

The Supreme Court of South Carolina

Thomas O. White, Jr., Appellant,

v.

State of South Carolina, Respondent.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2010-CP-26-07200

ORDER

For good cause shown, the request for an extension until May 16, 2012 to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 17, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Christina Catoe

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Steven H. John, Circuit Court Judge

RECEIVED

'APR 16'

S.C. Supreme Court

THOMAS O. WHITE, JR.,

v.

STATE OF SOUTH CAROLINA,

PETITIONER
RECEIVED

APR 16 2012

S.C. Supreme Court
RESPONDENT

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

(3)

The undersigned counsel would respectfully request a **final thirty-day extension, until May 16, 2012**, in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

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

2. Counsel is working on and planning to file the petition for writ of certiorari and accompanying appendix in the case of Isiah T. Smith v. State in the Supreme Court on Wednesday, April 18, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Hazel Stoudemire v. State in the

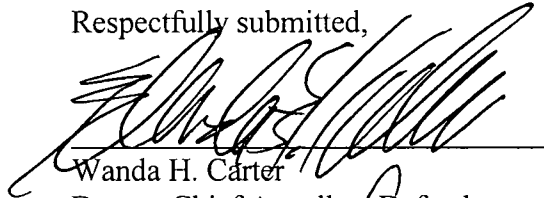
Supreme Court on April 13, 2012. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Demetrick McQueen in the Court of Appeals on April 12, 2012. Counsel had an oral argument in the case of State v. Kevin J. Williams, Sr. in the Court of Appeals on April 10, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Albert C. Smith, II v. State in the Supreme Court on April 9, 2012. Counsel filed the petition for rehearing in the case of State v. Lewis D. Williams in the Court of Appeals on March 30, 2012. Counsel had an oral argument in the case of Brian Gebhard v. State in the Court of Appeals on March 29, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Lenson Clyburn, Jr. v. State in the Supreme Court on March 26, 2012. Counsel filed petitions for writ of certiorari and accompanying appendices in the cases of Glenn Pernell v. State, Sylvester Toomer v. State and William Gladney Harden v. State in the Supreme Court on March 23, 2012. Counsel had an oral argument in the case of State v. Lewis Williams in the Court of Appeals on March 12, 2012. In February 2012, Counsel had oral arguments in the cases of State v. Otis Lamar Bland and State v. James Babb in the Court of Appeals, as well as an oral argument in the case of Benjamin Green v. State in the Supreme Court. Additionally in February, 2012, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Sherinette Wannamaker v. State, Henry Belton v. State, Tony Drayton v. State, William Hickman v. State and John E. Prigmore v. State. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Lawrence Brown in the Court of Appeals in February, 2012 as well.

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

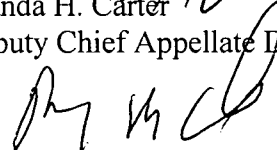
4. As indicated by her consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final thirty-day extension, until May 16, 2012**, in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender



Robert M. Dudek
Chief Appellate Defender

April 16, 2012

I DO NOT OPPOSE:



FOR Christina Catoe

The Supreme Court of South Carolina

Thomas O. White, Jr., Appellant,

v.

State of South Carolina, Respondent.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2010-CP-26-07200

ORDER

For good cause shown, the request for an extension until April 16, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Leenda J. Shealy*
Chief Deputy Clerk

Columbia, South Carolina

March 16, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Christina Catoe

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

MAR 15 2012

Certiorari to Horry County

Steven H. John, Circuit Court Judge

S.C. Supreme Court

THOMAS O. WHITE, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

(2)

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

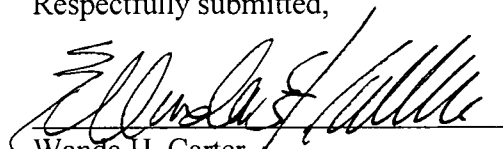
1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.
2. Counsel had an oral argument in the case of State v. Lewis Williams in the Court of Appeals on March 12, 2012. Counsel had an oral argument in the case of State v. Otis Lamar Bland in the Court of Appeals on February 29, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Sherinette

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

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

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

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

March 15, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Steven H. John, Circuit Court Judge

THOMAS O. WHITE, JR.,

PETITIONER,

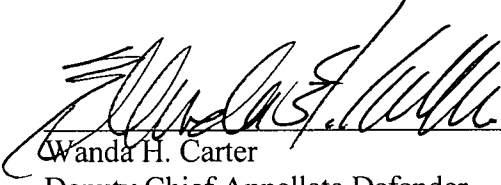
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Tyson Andrew Johnson, Sr., Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 15th day of March, 2012.



