

Original

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

J. Derham Cole, Circuit Court Judge

RECEIVED

APR 27 2012

S.C. Supreme Court

TIMOTHY YOUNG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

The undersigned counsel would respectfully request a **final thirty-day extension, until May 29, 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 filing the return to the petition for writ of certiorari in the case of Jonathan Hill v. State in the Supreme Court today, April 27, 2012. Counsel filed the petition for rehearing in the case of State v. Benjamin P. Green in the Supreme Court on April 19, 2012. Counsel filed the petition for writ of certiorari and accompanying

appendix in the case of Isiah T. Smith v. State in the Supreme Court on 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 Pernel 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.

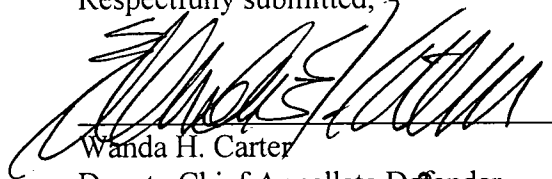
Counsel filed the initial brief of appellant and designation of matter in the case of State v. Lawrence Brown in the Court of Appeals in February, 2012 as well.

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.

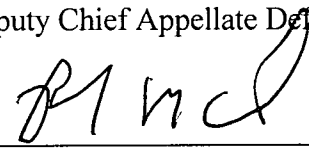
4. As indicated by her consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final thirty-day extension, until May 29, 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,



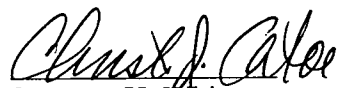
Wanda H. Carter
Deputy Chief Appellate Defender



Robert M. Dudek
Chief Appellate Defender

April 27, 2012

I DO NOT OPPOSE:



Suzanne H. White *for*

The Supreme Court of South Carolina

Timothy Young,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2010-CP-42-03533

ORDER

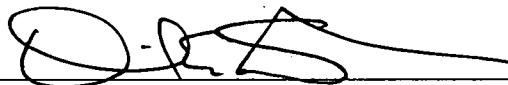
For good cause shown, the request for an extension until April 27, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted.

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



Clerk

Columbia, South Carolina

March 29, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Suzanne H. White

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

J. Derham Cole, Circuit Court Judge

RECEIVED

MAR 28 2012

S.C. Supreme Court

TIMOTHY YOUNG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

(2)

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

1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.
2. Counsel is preparing for 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

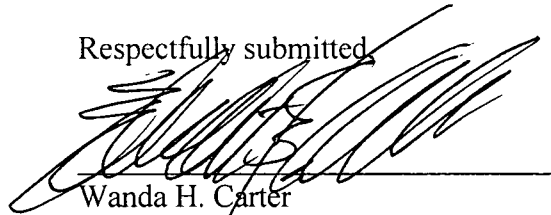
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accompanying appendices in the cases of Glenn Pernel v. State, Sylvester Toomer v. State and William Gladney Harden v. State in the Supreme Court on March 23, 2012. Counsel had an oral argument in the case of State v. Lewis Williams in the Court of 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.

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 28, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

J. Derham Cole, Circuit Court Judge

TIMOTHY YOUNG,

PETITIONER,

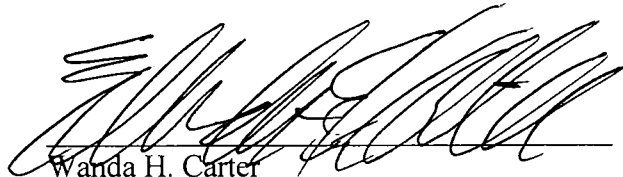
V.

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 Suzanne H. White, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 28th day of March, 2012.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 28th day of March, 2012.

