exclusion of evidence falls within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. State v. Morris, 376 S.C. 189, 205, 656 S.E.2d 359, 368 (2008). As well, the scope of cross-examination is within the discretion of the trial court, and the court's decision will not be reversed on appeal absent a showing of prejudice. State v. Colf, 337 S.C. 622, 625, 525 S.E.2d 246, 247-48 (2000).

Pursuant to Rule 609(b), SCRE:

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

Rule 609(b), SCRE (emphasis added).

Rule 609(b) creates a presumption that remote convictions are inadmissible. See State v. Bryant, 369 S.C. 511, 516, 633 S.E.2d 152, 155 (2006). Further, in State v. Johnson, this Court explained the conviction or release from confinement must be within ten years of the date of trial. State v. Johnson, 363 S.C. 53, 57, 609 S.E.2d 520, 522 (2005). The trial court properly ruled the conviction was remote in time beyond the ten year limit imposed by Rule 609(b).

As a result of the trial court's correct ruling the conviction was remote and not admissible under Rule 609(b) absent an exception; the burden was on Respondent to demonstrate "in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect." Rule 609(b). Respondent never provided any evidence to satisfy this burden. Respondent did not even make an argument that the conviction should be admitted under the exception to Rule 609(b).

Respondent failed to meet his burden of demonstrating the conviction should be admissible for impeachment. See State v. Colf, 337 S.C. 622, 626-627, 525 S.E.2d 246, 248 (2000) (party seeking to admit remote conviction must overcome presumption the conviction is inadmissible). Respondent did not comply with the exception to Rule 609(b) because he did not provide the trial court with specific facts and circumstances of the conviction to enable the trial court to make a determination regarding whether the probative value of the offense substantially outweighs its prejudicial nature or whether its admission would be in the interest of justice. The record contains no evidence regarding the underlying facts and circumstances of the conviction so the trial court, even if he had been asked to consider the exception to Rule 609(b), was presented no facts on which to base his decision. See Colf, 337 S.C. at 627, 525 S.E.2d at 248 (factors to consider include 1. the impeachment value of the prior crime; 2. the point in time of the conviction and the witness's subsequent history; 3. the similarity between the past crime and the charged crime; 4. the importance of the testimony; 5. The centrality of the credibility issue). Respondent never offered any facts regarding the conviction during argument and made no proffer of the facts after he was

denied admission of the conviction. Accordingly, based on the record before the Court, Respondent cannot demonstrate how he was prejudiced by the exclusion of the conviction because he has not shown he was entitled to have the conviction admitted under the exception to Rule 609(b)'s presumption a remote conviction is inadmissible.

**Moral Turpitude**

The South Carolina Court of Appeals rests its decision on the fact the trial court veered off on a tangent related to whether the conviction is from a crime of moral turpitude or whether it carries a conviction beyond one year. The Court of Appeals found because the court stated the conviction would not have been admissible based on its sentence being less than one year, it abused its discretion by employing the wrong standard. The trial court consistently held the conviction was beyond the ten year time limit, and as a result, was too remote to be admitted. The trial court found it would allow convictions within the ten year time limit, but did not believe the remote convictions should be admitted. (R.4-5; 7; 10-12).

The trial court then allowed additional argument by Respondent's counsel regarding the admissibility of the conviction. The trial court never reversed its prior rulings that the ten year time limit under Rule 609(b) controlled. Instead, the trial court considered Rule 609(a), finding whether the crime was a crime of moral turpitude was not the appropriate standard and because the conviction carried a sentence of less than one year, it was not admissible. The trial court's confusion of the standards in Rule 609(a) and 609(b) does not demonstrate the trial court failed to properly exercise its discretion in refusing to admit the conviction.

