The Supreme Court of South Carolina

Robert Troy Taylor, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Michael G. Nettles
Georgetown County
Trial Court Case No. 2007-CP-22-00476

ORDER

For good cause shown, the request for an extension until May 7, 2012 to serve and file the Brief of Respondent 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

April 9, 2012

cc: Jeremy Adam Thompson, Esquire
Assistant Attorney General Christina J. Catoe

ALAN WILSON
ATTORNEY GENERAL

April 6, 2012

VIA HAND DELIVERY

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

(2

RE: Robert Troy Taylor v. State of South Carolina
PCR Appeal – Georgetown County

Dear Mr. Shearouse:

The Brief of Respondent in the above-referenced PCR appeal is due to be served and filed today. However, due to my heavy workload at this time, I am requesting a thirty-day extension. I have communicated with opposing counsel, Jeremy A. Thompson, and he consents to this extension request.

Thank you for your attention to this matter. Please do not hesitate to contact me should there be any questions or concerns.

Sincerely,

Christina J. Catoe
Assistant Attorney General

CJC/

cc: Jeremy A. Thompson, Esquire
Law Office of Jeremy A. Thompson, LLC
PO Box 12891
Columbia, SC 29211

The Supreme Court of South Carolina

Robert Troy Taylor, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Michael G. Nettles
Georgetown County
Trial Court Case No. 2007-CP-22-00476

ORDER

The request for an extension until April 6, 2012 to serve and file the Brief of Respondent 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

March 8, 2012

cc: Jeremy Adam Thompson, Esquire
Assistant Attorney General Christina J. Catoe

ALAN WILSON
ATTORNEY GENERAL

March 7, 2012

VIA HAND DELIVERY

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

RE: Robert Troy Taylor v. State of South Carolina
PCR Appeal – Georgetown County

Dear Mr. Shearouse:

The State's Brief of Respondent in the above-referenced PCR appeal is due to be served and filed today. However, due to my heavy workload at this time, I am requesting a thirty-day extension. No previous extensions have been requested.

By copy of this letter, I am advising opposing counsel, Jeremy A. Thompson, Esquire, of this extension request.

Sincerely,

Christina J. Catoe
Assistant Attorney General

CJC/

cc: Jeremy A. Thompson, Esquire
Law Office of Jeremy A. Thompson, LLC
PO Box 12891
Columbia, SC 29211

LAW OFFICE OF
JEREMY A. THOMPSON
LLC

February 6, 2012

VIA HAND-DELIVERY

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211-1330

RE: Robert Troy Taylor, #315084 v. State of South Carolina; 07-CP-22-0476

Dear Mr. Shearouse:

Enclosed please find the original and seventeen copies of the Brief of Petitioner, one of which is unbound, thirteen copies of the Appendix, and the original and one copy of my Certificate of Service in this matter. I would appreciate your filing one unbound copy and fourteen bound copies of the Brief, the copies of the Appendix, and the original Certificate of Service, clocking the remaining copies, and returning the remaining copies to me. With my thanks for the Court's assistance in this matter, and my best regards, I am,

Yours sincerely,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
Enclosures
cc: Christina J. Catoe, Assistant Attorney General (via hand-delivery) (w/ Brief & Certificate of Service)
Robert Troy Taylor, #315084 (via U.S. mail) (w/ Brief & Certificate of Service)
Anthony Taylor (via U.S. mail) (w/ Brief & Certificate of Service)

: 803-779-2555
: 803-779-2556
: jeremyatlaw@yahoo.com
: www.jathompsonlaw.com

Mailing Address:
P.O. Box 12891, Columbia, SC 29211
Physical Address:
1612 Marion Street, Suite 210, Columbia, SC 29201

The Supreme Court of South Carolina

Robert Troy Taylor, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Michael G. Nettles
Georgetown County
Trial Court Case No. 2007-CP-22-00476

