



ALAN WILSON  
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737  
PCR FACSIMILE: 803.734.4113

April 11, 2011

*Via Hand Delivery*

Honorable Daniel E. Shearouse  
Clerk of the Supreme Court of South Carolina  
Post Office Box 1130  
Columbia, SC 29211

RECEIVED

APR 11 2012

S.C. Supreme Court

**RE: Waymon Harbin, Jr. v. State of South Carolina  
2008-CP-04-0073**

Dear Mr. Shearouse:

Enclosed please find the original and thirteen (13) copies of the Brief of Petitioner in the above-referenced matter for filing in your office. By copy of this letter we are serving opposing counsel, Bruce A. Byrholdt, with two copies of this brief today.

With highest regards,

Kaelon E. May  
Assistant Attorney General

SHW/aam  
Enclosures

cc: Bruce A. Byrholdt, Esquire (w/Brief enclosed)

# The Supreme Court of South Carolina

Waymon S. Harbin, Jr., Respondent,

v.

State of South Carolina, Petitioner.

The Honorable J. Cordell Maddox, Jr.  
Anderson County  
Trial Court Case No. 2008-CP-04-00073

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## ORDER

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For good cause shown, the request for an extension until April 11, 2012 to serve and file the Brief of Petitioner 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 Drenda J. Sharby  
Clerk

Columbia, South Carolina *Chief Deputy*

March 13, 2012

cc: Assistant Attorney General Kaelon E. May  
Bruce A. Byrholdt, Esquire



ALAN WILSON  
ATTORNEY GENERAL

March 12, 2012

RECEIVED

MAR 12 2012

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

S.C. Supreme Court

RE: Waymon Harbin, Jr. v. State of South Carolina  
2008-CP-04-00073

(2)

Dear Mr. Shearouse:

The Brief of Petitioner in the above appeal is due to be served and filed today. However, this is to respectfully request a 30-day extension to serve and file this Brief of Petitioner.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload and is for good cause.

Sincerely,

Kaelon E. May  
Assistant Attorney General

cc: Bruce Byrhodt, Esquire

# The Supreme Court of South Carolina

Waymon S. Harbin, Jr., Respondent,

v.

State of South Carolina, Petitioner.

The Honorable J. Cordell Maddox, Jr.  
Anderson County  
Trial Court Case No. 2008-CP-04-00073

---

## ORDER

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The request for an extension until March 12, 2012 to serve and file the Brief of Petitioner 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 *Kresda J. Shealy*  
Clerk

Columbia, South Carolina *Chief Deputy*

February 13, 2012

cc: Assistant Attorney General Kaelon E. May  
Bruce A. Byrholdt, Esquire



ALAN WILSON  
ATTORNEY GENERAL

February 10, 2012

RECEIVED

FEB 10 2012

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

S.C. Supreme Court

RE: Waymon Harbin, Jr. v. State of South Carolina  
2008-CP-04-00073

Dear Mr. Shearouse:

The Brief of Petitioner in the above appeal is due to be served and filed today. However, this is to respectfully request a 30-day extension to serve and file this Brief of Petitioner.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload and is for good cause.

Sincerely,

Kaelon E. May  
Assistant Attorney General

cc: Bruce Byrhodlt, Esquire



ALAN WILSON  
ATTORNEY GENERAL

January 18, 2012

RECEIVED

JAN 18 2012

S.C. Supreme Court

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

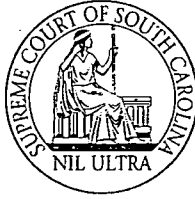
RE: Waymon Harbin, Jr. v. State of South Carolina  
2008-CP-04-00073

Dear Mr. Shearouse:

Enclosed please find the additional thirteen (13) bound copies of the appendix in the above-referenced case.