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

The Supreme Court of South Carolina

Timothy Young,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2010-CP-42-03533

ORDER

The request for an extension until March 28, 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 28, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Suzanne H. White

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

FEB 27 2012

S.C. Supreme Court

February 27, 2012

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

Re: Timothy Young 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 Suzanne H. White, 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: Suzanne H. White



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

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

RECEIVED

JAN - 3 2012

January 3, 2012

S.C. Supreme Court

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

Dear Mr. Shearouse:

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

Timothy Young v. State of South Carolina

12/29/2011

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,

Sharon A. Graham
Administrative Coordinator



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

November 2, 2011

RECEIVED

NOV - 2 2011

Ms. Linda D. Moffitt
Circuit Court Reporter
800 Belcher Road
Spartanburg, SC 29316

S.C. Supreme Court

Dear Ms. Moffitt:

Please provide us with the following transcript:

Timothy Young v. State of South Carolina Case #: 10-CP-42-03533

County: Spartanburg Date of Trial: April 7, 2011

Presiding Judge: J. Derham Cole

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Sharon A. Graham
Administrative Coordinator

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

Shawn M. Campbell
Kenneth P. Shabel
John R. Holland

Campbell & Shabel

A T T O R N E Y S A T L A W

OF COUNSEL:
Sean Giovannetti

Sender's Email: jmoss@gc-lawfirm.com

Thursday, September 22, 2011

VIA CERTIFIED MAIL

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

227364

Re: Timothy Young, # ~~277364~~ vs. State of South Carolina
2010-CP-42-3533

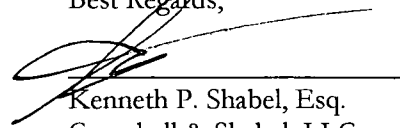
Dear Mr. Shearouse:

Enclosed for filing are an original and a copy of a notice of appeal in the above-referenced case. I have been appointed to serve as attorney for the PCR applicant, Timothy Young, in this action. 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.

Insofar as this is an appeal from a Post-Conviction Relief case, I am not enclosing a filing fee, as I believe such fees are waived in these cases.

Best Regards,



Kenneth P. Shabel, Esq.
Campbell & Shabel, LLC
P.O. Box 1793
Spartanburg, S.C. 29304
Telephone: 864-583-0001
FAX: 864-583-1199
Attorney for Appellant

cc: client
Ms. Suzanne H. White, Assistant Attorney General

RECEIVED

SEP 26 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable J. Durham Cole, Circuit Court Judge

Case No. 2010-CP-42-3533

Timothy Young, #227364,

Plaintiff/Applicant

vs.

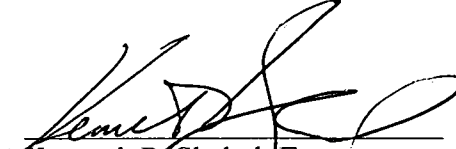
State of South Carolina,

Respondent

NOTICE OF APPEAL

Timothy Young, South Carolina Department of Corrections Number 227364, hereby appeals the order of the Honorable J. Durham Cole dated September 8, 2011 in Case Number 2010-CP-42-3533.

September 22, 2011


Kenneth P. Shabel, Esq.
Campbell & Shabel, LLC
104 N. Daniel Morgan Ave, Suite 201
Spartanburg, S.C. 29306
Telephone: 864-583-0001
FAX: 864-583-1199
Attorney for Applicant

Other Counsel of Record:

Suzanne H. White, Esq.
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
Tel: (803) 734-3970
Fax: (803) 253-6283
Attorney for Respondent

RECEIVED
SEP 26 2011
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable J. Durham Cole, Circuit Court Judge

Case No. 2010-CP-42-3533

Timothy Young, #227364,

Plaintiff/Applicant

vs.