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 15th day of March, 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 2, 2013 .

The Supreme Court of South Carolina

Thomas O. White, Jr., Appellant,

v.

State of South Carolina, Respondent.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2010-CP-26-07200

ORDER

The request for an extension until **March 15, 2012** to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

February 15, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Christina Catoe

ORIGINAL



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

RECEIVED
February 14, 2012
FEB 14 2012

S.C. Supreme Court

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

Re: Thomas O. White, Jr. v. State of South Carolina

Dear Mr. Shearouse:

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

By copy of this letter, I am informing Christina Catoe, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/kam

cc: Christina Catoe



SCCID

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Facsimile: (803) 734-1397

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

December 20, 2011

RECEIVED

DEC 20 2011

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

S.C. Supreme Court

Dear Mr. Shearouse:

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

Thomas O. White, Jr. v. State of South Carolina

12/16/2011

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 South Carolina Court of Appeals

Thomas O. White, 33877,

Appellant,

v.

State of South Carolina,

Respondent.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2010-CP-26-07200

ORDER

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OCT 17 2011

S.C. Supreme Court

The appeal in the above captioned matter is transferred to the South Carolina Supreme Court under the filing provisions of Rule 243 of the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For The Court

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: William W. DesChamps, III, Esq., Esq.
Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Christina Catoe
~~The Honorable Daniel Shearouse~~

FILED

10/13/11

PM - 10/4/11
POS - 10/4/11

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Civil Action No: 2010-CP-26-7200

Thomas O. White, Jr., Petitioner,
vs.
State of South Carolina, Respondent.

RECEIVED
OCT. 05 2011
SC Court of Appeals

NOTICE OF APPEAL

Petitioner, Thomas O. White, Jr., appeals the Order Denying Post Conviction Relief of the Honorable Steven H. John dated August 31, 2011. Petitioner received written notice of entry of this order on September 13, 2011.

September 30, 2011

William W. DesChamps, III, Esquire
Attorney for Petitioner, Thomas O. White, Jr.
1357 21st Avenue North, Suite 102
Myrtle Beach, South Carolina 29577
(843) 448-2391
SC Bar # 77150
E-mail: trey@deschampsllaw.com

Other Counsel of Record:

Christina J. Catoe
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent, State of South Carolina

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Civil Action No: 2010-CP-26-7200

Thomas O. White, Jr.,.....Petitioner,

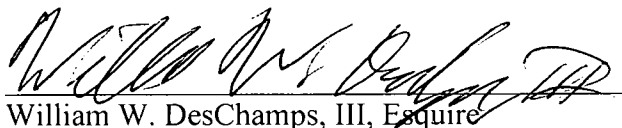
vs.

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

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on October 4, 2011, addressed to its attorney of record, Christina J. Catoe, Post Office Box 11549, Columbia, South Carolina, 29211-1549.

October 4, 2011



William W. DesChamps, III, Esquire
Attorney for Petitioner, Thomas O. White, Jr.
1357 21st Avenue North, Suite 102
Myrtle Beach, South Carolina 29577
(843) 448-2391
SC Bar # 77150
E-mail: trey@deschampslaw.com

RECEIVED
OCT 05 2011
SC Court of Appeals

DESCHAMPS LAW FIRM
ATTORNEYS-AT-LAW

www.deschampsllaw.com

WILLIAM W. DESCHAMPS, JR., ESQ.*
WILLIAM W. DESCHAMPS, III, ESQ.
BHUMI A. PATEL, ESQ.
PEGGY G. DESCHAMPS, OFFICE ADMINISTRATOR
*Certified Court Mediator and Arbitrator

1357 21ST AVENUE NORTH, STE. 102
P.O. BOX 2402 (29578)
MYRTLE BEACH, SC 29577
TELEPHONE: (843) 448-2391
FACSIMILE: (843) 448-3308

October 4, 2011

Via U.S. Mail

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
OCT 05 2011
SC Court of Appeals

Re: Thomas O. White, Jr. v. State of South Carolina
Civil Action No.: 2010-CP-26-7200

Dear Ms. Gee:


Enclosed for filing, in the above post conviction relief case, is a Notice of Appeal together with a copy of the Order which is to be challenged on appeal.