The issue briefed on appeal was not presented to the trial court and is not properly preserved for review on appeal. Even if properly preserved, the conviction was beyond the ten-year time limit and under Rule 609(b) is presumed to be inadmissible. Respondent never argued or demonstrated any specific facts or circumstances of the conviction to satisfy the exception to Rule 609(b)'s ten-year limitation. Finally, while the trial court did veer on a tangent related to the old moral turpitude standard, the court remained consistent in its holding that the conviction was too remote for admission into evidence. Accordingly, this Court should grant the Petition for Writ of Certiorari as to this issue and find the Court of Appeals erred in holding the trial court abused his discretion in excluding the prior conviction.

**II. The Court of Appeals failed to address the issue of whether the trial court properly charged the jury on the law of the case. Because this Court should reverse the decision of the Court of Appeals regarding the excluded prior conviction, the trial court's jury charge should be addressed and affirmed.**

Respondent maintains the trial court erred in failing to charge the jury that the State had to prove Respondent had sexual intercourse with the victim without her consent. The issue, however, is not properly preserved for review on appeal because Respondent did not raise it after the court initially charged the jury. Further, the court charged the jury with the appropriate law in South Carolina so there is no error in the charge as given. Finally, the burden of proof was never shifted to Respondent to prove there was consent versus the State being required to prove the elements of criminal sexual conduct.

First, this issue is not properly preserved for review on appeal. Respondent did not request a charge on consent or object to the failure by the trial court to give the jury a charge on consent when first given the opportunity. After the court originally charged the jury, both sides were given the opportunity to raise any issues before the jury retired, but both the State and Defendant indicated they did not. (T.591-592; R. 73-74). As a result of Respondent's failure to contemporaneously object to the trial court's jury charge, the issue is not preserved for review. See State v. Knighton, 334 S.C. 125, 136-137, 512 S.E.2d 117, 123 (Ct. App. 1999) (failure to object to charge as given or to request additional charge when given opportunity to do so constitutes waiver of right to complain on appeal); Rule 20(b), SCRCrimP ("Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires,

but out of the hearing of the jury . . . . Failure to object in accordance with this rule shall constitute a waiver of objection”).

Further, the charge given was clearly sufficient to instruct the jury on the applicable law related to the charge of criminal sexual conduct. Generally, a trial court is required to charge only the current and correct law of South Carolina. State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006). A jury charge is correct if it contains the correct definition of the law when read as a whole. Rayfield, 369 S.C. at 119, 631 S.E.2d at 251. “The substance of the law is what must be charged to the jury, not any particular verbiage.” State v. Adkins, 353 S.C. 312, 318-19, 577 S.E.2d 460, 464 (Ct. App. 2003). On review of a jury charge, an appellate court considers the charge as a whole in view of the evidence and issues presented at trial. State v. Lee-Grigg, 374 S.C. 388, 406, 649 S.E.2d 41, 50 (Ct. App. 2007).

In State v. Cox, 274 S.C. 624, 266 S.E.2d 784 (1980), this Court addressed a similar argument posited by Respondent. In Cox, the Court found the definition of “aggravated coercion” provided in section 16-3-651 was “meant to provide that the sexual battery occurred under circumstances where the victim’s consent was lacking.” Id. at 628, 266 S.E.2d at 786. The Court found where the judge charged the statutory language and “[g]iven the adequacy of the statutory language, appellant’s request to charge was unnecessary” and found no error in the court’s refusal to charge lack of consent. Id.

In the instant case, the trial court fully explained the elements of criminal sexual conduct in the first degree. The trial court charged the jury with the applicable language from sections 16-3-651 and -652 of the South Carolina Code. (T.587-588; 596-597; R. 69-70; 78-79). The trial court properly explained Respondent can be found guilty only if the

jury concluded the State proved beyond a reasonable doubt that Respondent “used aggravated force to accomplish the sexual battery” or “the victim submitted to a sexual battery while the victim was also a victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar act.” (T.588; 597; R. 70; 79). Further, the court twice defined “aggravated force” pursuant to the definition provided in section 16-3-651(c) of the South Carolina Code. (T.588; 597; R. 70; 79). Specifically, the court stated: “Aggravated force means to use a physical force or physical violence of a high and aggravated nature to overcome the victim. This includes the threat of use of a deadly weapon.” (T.597; R. 79).