Sincerely,

Kaelon E. May  
Assistant Attorney General



# 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

January 11, 2012

Assistant Attorney General Kaelon May  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Re: Harbin, Waymon S. Jr. v. The STATE

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) **bound** 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 February 10, 2012. 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,

*Daniel E. Shearouse*

CLERK

DES/jj

cc: Bruce A. Byrholdt, Esquire

# The Supreme Court of South Carolina

Waymon S. Harbin, Jr.,

Respondent,

v.

State of South Carolina,



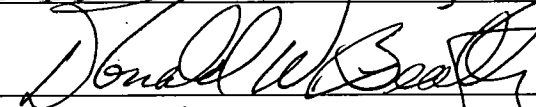


Petitioner.

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## ORDER

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This matter is before the Court on a petition for a writ of certiorari. The petition for a writ of certiorari is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.

 C. J.  
 J.  
 J.  
 J.  
 J.

Columbia, South Carolina

January 11, 2012

**CHAPMAN, BYRHOLDT & YON, L.L.P.**  
ATTORNEYS AND COUNSELORS AT LAW  
117 WEST BENSON STREET - P.O. BOX 2506  
ANDERSON, SOUTH CAROLINA 29622

V. LANIEL CHAPMAN\*  
BRUCE A. BYRHOLDT\*  
W. PATRICK YON  
E. ALEX TURNER, III

\*CERTIFIED CIVIL MEDIATOR

TELEPHONE (864) 225-1411  
TOLL FREE: 800-650-1411  
FAX: (864) 231-9131

March 30, 2011

**RECEIVED**

MAR 31 2011

**S.C. Supreme Court**

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

RE: Waymond S. Harbin, Jr. #249126 -vs- State of South Carolina  
2008-CP-04-0073

Dear Mr. Shearouse:

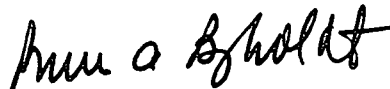
Enclosed please find the original and six copies of the Return to Petition for Certiorari for filing. Please return certified copies to me in the enclosed envelope.

By copy of this letter, I am serving the same upon A. West Lee, Assistant Attorney General.

With kind regards, I am

Yours truly,

**CHAPMAN, BYRHOLDT & YON, LLP**



Bruce A. Byrholdt  
Attorney for Applicant

BAB/adr  
encls.

cc: A. West Lee  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549



ALAN WILSON  
ATTORNEY GENERAL

RECEIVED

MAR - 3 2011

S.C. Supreme Court

March 3, 2011

***Via Hand Delivery***

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

**RE: Waymon Harbin, Jr., 249126 v. State of South Carolina  
2008-CP-04-0073**

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the Petition for Writ of Certiorari and two copies of the appendix in the above matter for filing in your office. By copy of this letter I am serving opposing counsel with this petition today.

Sincerely,

A. West Lee  
Assistant Attorney General

AWL/lp  
Enclosures

cc: Bruce Byrholdt, Esquire

# The Supreme Court of South Carolina

Waymon S. Harbin, Jr., Respondent,

v.

State of South Carolina, Petitioner.

The Honorable J. Cordell Maddox, Jr.  
Anderson County  
Trial Court Case No. 2008-CP-04-00073

---

## ORDER

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For good cause shown, the request for an extension until March 7, 2011 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

February 7, 2011

cc: Assistant Attorney General A. West Lee  
Bruce A. Byrholdt, Esquire



RECEIVED

FEB 04 2011

S.C. Supreme Court

ALAN WILSON  
ATTORNEY GENERAL

February 4, 2011

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

(3)

RE: Waymon S. Harbin, Jr. v. State of South Carolina  
2008-CP-04-00073

Dear Mr. Shearouse:

The Petition for Writ of Certiorari and Appendix in the above appeal are due to be served and filed today. However, this is to respectfully request a 30-day extension to serve and file these documents.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload and is for good cause.

Sincerely,

A. West Lee  
Assistant Attorney General

In compliance with:

*In Re: Extensions in Criminal and Post-Conviction Relief Cases*, (S.C. Sup. Ct. order dated March 18, 2009) (Davis Adv. Sh. No. 13 at 1).