ORDER

For good cause shown, the request for an extension until February 6, 2012 to serve and file the Brief of Petitioner and additional appendices 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 Brenda J. Shealy
Chief Deputy Clerk

Columbia, South Carolina

January 5, 2012

cc: Jeremy Adam Thompson, Esquire
Assistant Attorney General Christina J. Catoe

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2007-CP-22-0475

ROBERT TROY TAYLOR, #315084,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITIONER'S MOTION FOR EXTENSION OF TIME

THIS MATTER comes before the Court by way of an appeal from a Post-Conviction Relief Order. The Brief of Petitioner and thirteen additional copies of the Appendix are due for filing on January 6, 2012. Because of my heavy State and federal trial and appellate schedules, I will be unable to complete the Brief and to prepare the additional copies of the Appendix by that date and, for that reason, I now respectfully request a 30-day extension of time in which to prepare and submit my Brief of Petitioner and the additional copies of the Appendix on behalf of this client.

Inasmuch as this is my third extension request, opposing counsel, Christina J. Catoe, Assistant Attorney General, has consented to this request. See In re Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings, S.C. Sup. Ct. Order dated March 18, 2009.

Respectfully submitted,

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555
803-779-2556 FAX
jeremyatlaw@yahoo.com

ATTORNEY FOR PETITIONER.

This 4th day of January, 2012.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2007-CP-22-0475

ROBERT TROY TAYLOR, #315084,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Motion for Extension of Time in the above-entitled case has been served upon opposing counsel, Christina J. Catoe, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing in the U.S. mail with proper postage, this 4th day of January, 2012.

JEREMY A. THOMPSON
ATTORNEY FOR THE PETITIONER

SWORN TO BEFORE me this 4 day of January, 2012.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: 2/14

Law Office of Jeremy A. Thompson, LLC

January 4, 2012

Jeremy A. Thompson
Attorney at Law

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211-1330

RE: Robert Troy Taylor, #315084 v. State of South Carolina; 07-CP-22-475

Dear Mr. Shearouse:

Enclosed please find the original and one copy of my Petitioner's Motion for Extension of Time in the above-captioned matter. I would appreciate your filing the original, clocking the copy, and returning the clocked copy to me in the enclosed self-addressed, stamped envelope. With my thanks for the Court's attention to this matter, and my best regards, I am,

Yours sincerely,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
Enclosures
cc: Christina J. Catoe, Assistant Attorney General (w/ motion)
Robert Troy Taylor, #315084 (w/ motion)
Anthony Taylor (w/ motion)

1612 Marion Street, Suite 210
Columbia, South Carolina

P O Box 12891
Columbia, SC 29211

Phone: 803-779-2555
Fax: 803-779-2556

The Supreme Court of South Carolina

Robert Troy Taylor, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Michael G. Nettles
Georgetown County
Trial Court Case No. 2007-CP-22-00476

ORDER

For good cause shown, the request for an extension until January 6, 2012 to serve and file the Brief of Petitioner and additional appendices 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

December 12, 2011

cc: Jeremy Adam Thompson, Esquire
Assistant Attorney General Christina J. Catoe

Law Office of Jeremy A. Thompson, LLC

December 6, 2011

Jeremy A. Thompson
Attorney at Law

(2)

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211-1330

RE: Robert Troy Taylor, #315084 v. State of South Carolina; 07-CP-22-476

Dear Mr. Shearouse:

My Brief of Petitioner and thirteen additional copies of the Appendix are due to be filed in this matter on December 7, 2011. Due to my heavy State and federal trial and appellate court schedules, I will be unable to complete my work on the Brief of Petitioner by that date. Therefore, I respectfully request a thirty-day extension of time in which to prepare and file the Brief of Petitioner and thirteen additional copies of the Appendix on behalf of this client.