By a copy of this correspondence, I am herewith serving counsel for the Respondent with a copy of the Notice of Appeal as evidenced by the enclosed Proof of Service. I am also filing a copy of the Notice of Appeal with the lower court and forwarding a copy of same to the Office of Appellate Defense.

If you have any questions or need any further information, please do not hesitate to contact me.

With kindest personal regards, I remain

Yours very truly,


William W. DesChamps, III

WWDIII/tdm

Enclosures.

cc: Christina J. Catoe, Esquire
The Honorable Steven H. John
The Honorable Melanie Huggins-Ward
South Carolina Office of Appellate Defense
Thomas O. White, Jr.

DESCHAMPS LAW FIRM
ATTORNEYS-AT-LAW

www.deschampslaw.com

WILLIAM W. DESCHAMPS, JR., ESQ.*
WILLIAM W. DESCHAMPS, III, ESQ.
BHUMI A. PATEL, ESQ.
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*Certified Court Mediator and Arbitrator

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P.O. BOX 2402 (29578)
MYRTLE BEACH, SC 29577
TELEPHONE: (843) 448-2391
FACSIMILE: (843) 448-3308

October 4, 2011

Via U.S. Mail

Office of the Appellate Defense
Attn: PCR Appeal Division
Post Office Box 11589
Columbia, S.C. 29211

RE: Thomas O. White, Jr. v. State of South Carolina, 2010-CP-26-7200


Dear Sir or Madam:

Enclosed please find a copy of the Notice of Appeal together with a copy of the Order Denying Post-Conviction Relief regarding the case referenced above. It is my understanding that from this point forward your office will handle the appeal in this case to its completion. If there is any information you need from our office, please do not hesitate to contact my paralegal, Trina McManus.

Thank you for your assistance in this matter.

With kindest personal regards, I remain

Very Truly Yours,


William W. DesChamps, III

WWDIII/tm

Enclosures.

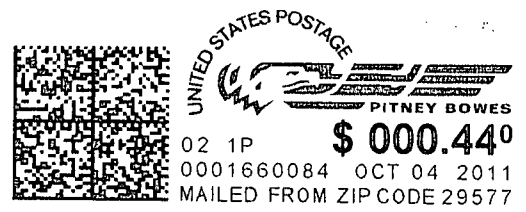
cc: The Honorable Tanya A. Gee
Christina J. Catoe, Esquire
Thomas O. White, Jr.

RECEIVED
OCT 05 2011
SC Court of Appeals

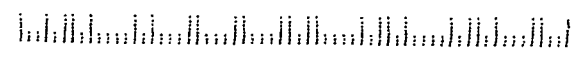
DESCHAMPS LAW FIRM
WILLIAM W. DESCHAMPS, JR., P.A.
1551 21ST AVENUE NORTH • SUITE 14
MYRTLE BEACH, SC 29578

*Thomas
O. White, Jr.*

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211



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RECEIVED

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Thomas O. White, Jr., # 338777,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-26-7200

**ORDER DENYING
POST-CONVICTION RELIEF**

RECEIVED
11 SEP -6 AM 10:55
CLERK OF COURT

This matter came before the Court pursuant to an Application for post-conviction relief filed August 9, 2010, by Thomas O. White, Jr. Respondent made a Return dated October 6, 2010. An evidentiary hearing was convened at the Horry County Courthouse on August 23, 2011. The Applicant was present in court and represented by William W. DesChamps, III, Esquire. Respondent was represented by Christina J. Catoe, Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. In April 2009, the Applicant was indicted for armed robbery (2009-GS-26-1726). The Applicant was represented by Julian Z. Hanna, Esquire. On August 3, 2009, the Applicant entered a plea pursuant to North Carolina v. Alford before the Honorable Benjamin H. Culbertson, and sentencing was deferred. On October 6, 2010, Applicant's counsel filed a motion to withdraw the plea. On January 11, 2010, Judge Culbertson denied the motion to withdraw the plea, and sentenced the Applicant to ten (10) years pursuant to the State's recommendation. Three days after the plea, the solicitor dismissed the following charges: another count of armed robbery (2009-GS-26-1724); possession of a weapon during commission of a violent crime (2009-GS-26-1725); and possession of a weapon during commission of a violent crime (2009-GS-26-1727). Applicant's counsel filed a timely notice of

AHO

appeal, but the appeal was dismissed on March 18, 2010, pursuant to Rule 203(d)(1)(B)(iv), SCACR. The matter was remitted to the circuit court on April 7, 2010.