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

BRUCE A. BYRHOLDT  
Attorney for Petitioner

# The Supreme Court of South Carolina

Waymon S. Harbin, Jr., Respondent,

v.

State of South Carolina, Petitioner.

The Honorable J. Cordell Maddox, Jr.  
Anderson County  
Trial Court Case No. 2008-CP-04-00073

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## ORDER

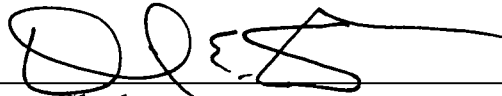
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For good cause shown, the request for an extension until February 4, 2011 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY

  
Clerk

Columbia, South Carolina

January 7, 2011

cc: Assistant Attorney General A. West Lee  
Bruce A. Byrholdt, Esquire



HENRY McMASTER  
ATTORNEY GENERAL

January 5, 2011

RECEIVED

JAN 05 2011

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

S.C. Supreme Court

**Re: Waymon S. Harbin, Jr. v. State of South Carolina**  
**2008-CP-04-00073**

(2)

Dear Mr. Shearouse:

The Petition for a Writ of Certiorari and Appendix in the above appeal is due to be served and filed today. I would respectfully request a 30-day extension in which to serve and file this.

This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

A. West Lee  
Assistant Attorney General

AWL/ab

cc: Bruce A. Byrholdt, Esquire

# The Supreme Court of South Carolina

Waymon S. Harbin, Jr., Respondent,

v.

State of South Carolina, Petitioner.

The Honorable J. Cordell Maddox, Jr.  
Anderson County  
Trial Court Case No. 2008-CP-04-00073

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## ORDER

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The request for an extension until January 5, 2011 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

December 7, 2010

cc: Assistant Attorney General A. West Lee  
Bruce A. Byrholdt, Esquire



HENRY McMASTER  
ATTORNEY GENERAL

December 6, 2010

RECEIVED

DEC - 6 2010

S.C. Supreme Court

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

**Re: Waymon S. Harbin, Jr. v. State of South Carolina**  
**2008-CP-04-00073**

Dear Mr. Shearouse:

The Petition for a Writ of Certiorari and Appendix in the above appeal is due to be served and filed today. I would respectfully request a 30-day extension in which to serve and file this.

This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

A. West Lee  
Assistant Attorney General

AWL/ab

cc: Bruce A. Byrholdt, Esquire

**CHAPMAN, BYRHOLDT & YON, L.L.P.**

ATTORNEYS AND COUNSELORS AT LAW  
117 WEST BENSON STREET - P.O. BOX 2506  
ANDERSON, SOUTH CAROLINA 29622

V. LANGEL CHAPMAN\*  
BRUCE A. BYRHOLDT\*  
W. PATRICK YON  
E. ALEX TURNER, III

\*CERTIFIED CIVIL MEDIATOR

TELEPHONE (864) 225-1411  
TOLL FREE: 800-650-1411  
FAX: (864) 281-0181

October 1, 2009

Via Fax/US Mail To: 803-734-1397

Loriene French  
Legal Services Coordinator  
SCCID  
P.O. Box 11589  
Columbia, SC 29211-1589

**RECEIVED**

OCT 06 2010

**S.C. SUPREME COURT**

RE: Waymond S. Harbin, Jr. #249126 -vs- State of South Carolina  
2008-CP-04-00073

Dear Ms. French:

I will be Mr. Harbin's counsel for this appeal. You may close your file regarding this matter.

With kind regards, I am

Yours truly,

**CHAPMAN, BYRHOLDT & YON, LLP**

Bruce A. Byrholdt

BAB/adr



HENRY MCMASTER  
ATTORNEY GENERAL

October 5, 2010

RECEIVED

OCT - 5 2010

S.C. SUPREME COURT

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

RE: Waymon Harbin, Jr. v. State of South Carolina  
Case #2008-CP-04-00073

Dear Mr. Shearouse:

Please be advised that the PCR transcript has been received in this Office on October 5, 2010. We understand that the Petition for Writ of Certiorari will be due on Monday, December 6, 2010. If this date is incorrect, please advise.