The definition of “aggravated force” is sufficient to apprise the jury regarding lack of consent. The definition, just like the definition of “aggravated coercion” in Cox, is “meant to provide that the sexual battery occurred under circumstances where the victim’s consent was lacking.” Cox, 274 S.C. at 628, 266 S.E.2d at 786. Accordingly, this Court should find the statutory language charged was sufficient and the trial court did not err in refusing to charge the jury regarding lack of consent.

Finally, nothing in the charge or during the case shifted the burden onto Respondent to prove consent or to prove his innocence. During his closing argument, Respondent’s counsel insinuated numerous times that the sex between Respondent and the victim was consensual. (T.534-545; R. 32-43). The State responded by indicating there was no evidence presented indicating consent. (T.557-560; 577; R. 55-58; 59).

The trial court charged the jury that the State had the burden to prove each and every element beyond a reasonable doubt. (T.580-582; R. 62-64). The trial court specifically stated: “A person charged with committing a criminal offense in South Carolina is never

required to prove himself or herself innocent.” (T.580; R. 62). The trial court also instructed the jury that they were responsible for making findings of fact and weighing the evidence presented. (T.578-579; R. 60-61).

Accordingly, this Court should find the issue regarding the jury charge is not properly preserved for review on appeal because Respondent did not object or offer a charge after the trial court first charged the jury. On the merits, the jury charges given by the trial court were sufficient and properly explained the substance of the law to be charged. A charge specifically related to lack of consent was not necessary given the clear definition of “aggravated force” in the statute and the trial court’s full instruction to the jury regarding sections 16-3-651 and -652. Because this Court should find the Court of Appeals erred in reversing the trial court’s exclusion of the victim’s remote conviction, this Court should grant the Petition for Writ of Certiorari and consider this issue which was not determined by the Court of Appeals.

## CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should grant the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

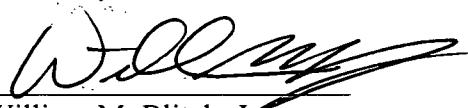
SALLEY W. ELLIOTT  
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BY:

  
William M. Blich, Jr.

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ATTORNEYS FOR PETITIONER

September 27, 2010

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals  
Appeal From Sumter County  
Hon. R. Ferrell Cothran, Jr., Circuit Court Judge

The State,

Petitioner,

v.

Ricky Darren Sanders,

Respondent.

Opinion No. 2010-UP-362 (S.C. Ct. App. filed July 12, 2010)

**PROOF OF SERVICE**

I, ELLEN DuBOIS, certify that I have served the within Petition For Writ of Certiorari to the Court of Appeals by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Elizabeth A. Franklin-Best, Esquire  
SC Commission on Indigent Defense  
Division of Appellate Defense  
P. O. Box 11589  
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.  
This 27<sup>th</sup> day of September, 2010.



ELLEN DuBOIS  
Legal Assistant  
Office of Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3727

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

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**RECEIVED**

NOV - 1 2010

Opinion No. 2010-UP-362 (S.C. Ct. App. filed 7/12/2010)

**S.C. Supreme Court**

06-GS-43-0336

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THE STATE,

PETITIONER,

V.

RICKY DARREN SANDERS,

RESPONDENT.

---

RETURN PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

---

ELIZABETH A. FRANKLIN-BEST  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
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ATTORNEY FOR RESPONDENT.

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QUESTION PRESENTED

I. Should this Court deny the state's petition for certiorari because the Court of Appeals correctly found the trial court judge abused his discretion in excluding the accuser's prior conviction for filing a false police report?