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, supra. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood, supra, at 109, 525 S.E.2d at 517 (citations omitted). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

prove both ineffective assistance and resulting prejudice. See Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). However, a guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. See Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (2007). Statements made during a plea should be considered conclusive unless the defendant presents persuasive reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

ALLEGATIONS

At the PCR hearing, Mr. White alleged that his custody was unlawful for the following reason:

1. Ineffective assistance of counsel:
 - Plea was not knowingly and voluntarily entered because counsel failed to sufficiently inform the Applicant of the nature of the charge, the mandatory minimum sentence, and the ramifications of an Alford plea.

The Applicant indicated that he was seeking to have his guilty plea and sentence vacated and the case remanded for a new trial.

REVIEW OF THE PCR HEARING

The Applicant testified on his own behalf at the hearing. Mr. White testified that he hired Julian Hanna as his attorney in February 2009. He met with him at that time at Mr. Hanna's office. Subsequently he saw Mr. Hanna at several roll calls at the courthouse and at some point they watched the videotape of one of the robberies at Mr. Hanna's office. In the initial February 2009 meeting, the Applicant briefed Mr. Hanna regarding the charges. Thereafter, in March 2009, the Applicant received the discovery and reviewed it thoroughly.

Around the time of his plea, the Applicant was out on bond. He received a telephone call from Mr. Hanna that week indicating that they needed to have a meeting with the solicitor on August 3, 2009. The Applicant stated that Mr. Hanna told him that he needed to attend both his regular roll call and the meeting with the solicitor. The Applicant testified that, at some point shortly before this meeting, Mr. Hanna told him that the meeting would be "before a judge." The Applicant stated that prior to August 3, 2009, he and Mr. Hanna had not had any discussions regarding plea offers. The Applicant testified that he and Mr. Hanna had not had any discussions regarding trial preparation and the Applicant was not aware that the case was on the trial roster. The Applicant denied that Mr. Hanna had informed him regarding the doctrine of "the hand of one is the hand of all," although he stated that he did not believe this doctrine was applicable.

The Applicant stated that he met with Mr. Hanna twenty to thirty minutes before the meeting on August 3, 2009. He stated that the first time an Alford plea was mentioned was five minutes before they went into the courtroom. He stated that Mr. Hanna advised him to take the Alford plea to "get the process going." The Applicant testified that he was not from South Carolina and had not had any previous encounters with the law. Therefore, he stated, he was unaware at that time that an Alford plea was the same as a guilty plea. He indicated that he did not know why his attorney let him do an Alford plea when he knew that the Applicant was insistent about his innocence and would not plead to something that he did not do. The Applicant stated that, at the time, he assumed that the Alford plea was some sort of trial strategy that Mr. Hanna was employing.

The Applicant testified that he and Mr. Hanna only discussed one of the armed robbery charges and that Mr. Hanna never advised him regarding the minimum or maximum sentences. The Applicant also stated that they never discussed the constitutional rights the Applicant would be waiving by entering a plea. The Applicant testified that Mr. Hanna told him to "just answer

the judge's questions." The Applicant stated that he did not know anything about the questions being asked by the judge because he was unfamiliar with the criminal court system. He stated that he did not think that his answers to the judge meant anything. He further stated that he did not understand the 10-year mandatory minimum sentence and that he thought it was possible to receive a reduced sentence or a probationary sentence. Nevertheless, he stated, he was not looking for a probationary sentence and was instead seeking dismissal of the charges. Mr. White testified that he did not understand the ramifications of his Alford plea, and that if he had properly understood, he would not have pled. He stated that was the reason why he asked his attorney to file a motion to withdraw the plea.

The Applicant stated that he felt like Mr. Hanna should have represented him to the best of his ability. He stated that Mr. Hanna should have investigated the case and gathered all of the information necessary to prove the Applicant's innocence. He stated that Mr. Hanna should have realized he was innocent as soon as he watched the videotape of the first armed robbery. The Applicant indicated that he was not aware of co-defendant Meleik Roach's statement during his guilty plea implicating the Applicant in the second armed robbery.