If this Office can be of further assistance, please call.

Sincerely,

A. West Lee  
Assistant Attorney General

AWL:las



HENRY MCMASTER  
ATTORNEY GENERAL

April 22, 2010

Ms. Tracy Garrett  
South Carolina Court Administration  
1015 Sumter Street, Suite 200  
Columbia, South Carolina 29201

Re: State of South Carolina v. Waymon Harbin, Jr.  
Case #2008-CP-04-00073

Dear Ms. Garrett:

Please find enclosed a copy of letter dated January 14, 2010 requesting the PCR transcript on the above named individual taken on March 26, 2009 before the Honorable J. Cordell Maddox, Jr. for the term of the Court of Common Pleas for Anderson County. According to our records, the court reporter, Donna Brady, had sixty (60) days from the date of the initial request in which to prepare the transcript and forward it to our Office. To this date, we have not received the transcript nor an Order from Supreme Court extending the time for the transcript to be prepared and delivered to this Office. If the conviction and sentencing were on different dates but Ms. Brady was not the reporter for both, let me know immediately, in writing, so that I can contact the other reporter.

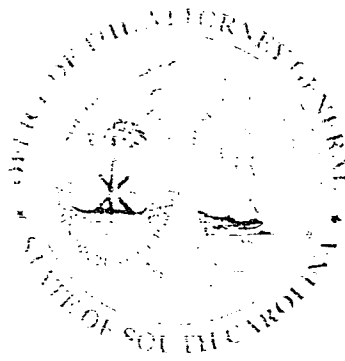
Sincerely,

Lisa A. Suber  
Legal Assistant to  
A. West Lee  
Assistant Attorney General

/las

Enclosures: noted

cc: Janet Johnson, SC Supreme Court



January 14, 2010

Donna M. Brady  
1107 Broadwater Drive  
Anderson, South Carolina 29624

Re: Waymon Harbin v. State of South Carolina  
Case #2008-CP-04-00073

Dear Ms. Brady:

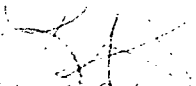
Please prepare the PCR transcript for the above named individual taken on March 26, 2009 before the Honorable J. Cordell Maddox, Jr. for the term of the Court of Common Pleas for Anderson county. If you have already typed it once for Appellate Defense, let me know before you send me a copy.

If the conviction and sentencing were on different dates but you were not the reporter for both, let me know immediately so that I can contact the other reporter.

Please note that the amended Rule 227(e) (3), SCACR, now requires as detailed an index for PCR hearings as for trial transcripts filled in the Supreme Court. The index should include all exhibits. If exhibits were not introduced, then please note that no exhibits were submitted at the hearing.

**If this transcript will exceed \$500.00 in cost, please inform me in writing before you complete this transcript.** If you will prepare this transcript and forward it to me along with your statement, I will arrange for payment. Please note that all statements are to be signed.

Sincerely,

  
Lisa A. Subers  
Legal Assistant to  
Gregory P. Jones, Jr.  
Assistant Attorney General

las  
cc: SC Supreme Court



HENRY McMASTER  
ATTORNEY GENERAL

RECEIVED

APR 22 2010

S.C. SUPREME COURT

April 22, 2010

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

RE: State of South Carolina v. Waymon S. Harbin, Jr.  
Case #2008-CP-04-00073

Dear Mr. Shearouse:

I will be representing the State regarding this matter. Please note me as counsel of record for the State and forward all future correspondence regarding this case directly to me.