There has been one previous extension request in this matter. With my thanks for the Court's attention to this matter, and my best regards, I am,

Yours sincerely,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
cc: Christina J. Catoe, Assistant Attorney General
Robert Troy Taylor, #315084
Anthony Taylor

1612 Marion Street, Suite 210
Columbia, South Carolina

P O Box 12891
Columbia, SC 29211

Phone: 803-779-2555
Fax: 803-779-2556

The Supreme Court of South Carolina

Robert Troy Taylor, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Michael G. Nettles
Georgetown County
Trial Court Case No. 2007-CP-22-00476

ORDER

The request for an extension until December 7, 2011 to serve and file the Brief of Petitioner and additional appendices 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

November 2, 2011

cc: Jeremy Adam Thompson, Esquire
Assistant Attorney General Christina J. Catoe

Law Office of Jeremy A. Thompson, LLC

November 1, 2011

Jeremy A. Thompson
Attorney at Law

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211-1330

RE: Robert Troy Taylor, #315084 v. State of South Carolina; 07-CP-22-476

Dear Mr. Shearouse:

My Brief of Petitioner and thirteen additional copies of the Appendix are due to be filed in this matter on November 7, 2011. Due to my heavy State and federal trial and appellate court schedules, I will be unable to complete my work on the Brief of Petitioner by that date. Therefore, I respectfully request a thirty-day extension of time in which to prepare and file the Brief of Petitioner and thirteen additional copies of the Appendix on behalf of this client.

There have been no previous extension requests in this matter. With my thanks for the Court's attention to this matter, and my best regards, I am,

Yours sincerely,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
cc: Christina J. Catoe, Assistant Attorney General
Robert Troy Taylor, #315084
Anthony Taylor

1612 Marion Street, Suite 210
Columbia, South Carolina

P O Box 12891
Columbia, SC 29211

Phone: 803-779-2555
Fax: 803-779-2556

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

October 6, 2011

Jeremy Adam Thompson, Esquire
Law Office of Jeremy A. Thompson, LL
P.O. Box 12891
Columbia, SC 29211

Re: Taylor, Robert Troy v. The State

Dear Mr. Thompson:

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 November 7, 2011. The brief is not properly filed until we have proof of service.

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

Very truly yours,

CLERK

DES/jj

cc: Assistant Attorney General Christina J. Catoe

The Supreme Court of South Carolina

Robert Troy Taylor, Petitioner,

v.

State of South Carolina, Respondent.

ORDER

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

October 6, 2011

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2007-CP-22-475

ROBERT TROY TAYLOR, #315084,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

AMENDED PETITION FOR A WRIT OF CERTIORARI

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite D
Columbia, SC 29204
(803) 738-8622
(803) 738-1600 (FAX)

ATTORNEY FOR PETITIONER.

INDEX

QUESTIONS PRESENTED

I.

Whether the lower court improperly found that defense counsel was not ineffective for failing to advise the Petitioner that his Georgetown County plea to criminal sexual conduct with a minor in the second degree would be a predicate "most serious" offense?

II.

Whether the lower court improperly found that defense counsel was not ineffective for failing to conduct a sufficient investigation into the criminal sexual conduct with a minor in the second degree charge?

STATEMENT OF THE CASE

The Petitioner, Robert Troy Taylor, was indicted in Georgetown County for one count of criminal sexual conduct with a minor in the second degree and two counts of committing lewd act upon a minor. All three charges involved different victims.[1] On April 20, 2006, the Petitioner pleaded guilty as charged to the offenses. He was represented at this proceeding by R. Scott Joye, Esquire, and Delton W. Powers, Esquire. The Honorable Edward B. Cottingham, presiding circuit judge, sentenced the Petitioner to eight years imprisonment, suspended to five years imprisonment and a three-year term of probation. The Petitioner did not appeal his convictions or sentences.