II. Should this Court deny the state's petition for certiorari on the issue of the Court of Appeal's decision not to address whether the trial court properly charged the jury on the law of the case (see State's Issue II) when the first issue is dispositive of the case?

## STATEMENT OF THE CASE

Ricky Darren Sanders was indicted by the Sumter County Grand Jury of Criminal Sexual Conduct, 1<sup>st</sup> degree, and Kidnapping. He was tried before the Honorable R. Ferrell Cothran, Jr. and a jury between April 14<sup>th</sup> and 17<sup>th</sup>, 2008. He was represented by Ernest Finney, Esquire. He was convicted of CSC, acquitted of Kidnapping, and sentenced to thirty (30) years in prison.

Respondent timely appealed his conviction and sentence, and the South Carolina Court of Appeals reversed and remanded his case in an unpublished opinion. State v. Sanders, No. 2010-UP-362 (filed July 12, 2010).

The State then filed a petition for rehearing which was denied by order dated August 27, 2010. The State then filed a petition for writ of certiorari to this Court on September 27, 2010.

This return to the state's petition for writ of certiorari timely follows.

ARGUMENT

I. This Court should deny the State's petition for certiorari because the Court of Appeals correctly found the trial court judge abused his discretion in excluding the accuser's prior conviction for filing a false police report.

The charges that formed the basis of the indictment occurred in 2002, but respondent was not charged until 2005. *See* Indictment; Tr. 91, ll. 15-17. It was then another three (3) years before the State tried the case. The accuser was convicted in 1995 of giving false information to police officers. Tr. 101, ll. 14-22.<sup>1</sup> Respondent sought to be able to impeach the victim with her prior convictions, including this one, but was not allowed:

THE COURT: How would that be admissible even if it was within the 10 years?

MR. FINNY: How would it be admissible? Because filing the false police report and lying to an officer would be a (sic) indication of her character and ability to be truthful and responsible . . .

THE COURT: I don't—I'm not—it carries how much time?

MS. FANT: Thirty days.

THE COURT: That's right. It's a magistrate court offense. It's less than a year. It wouldn't be admissible if it happened yesterday.

MR. FINNEY: I'd like to be noted on the record for that, Your Honor.

Tr. 101, l. 14 -- 102, l. 21.

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<sup>1</sup> At page 22, lines 16-18, it appears this conviction occurred in 1997.

The trial court judge applied the wrong analysis to this conviction, and respondent should have been allowed to use this conviction in this case that came down to his word versus the accuser's. It was error for the judge to hold otherwise. According to Rule 609(a)(2), SCRE:

[E]vidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

Rule 609(b) allows that:

Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

The judge, then, was empowered to consider whether the interests of justice would have allowed the use of this conviction. The court's failure to exercise this discretion, based on its misapprehension of 609(a)(2), amounts to an abuse of it. See CEL Products, LLC v. Rozelle, 357 S.C. 125, 591 S.E.2d 643 (Ct. App. 2004); State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981). He may have weighed two (2) factors, especially, that militated in favor of its use: (1) that the State waited three years to try the case that was already three (3) years old, thus, by their actions, placing this conviction beyond the statutory period, and (2) that the *only evidence* that Sanders raped the victim came from the victim herself. Her credibility, frankly, was the very heart of the State's case. And, apparently, the jury did not credit her testimony during the first trial. Tr. 26, ll. 6-10. In a he-said-she-said case such as this, information indicating that the victim had a history of lying to police officers cannot

possibly be harmless. Respondent was denied his right to a fair trial by the exclusion of this conviction.

The Court of Appeals correctly analyzed this issue, in this unpublished opinion, and found that the trial court erred in ruling the conviction inadmissible because it only carried a 30 day punishment. The trial court focused on the potential punishment, and never occasioned to determine if the conviction fell within the exception provided by rule 609 (b). The objection was fairly raised to the trial court judge who then erroneously concluded that counsel would not be allowed to impeach the accuser with this conviction. Respondent was prejudiced by his inability to cross-examine his accuser because the case was based solely on his word versus her word. Respectfully, respondent asked this court to deny the state's petition for writ of certiorari.