Sincerely,

A. West Lee  
Assistant Attorney General

AWL:las

cc: SC Office of Appellate Defense



RECEIVED

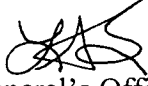
JAN 14 2010

S.C. SUPREME COURT

HENRY McMASTER  
ATTORNEY GENERAL

January 14, 2010

TO: Ms. Janet Johnson  
Supreme Court

FROM: Lisa Suber   
Attorney General's Office

SUBJECT: State of South Carolina v. Waymon Harbin  
Case #2008-CP-04-00073

The transcript request submitted to the initial court reporter, Sharon Vizer-Hanks, was mailed on September 15, 2009. Ms. Vizer-Hanks sent us documentation that informed us that no hearing took place on that date. After speaking with the Assistant Attorney General handling the appeal, Gregory Jones, he stated that the hearing was held on the following Thursday, March 26, 2009. A transcript request was submitted to the new court reporter, Donna Brady, on today's date.



HENRY McMASTER  
ATTORNEY GENERAL

January 14, 2010

Donna M. Brady  
1107 Broadwater Drive  
Anderson, South Carolina 29624

Re: Waymon Harbin v. State of South Carolina  
Case #2008-CP-04-00073

Dear Ms. Brady:

Please prepare the PCR transcript for the above named individual taken on March 26, 2009 before the Honorable J. Cordell Maddox, Jr. for the term of the Court of Common Pleas for Anderson county. If you have already typed it once for Appellate Defense, let me know before you send me a copy.

If the conviction and sentencing were on different dates but you were not the reporter for both, let me know immediately so that I can contact the other reporter.

Please note that the amended Rule 227(e) (3), SCACR, now requires as detailed an index for PCR hearings as for trial transcripts filled in the Supreme Court. The index should include all exhibits. If exhibits were not introduced, then please note that no exhibits were submitted at the hearing.

**If this transcript will exceed \$500.00 in cost, please inform me in writing before you complete this transcript.** If you will prepare this transcript and forward it to me along with your statement, I will arrange for payment. Please note that all statements are to be signed.

Sincerely,

Lisa A. Suber  
Legal Assistant to  
Gregory P. Jones, Jr.  
Assistant Attorney General

/las

cc: SC Supreme Court



RECEIVED  
SEP 15 2009  
S.C. SUPREME COURT

HENRY McMASTER  
ATTORNEY GENERAL

September 15, 2009

Sharon Vizer-Hanks  
Post Office Box 52  
Honea Path, South Carolina 29654

Re: Waymon S. Harbin, Jr. v. State of South Carolina  
Case #2008-CP-04-00073

Dear Ms. Vizer-Hanks:

Please prepare a transcript of the PCR proceedings of the above named individual taken on March 19, 2009 before the Honorable J. Cordell Maddox, Jr. for the term of the Court of Common Pleas for Anderson County. If you have already typed it once for Appellate Defense, let me know before you send me a copy.

If the conviction and sentencing were on different dates but you were not the reporter for both, let me know immediately so that I can contact the other reporter.

Please note that the amended Rule 227(e) (3), SCACR, now requires as detailed an index for PCR hearings as for trial transcripts filled in the Supreme Court. The index should include all exhibits. If exhibits were not introduced, then please note that no exhibits were submitted at the hearing.

**If this transcript will exceed \$500.00 in cost, please inform me in writing before you complete this transcript.** If you will prepare this transcript and forward it to me along with your statement, I will arrange for payment. Please note that all statements are to be signed.

Sincerely,

Lisa A. Suber  
Legal Assistant

/las

cc: SC Court Administration



RECEIVED  
SEP 15 2008  
S.C. SUPRE

HENRY McMASTER  
ATTORNEY GENERAL

September 15, 2008

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

GET  
ORDER -  
NOT  
ATTACHED

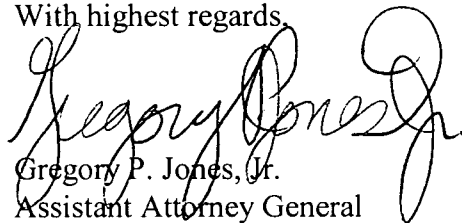
Re: **Waymon S. Harbin, Jr. v. State of South Carolina**  
2008-CP-04-0073

Dear Mr. Shearouse:

Enclosed is for filing is a notice of appeal in the above case. Also enclosed are the following:

1. Proof of service of the notice of appeal on the respondent.
2. A copy of the order which is to be challenged on appeal.
3. A copy of the letter to the court reporter requesting the PCR transcript.