On April 3, 2007, the Petitioner filed an Application for Post-Conviction Relief with the Georgetown County Clerk of Court. The State made its Return on July 27, 2007. An evidentiary hearing into the matter was convened on November 20-21, 2008, before the Honorable Michael G. Nettles, presiding circuit judge. On January 27, 2009, the PCR court filed an Order of Dismissal denying the Petitioner's application on all issues. A timely Rule 59(e), SCRCP, motion was filed on February 9, 2009. This motion was denied by Form 4 order filed March 30, 2009. On April 15, 2009, the Petitioner timely served a Notice of Appeal indicating his intent to appeal the orders issued by Judge Nettles in this case. The Notice of Appeal was filed with this Court on April 16, 2009.

Notice of appeal was timely served and filed. The Petitioner now seeks a writ of certiorari.

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[1] In accordance with this Court's order regarding redaction of personal identifiers, all references to the victims' names in the Appendix have been redacted. Since there are three minor victims, their names have been replaced with the pseudonyms "Victim 1," "Victim 2," and "Victim 3."

ARGUMENT

Standard of Review

The Sixth and Fourteenth Amendments to the United States Constitution guarantee every criminal defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In the context of ineffective assistance of counsel during a guilty plea, the PCR applicant must show that but for counsel's errors and omissions, he would have exercised his right to trial. Hill v. Lockhart, 474 U.S. 52 (1985). Further, the PCR applicant must show that there is a reasonable probability that he would have insisted on proceeding to trial on the matter instead of pleading guilty. Porter v. State, 368 S.C. 378, 629 S.E.2d 353 (2006). In other words, a defendant who pleads guilty on the advice of counsel may collaterally attack the voluntariness of his plea only by showing (1) that counsel was ineffective; and (2) that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997).

On appeal, a PCR court's findings will be upheld if there is any evidence of probative value supporting them. Cherry v. State, 300 S.C. 155, 386 S.E.2d 624 (1989). If no probative evidence is found, the reviewing court will reverse the lower court's findings. Pierce v. State, 338 S.C. 139, 526 S.E.2d 222 (2000).

I. The PCR court erred in finding that defense counsel was not ineffective for failing to advise the Petitioner that his plea to criminal sexual conduct with a minor in the second degree would be considered a "most serious" strike pursuant to S.C. Code Ann. §17-25-45.

A. How the Issue Arose Below

The Petitioner was charged with two counts of lewd act and one count of criminal sexual conduct with a minor in the second degree ("CSC") in Georgetown County. While these charges were pending, he was also charged with another CSC offense in Williamsburg County. While each charge in Georgetown County involved different victims, the two CSC charges in Georgetown and Williamsburg Counties involved the same victim: Victim 3. At the time the Petitioner was arrested and charged in Williamsburg County, he was represented by defense counsel on all charges in both counties.

Defense counsel, however, was under the mistaken belief that the Williamsburg County charge was for lewd act and not for CSC. See App. p. 109, lines 1-7. It was not until after the Georgetown County plea that he realized that the charge against the Petitioner in Williamsburg County was for CSC. See App. p. 176, line 18-p. 177, line 8. Defense counsel admitted in his testimony that he did not advise the Petitioner that his plea to CSC in Georgetown County would serve as a predicate "most serious" offense, and that he would have discussed that fact with the Petitioner had he known what the Petitioner was charged with in Williamsburg County. App. p. 111, line 23-p. 113, line 5. At the close of his testimony, defense counsel admitted that his failure to advise the Petitioner about the two-strike law was a mistake:

> I made a mistake in this case. The mistake is I didn't tell him about second strike. ...
>
> I didn't pay attention. I grabbed the warrant. I turned it over to – to my staff. I certainly will never make that mistake again. I used

> to work – clerk for Sydney Floyd. Judge Floyd said, "You never learn by what you did right; its [sic] what you did wrong."