II. This Court should deny the state's petition for certiorari on the issue of the Court of Appeal's decision not to address whether the trial court properly charged the jury on the law of the case (see State's Issue II) because the first issue is dispositive of the case.

The trial court judge instructed the jury as follows as he initially charged the jury. The jury asked to hear the instruction again, and it was given to them again. Tr. 596, l. 10 -- 597, l. 20:

The defendant is charged with criminal sexual conduct in the first degree. The first element which the State must prove beyond a reasonable doubt is the defendant engaged in a sexual battery with the victim.

A sexual battery is sexual intercourse . . . except when the intrusion is accomplished for medical recognized treatment or diagnostic purposes.

If you find that the State has not proven beyond a reasonable doubt that a sexual battery occurred, you would stop deliberating and your verdict would be not guilty.

If you find that the sexual battery did occur, you must then decide whether the State has proven beyond a reasonable doubt that the defendant used aggravated force to accomplish the sexual battery.

Aggravated force means the use of a physical force or— or physical violence of a high and aggravated nature to overcome the victim. This includes the threat of using a deadly weapon.

The defendant—number two. The victim submitted to sexual battery while the victim was also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housekeeping, or-- I'm sorry—housebreaking or any other similar act or offense.

Tr. 587, l. 15-- 588, l. 19.

Respondent was also charged and tried on a count of Kidnapping, but he was acquitted of that charge. Tr. 616, ll. 21-25.

After the second charge was given, respondent discussed, at length, with the judge the fact that the charge did not include any language concerning the issue of consent. Tr. 598, l. 7-- 612, l. 14. Essentially, respondent's position was that the jury instruction was ambiguous as to the consent issue. Clearly, the burden is on the State to prove that respondent had sexual intercourse with the victim *without* her consent. Precisely how the jury was to consider the consent issue was difficult to discern from the jury instruction given. The judge conceded that he understood respondent's concern. Tr. 599, ll. 2-8; Tr. 602, ll. 8-19. Even the judge admitted he found his charge confusing to understand. Tr. 606, ll. 16-20. Despite respondent's request to have the jury instructed on the issue of consent, the judge did not do so. Tr. 611, l. 25-- 612, l. 14. This was error.

Compounding the judge's error was the Solicitor's closing statement that impermissibly shifted the burden of onto respondent to prove himself innocent of the crime. She stated:

And if he was at that club, why didn't he bring some people there to talk about it? Tr. 555, ll. 19-22.

Respondent objected to this, but the judge ruled that the Solicitor had the right to comment on the facts. Tr. 555, l. 21-- 556, l. 15. The Solicitor then continued:

MS. FANT: I apologize. The bottom line is that the defendant is entitled to call witnesses, too, and if they were there with him, they could have come and said so, and he did not do that.

Tr. 556, ll. 17-20.

Respondent did not testify at trial.

And then,

I ask that you go back to the jury room and look at all the evidence, and I believe you will agree that there is absolutely none, no evidence of any consent by the victim in this case.

Tr. 560, ll. 7-10.

And then,

Mr. Finney does not have any evidence that this was consent. And of course, in these types of cases if all else fails, just blame the victim, attack her character, say she should have done this, she should have done that, she should have called.

Tr. 577, ll. 6-10.

The Solicitor's remarks, in conjunction with the failure of the judge to give the jury an instruction on the critical consent issue, deprived Respondent his right to a fair trial. Under these facts, there is a "reasonable likelihood" that the jury understood the jury instructions to allow conviction based on proof insufficient to meet the *Winship* standard—that the Due Process Clause mandates that the government prove every element of the charged offense beyond a reasonable

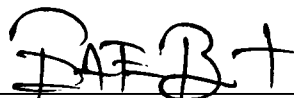
doubt. Todd v. State, 355, S.C. 396, 400, 585 S.E.2d 305, 307 (2003); State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000). *See also* In re Winship, 397 U.S. 358 (1970).