With highest regards,

  
Gregory P. Jones, Jr.  
Assistant Attorney General

Enclosures

cc: Bruce A. Byrholdt, Esquire  
The Honorable J. Cordell Maddox, Jr., Clerk of Court of Anderson County  
Appellate Defense  
Trisha Allen, Victims Services

RECEIVED  
SEP 1 5 2009  
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_

Certiorari to Anderson County

The Honorable J. Cordell Maddox, Jr.

\_\_\_\_\_

Case No. 2008-CP-04-0073

\_\_\_\_\_

Waymon S. Harbin, Jr,

Respondent,

vs.

State of South Carolina,

Petitioner.

\_\_\_\_\_

**NOTICE OF APPEAL**

\_\_\_\_\_

The State of South Carolina hereby appeals from the Order of the Honorable J. Cordell Maddox, Jr., dated August 26, 2009, granting post-conviction relief to the Respondent. The State received notice of the entry of the order on August 28, 2009, in the matter of Waymon S. Harbin, Jr. vs. State of South Carolina, Case No. 2008-CP-04-0073.

Respectfully submitted,

HENRY D. MCMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

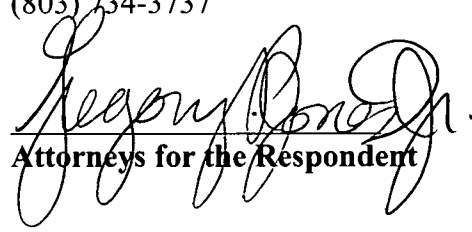
SALLEY W. ELLIOTT  
Assistant Chief Deputy Attorney General

*[Signatures continued on next page]*

GREGORY P. JONES, JR.  
Assistant Attorney General

P.O. Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

By:

  
Attorneys for the Respondent

Columbia, South Carolina  
September 14, 2009

*Other counsel of record:*

Bruce A. Byrholdt, Esquire

RECEIVED  
SEP 15 2009  
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Anderson County  
Honorable J. Cordell Maddox, Jr., Judge

RECEIVED  
SEP 15 2009  
S.C. SUPREME COURT

Waymon S. Harbin, Jr.

Respondent,

vs.

State of South Carolina,

Appellant.

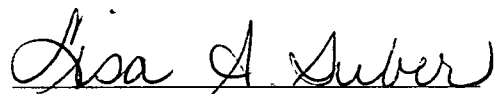
\_\_\_\_\_  
PROOF OF SERVICE  
\_\_\_\_\_

PERSONALLY appeared before me, Lisa A. Suber, who being duly sworn, deposes and says:

That there is a regular communication by mail throughout the State of South Carolina, and that this is a proper circumstance for service by mail; and,

That the foregoing NOTICE OF APPEAL was served on the following person on September 15, 2009 by depositing one copy of each in the U.S. Mail, postage prepaid, addressed as follows:


Bruce Byrholdt, Esquire  
Post Office Box 2506  
Anderson, South Carolina 29622

  
\_\_\_\_\_  
Lisa A. Suber  
Legal Assistant

DATED this 15<sup>th</sup> day of September, 2009.

SWORN to before me this

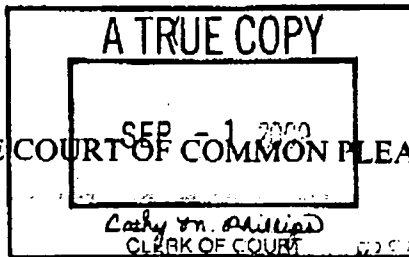
15<sup>th</sup> day of September, 2009

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: My Commission Expires  
January 30, 2013