Julian Hanna, Esquire, testified that he represented the Applicant on all four charges, including two armed robbery charges and two associated weapon charges. The charges arose out of two armed robbery incidents at local hotels. The Applicant was arrested after the police found him in a vehicle with two other suspects minutes after the second armed robbery occurred. The vehicle belonged to the Applicant, and evidence found in the vehicle matched the description of the property stolen from the hotels. The Applicant was found with a roll of coins in his pocket matching the rolled coins stolen from one of the hotels. There was a videotape of the first armed robbery at the Red Roof Inn. It did not appear, based on the height differences in the three suspects, that the Applicant was one of the two individuals who actually entered the hotel during

that armed robbery. However, a co-defendant later implicated the Applicant as being one of the two individuals who actually entered the second hotel. One of the victims identified three males leaving the scene of the second robbery – two of the males who actually entered the hotel to perform the robbery and one remaining in the getaway car. The fact that this witness was able to see the third male in the car tended to refute the Applicant's claim that he was fast asleep in the back seat of the car while these armed robberies were committed.

Mr. Hanna and the Applicant discussed the charges at length and fully reviewed the discovery. Many of their discussions occurred over the telephone because the Applicant lived out of town in Columbia. They discussed what the co-defendants might say regarding the Applicant's involvement. They also discussed the mandatory minimum sentence of 10 years and the maximum sentence of 30 years. They discussed the fact that if the State elected to try the two armed robbery cases separately, the Applicant could potentially receive a sentence of life without parole pursuant to the two-strikes law. Mr. Hanna also advised the Applicant regarding his constitutional rights associated with a trial. Mr. Hanna explained to the Applicant how he could be convicted of each armed robbery under the "hand of one is the hand of all" theory even if the Applicant did not physically enter either of the hotels. Mr. Hanna stated that they discussed possible defenses but that the Applicant did not really have a valid defense. He stated that they discussed in great detail the height differentials regarding the suspects and the impact this had upon the Applicant's case. Mr. Hanna stated that they reviewed every witness statement that existed in the case.

After many discussions regarding the charges, the Applicant came to the conclusion that the State had enough evidence to most likely convict him at trial. Although he did not wish to admit his guilt, he realized the gravity of the situation in which he found himself. Therefore, Mr. Hanna and the Applicant discussed entering a guilty plea under North Carolina v. Alford. Mr.

Hanna stated that their discussions regarding an Alford plea did not occur just minutes before the plea, as the Applicant claimed. Instead, Mr. Hanna testified, there were lengthy plea negotiations. He stated that the Applicant knew about the ten-year offer months before the plea, and possibly even before the Applicant retained him. The ten-year offer was the best offer that the solicitor would make in light of the serious nature of the charges and in light of the potential for life without parole upon successive convictions. Mr. Hanna and the Applicant discussed this offer thoroughly and Mr. Hanna fully explained to the Applicant the ramifications of an Alford plea. He stated that the discussions regarding an Alford plea took place over the course of at least two days and the meetings lasted for hours at a time. Mr. Hanna stated that the Applicant was a very bright individual and that he understood exactly what an Alford plea entailed. He stated that the Applicant made his own decision to enter the Alford plea after being fully informed regarding all relevant considerations. Mr. Hanna testified that the Applicant's decision to enter an Alford plea was not a spur of the moment decision.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the PCR hearing, this Court had before it the Applicant's PCR file, including all pleadings filed, the records of the Horry County Clerk of Court regarding the conviction, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the motion to withdraw/sentencing hearing transcript. This Court carefully listened to all of the testimony presented at the hearing and weighed the same according to credibility. This Court found the Applicant's testimony to be lacking in credibility with respect to his allegations of ineffective assistance of counsel and with respect to his allegation that he did not understand the ramifications of his Alford plea. This Court found the testimony of Julian

CONCLUSION

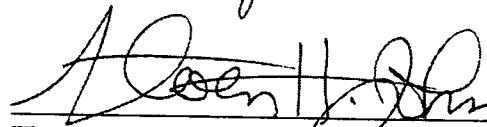
In sum, this Court finds no credible evidence of ineffective assistance of counsel and no credible evidence that the Applicant's guilty plea was involuntary. Therefore, the Applicant failed to prove any entitlement to post-conviction relief. Accordingly, the PCR Application must be denied and dismissed with prejudice for failure to meet the burden of proof under Strickland v. Washington, 466 U.S. 668 (1984), and Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Counsel's attention is directed to Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), and Rule 59(e), SCRCP, regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S.C. Code Ann. § 17-27-80 (2003). This Court further advises that if Applicant desires to secure appellate review of this Order, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

IT IS THEREFORE ORDERED THAT:

1. The Application for post-conviction relief is **DENIED and DISMISSED with PREJUDICE**.
2. The Applicant must remain in the custody of the State for completion of his sentence.

AND, IT IS SO ORDERED this 31st day of August, 2011.


The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

Conway, South Carolina