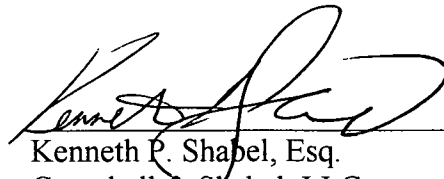
State of South Carolina,

Respondent

PROOF OF SERVICE

I certified that I have served the Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid, on the State of South Carolina, addressed to its attorney of Record, Suzanne H. White, Assistant Attorney General, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549

September 22, 2011



Kenneth P. Shabel, Esq.
Campbell & Shabel, LLC
104 N. Daniel Morgan Ave, Suite 201
Spartanburg, S.C. 29306
Telephone: 864-583-0001
FAX: 864-583-1199
Attorney for Applicant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Timothy Young, #227364,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2010-CP-42-3533

ORDER OF DISMISSAL

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2011 SEP 12 AM 10:38
 M. HOPE BLACKWELL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 8, 2010. The Respondent made its Return on or about February 16, 2011. An evidentiary hearing into the matter was convened on April 7, 2011, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Kenneth P. Shabel, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the October 2009 term of the Spartanburg County Grand Jury for burglary – 2nd degree (09-GS-42-5318). Applicant was represented by James A. Cheek, Esquire. On October 30, 2009, the Applicant pled guilty as indicted. Applicant was sentenced by the Honorable J.

COMPUTER

Mark Hayes II to confinement for a period of twelve years. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. "Pled guilty and was sentenced while under the influence of Class III narcotic (Haldol);" and
 - b. "Counsel was aware of prior plea agreement with Solicitor and Probation Officer to drop charge to Burglary - 3rd degree and run concurrent with probation violation."

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 SEP 12 AM 10:18
M. HOPE BLAOKLEY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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 proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 480 S.E.2d 733, 735 (1997) (citing Strickland).

FILED
DEPT. OF COURT
HARTZBURG COUNTY
2011 SEP 12 AM 10:18
M. H. PE
D. A. CILLEY

Applicant alleged that he was under the influence of a prescribed narcotic when he pled guilty and that there was a plea agreement to drop the charge to a burglary – 3rd degree that was not honored. Applicant testified that because he hears voices and is violent, he takes two Haldol daily. In support of his testimony regarding his mental illness, Applicant entered into evidence two documents from SCDC regarding his medical history. (Exhibits #1 & #2). Applicant testified that when he is not incarcerated in SCDC, he has trouble getting and receiving his medications on a regular basis. However, Applicant testified that at the time of this arrest, he had been taking his medications regularly, but he had gotten into an argument and had hit the glass of the window in this building and the glass broke. Applicant testified that he never

entered the building. Applicant testified that Counsel never explained that Applicant was pleading guilty to burglary – 2nd degree and never explained the elements of that charge. However, Applicant also acknowledged that he also faced a probation violation at the same time of his guilty plea for a previous charge of burglary – 2nd degree. Applicant also acknowledged that he was taking his prescribed medication on the day of his guilty plea.

This Court finds that Applicant has failed to meet his burden of proof as to any claim of ineffective assistance of counsel. The record directly contradicts Applicant’s testimony as to some points regarding his medication and his understanding of the charge he was facing at the time. It is clear that Applicant and Counsel had a history of working together in the past and Counsel was well aware of Applicant’s mental issues, and made the Court aware of those issues as well. Applicant failed to present any testimony or evidence regarding any plea agreement. Therefore, this Court finds that this claim should be denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant’s testimony has failed to establish any meritorious claim sufficient to grant application. This Court further finds the record reflects that counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in their representation, and that counsel’s conduct does not fall below the objective standard of reasonableness.

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

FILED
CLERK OF COURT
SARATOGA COUNTY
2011 SEP 12 AM 10:18
M. HOPE BEAUCHELEY

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION


Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel’s assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant’s behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

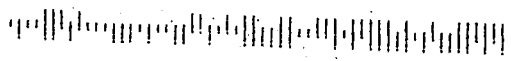
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8 day of September, 2011.



J. Derham Cole
Presiding Judge

FILED
CLERK OF COURT
MARIANBURG COUNTY
2011 SEP 12 AM 10:18
M. HOPE BLANCHLEY



Campbell & Shabel, LLC
104 N. Daniel Morgan Ave
Suite 201
Spartanburg, SC 29306

Timothy Young

VIA CERTIFIED MAIL
The Honorable Daniel Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211