STATE OF SOUTH CAROLINA )  
 COUNTY OF ANDERSON )  
 Waymon S. Harbin, Jr.249126 )  
 APPLICANT, )  
 VS. )  
 STATE OF SOUTH CAROLINA, )  
 RESPONDENT. )

IN THE COURT OF COMMON PLEAS



ORDER

2008-CP-04-00073

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This matter is before the Court on the State's Motion to Dismiss and Applicant Waymon S. Harbin's, Jr. (Harbin), Application for Post Conviction Relief. There have been two prior orders which dismissed the Applicant's request for Post Conviction Relief. After a complete and thorough review of the record, this Court finds the Applicant has never had his day in court for an evidentiary hearing on Post Conviction Relief. He is incarcerated at McCormick Correctional Institution and he has never been brought to court for any evidentiary hearing. Applicant would assert that the Statute of Limitation should be tolled in this matter because he never received an evidentiary hearing. Moreover, Applicant was never appointed counsel to assist him and as a pro se litigant he timely responded to the Respondent's Conditional Motions to Dismiss. I find justice requires that he be allowed to present his evidence that his guilty plea was not knowingly, intelligently and voluntarily entered and that he did not have the effective assistance of counsel because Mr. Warder had only been hired a few days before this trial was scheduled and did not have any opportunity to investigate the case.

I find that justice requires the State's motion to dismiss based upon the statute of limitations and subsequent PCR application should be denied and Applicant should have an evidentiary hearing.

This Court held an evidentiary hearing on March 19, 2009. The Applicant and his former attorney Richard Warder testified at the hearing. I find that Applicant did not have the effective assistance of counsel based upon the following reasons:

#### **FINDINGS OF FACT**

1. Applicant was charged with murder. Mr. Warder was retained by Applicant's family on or about April 15, 1998. On April 16, 1998, Mr. Warder filed a motion for a continuance asserting he had just been retained, that he needed time to review discovery material and properly prepare for trial. The Court denied his motion for a continuance and the case was called for trial on Tuesday, April 21, 1998. Mr. Warder has less than five (5) days to prepare to defend a charge of murder in a jury trial.

2. On April 16, 1998, Mr. Warder requested a continuance of the case before the Honorable Gerald Smoak which was denied. Mr. Warder requested the continuance in order to have time to prepare Applicant's defense to the charge of murder.

3. Mr. Warder testified at the evidentiary hearing that he was prepared to proceed to trial on Tuesday, April 21, 1998 despite the fact he had requested a continuance because he needed time to prepare a defense. If Mr. Warder was ready for trial why did he request a continuance. The record in this case reflects more than 83 items of discovery materials which had been produced to a former attorney of the Applicant of more than 350 pages of documents plus physical evidence which was in the custody of the Anderson County Sheriff's office.

4. I further find that Applicant's guilty plea was not freely, voluntarily, knowingly and intelligently entered because he did not have the effective assistance of trial counsel who would have conducted a thorough investigation of the case because of the extremely short amount of time Mr. Warder was involved in the case, trial counsel's failure to review more than 350 pages

of discovery material, trial counsel's failure to review the physical evidence in the case.

LCB

5. I further find that had trial counsel had sufficient time to prepare a defense and prepare for trial that it was reasonable a different result would have been achieved.

**CONCLUSIONS OF LAW**

1. This Court has jurisdiction over the PCR claim pursuant to S.C. Code of Laws Sec. 17-27-30 (1976, as amended).

2. PCR applicant may attack voluntariness and intelligence character of his guilty plea by establish he had the ineffective assistance of counsel. An applicant for PCR must establish that trial counsel's representation fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability the result would have been different. Jackson v. State, 355 S.C. 568, 586 S.E.2d 562 (SC 2003)(citations omitted).

**IT IS THEREFORE ORDERED**, that the convictions of Waymon S. Harbin, Jr. in case nos. 1998-GS-04-93 and 94 are hereby vacated and he is granted a new trial.

**IT IS SO ORDERED.**

*J. Cordell Maddox*

**J. CORDELL MADDOX,  
CIRCUIT JUDGE**

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