The problem is that the jury was not given any instruction on the issue of consent at all after the Solicitor informed the jury that it was Respondent's responsibility to prove that the victim consented. It is this combination of factors that caused the jury charge to be confusing as a whole. *See Todd, supra*, and State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994) (jury charges should be examined in their entirety and not in isolation in analyzing whether a defendant's due process rights have been violated). There is a "reasonable likelihood" that the jury instructions allowed a conviction based on less than the *Winship* standard, as evidenced by the fact that the jury had to be re-instructed on both charges. Further evidence is the fact that the jury acquitted on the kidnapping charge. It is difficult to conceive how a conviction for rape would not necessarily entail a conviction for kidnapping, so the verdict raises the question that either the jury compromised during their deliberations, or they were actually confused about the charges themselves. Given that both the judge and the attorneys were confused by the instructions, there is a reasonable basis to conclude the latter. Respectfully, while respondent maintains that there is substantial and reversible error in the jury instructions that were given in this case, he asks this Court to deny the State's petition for writ of certiorari.

CONCLUSION

For the preceding reasons, respondent respectfully asks this Court to deny the State's petition for writ of certiorari.

Respectfully submitted,

Handwritten signature of Elizabeth A. Franklin-Best, consisting of stylized initials 'EAFB' followed by a vertical line.

Elizabeth A. Franklin-Best  
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 1st day of November, 2010

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

---

Opinion No. 2010-UP-362 (S.C. Ct. App. filed 7/12/2010)  
06-GS-43-0336

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THE STATE,

PETITIONER,

V.

RICKY DARREN SANDERS,

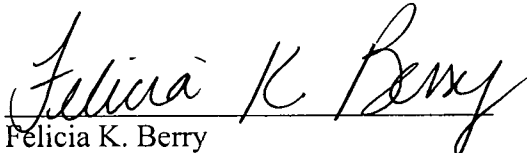
RESPONDENT

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CERTIFICATE OF SERVICE

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I certify that a true copy of the return petition for writ of certiorari, in this case has been served on William M. Blich, Jr., Esquire, and the S.C. Court of Appeals this 1st day of November, 2010.

  
Felicia K. Berry  
Legal Assistant

SWORN TO BEFORE ME this 1st day  
of November, 2010.

\_\_\_\_\_(L.S.)  
Notary Public for South Carolina  
My Commission Expires: August 23, 2014

# The Supreme Court of South Carolina

The State,

Petitioner,

v.

Ricky Darren Sanders,

Respondent.

The Honorable R. Ferrell Cothran, Jr.  
Sumter County  
Trial Court Case No. 2006-GS-43-00336

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## ORDER

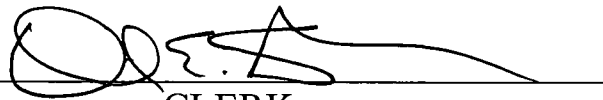
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The request for an extension to serve and file the Return to the Petition for Writ of Certiorari out of time is granted and extended until November 29, 2010. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

November 1, 2010

cc: Assistant Attorney General William M. Blich, Jr.  
Cecil Kelly Jackson, Esquire  
Appellate Defender Elizabeth A. Franklin-Best  
The Honorable Tanya Gee

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

ORIGINAL

Certiorari to Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

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Opinion No. 2010-UP-362 (S.C. Ct. App. filed 7/12/2010)  
06-GS-43-0336

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

RICKY DARREN SANDERS,

APPELLANT

PETITION FOR EXTENSION OF TIME  
IN WHICH TO FILE THE RETURN TO THE PETITION FOR WRIT  
OF CERTIORARI OUT OF TIME

Counsel for Ricky Darren Sanders respectfully petitions this Court for an additional 30 days to file the return to the petition for writ of certiorari on behalf of her client out of time. In support of this petition, counsel shows:

1. The return to the petition for writ of certiorari were due on October 27, 2010. The Court has granted no previous extension.
2. Counsel respectfully submits that good cause exists to warrant the granting of an additional extension of time.

3. Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. *See* Evitts v. Lucey, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair). *See also* Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); South Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA maximum caseload standards of 25 appeals). *See generally* Polk County v. Dodson, 454 U.S. 312 (1981); Gideon v. Wainwright, 372 U.S. 335 (1963). Counsel has prioritized her caseload to complete the cases with the largest number of extensions first.

4. Counsel diligently works to keep up with her case load.

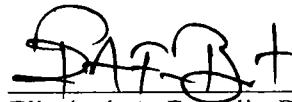
5. In the month of October, counsel is assigned to file 27 briefs.

6. As indicated by the signature below, the Attorney General's Office does not oppose the request.

7. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a 30 day extension in which to file her client's return to petition for writ of certiorari out of time.

Respectfully submitted,

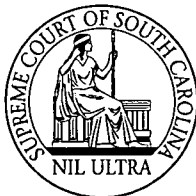


Elizabeth A. Franklin-Best  
Appellate Defender

November 1, 2010

I do not oppose:

\_\_\_\_\_  
William Blitch



# 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

September 28, 2010

Attorney General Henry Dargan McMaster  
Chief Deputy Attorney General John W. McIntosh  
Assistant Deputy Attorney General Salley W. Elliott  
Assistant Attorney General William M. Blich, Jr.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Re: The State v. Sanders, Ricky Darren  
Case Tracking No. 2010-173047

Dear Counsel:

This office has received your Petition for Writ of Certiorari and Appendix in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,



CLERK

The State v. Sanders, Ricky Darren  
Page Two  
September 28, 2010

DES/lda

cc: Cecil Kelly Jackson, Esquire  
Appellate Defender Elizabeth A. Franklin-Best  
The Honorable Tanya Gee



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SEP 27 2010

S.C. SUPREME COURT

HENRY McMASTER  
ATTORNEY GENERAL

September 27, 2010

**HAND-DELIVERED**

The Honorable Daniel E. Shearouse  
Clerk of Court, S. C. Supreme Court  
1231 Gervais Street  
Columbia, S. C. 29211

Re: State v. Ricky Darren Sanders

Dear Mr. Shearouse:

Enclosed please find two copies of the Appendix, along with Proof of Service, in the above-referenced case.

Thank you for your attention to this matter.

Sincerely,

William M. Blich, Jr.  
Assistant Attorney General

WMB/erd

Enclosures

cc: The Honorable Tanya A. Gee (one copy of Petition enclosed)  
The Honorable C. Kelly Jackson (one copy of Petition enclosed)  
Elizabeth A. Franklin-Best, Esquire (two copies of Petition and Appendix enclosed)  
Victim Services (one copy of Petition enclosed)



HENRY McMASTER  
ATTORNEY GENERAL

RECEIVED

September 27, 2010

SEP 27 2010

S.C. SUPREME COURT

Elizabeth A. Franklin-Best, Esquire  
SC Commission on Indigent Defense  
Division of Appellate Defense  
P. O. Box 11589  
Columbia, South Carolina 29211

Re: State v. Ricky Darren Sanders

Dear Ms. Franklin-Best:

I am enclosing two (2) copies of the Petition for Writ of Certiorari to the Court of Appeals and the Appendix in the above-referenced case.

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

Sincerely,

William M. Blich, Jr.  
Assistant Attorney General

WMB:erd

cc: ~~Honorable Daniel E. Shearouse~~ (original and six enclosed)  
Honorable Tanya A. Gee  
Victim Services (enclosure)