App. p. 191, line 19-p. 192, line 12.[2]

The Petitioner's intent was always to proceed to trial in Williamsburg County. See App. p. 103, lines 16-18 ("Troy had told me, on numerous occasions, that he absolutely would not plea on the Williamsburg County counts"). The Petitioner testified that he was not advised that a plea in Georgetown County to the CSC charge would result in a first "most serious" strike that would be used as a predicate offense to elevate his sentence in Williamsburg County to life without parole. App. p. 230, line 21-p. 231, line 5. He further testified on multiple occasions that had he been so advised, he would not have pleaded guilty and instead would have proceeded to trial in Georgetown County. See App. p. 231, lines 6-10; p. 235, line 24-p. 236, line 4.

The PCR court denied relief on this issue, finding that the Petitioner had failed to meet his burden of proof in demonstrating that defense counsel's performance was deficient and that he would have proceeded to trial had defense counsel given him the correct advice. See App. pp. 7-14. The Petitioner filed a Rule 59(e), SCRCP, motion on this ground, arguing that the PCR court had misapprehended his argument and that the PCR court should have granted relief. See App. pp. 357-360. The PCR court denied this motion in a form order. See App. p. 365. The Petitioner now argues that these rulings were in error.

B. Discussion

In order to demonstrate that defense counsel's performance constituted ineffective assistance of counsel, the Petitioner must show that his pleas of guilty were the product of

[2] The parties also stipulated that attorney Powers, who also represented the Petitioner, did not advise the Petitioner of the life without parole consequences of the Petitioner's plea in Georgetown County. See App. p. 280, line 12-p. 281, line 16.

defense counsel's errors and omissions, and, but for counsel's deficient performance, he would not have pleaded guilty and would instead have proceeded to trial. See generally Hill v. Lockhart, *supra*; Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009). The PCR court found that the Petitioner failed to meet his burden of proof on both prongs of the ineffective assistance of counsel inquiry. The Petitioner respectfully submits that neither finding is supported by any evidence in the record, and that he is entitled to a new trial. Each prong of the ineffective assistance of counsel inquiry will be addressed in turn.

1. Defense Counsel's Failure to Give Advice Regarding the Application of the Two-Strike Law Constituted Deficient Performance

A criminal defendant must only comprehend the direct consequences of his plea in order for his plea to be made knowingly, voluntarily, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969).

> For a guilty to be constitutionally valid, a defendant must be made aware of all the "direct," but not the "collateral," consequences of his plea. "Direct" consequences have "a definite, immediate, and largely automatic effect on the range of the defendant's punishment." A consequence is "collateral" when it is uncertain or beyond the direct control of the court.

Meyer v. Branker, 506 F.3d 358, 367-368 (4th Cir. 2007) (internal citations omitted). Failure to advise a defendant of the collateral consequences of his plea does not render defense counsel's performance deficient. Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). However, incorrect advice regarding the applicability of a collateral consequence will render a guilty plea invalid. Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991).

Criminal sexual conduct with a minor in the second degree is statutorily qualified as a "most serious" offense. S.C. Code Ann. §17-25-45(C)(1). Upon a conviction for a "most serious" offense, if the defendant has a prior conviction for a "most serious" offense, the

defendant "must be sentenced to a term of imprisonment for life without the possibility of parole." S.C. Code Ann. §17-25-45(A). The provisions of §17-25-45(A) are mandatory, and may not be waived by the solicitor or the court. S.C. Code Ann. §17-25-45(G).

Whether the fact that a conviction for an offense may cause a defendant to receive an enhanced sentence under a recidivist statute in the future constitutes a direct or collateral consequence of a plea to that offense appears to be a novel issue of law in this State. The PCR court found that the potential application of a recidivist statute is a collateral consequence, see App. p. 344, and the Petitioner does not challenge this finding on appeal. The distinction which the Petitioner draws, and which the PCR court ignored, is that when the potential to apply the recidivist statute becomes a certainty, then the recidivist nature of the conviction becomes a direct consequence of the plea rather than a collateral consequence. Under such limited circumstances, which existed in this case, defense attorneys should be required to advise their clients of the application of the recidivist statute to their impending conviction prior to the guilty plea proceeding. Since defense counsel clearly failed to advise the Petitioner of this direct consequence of his plea to CSC in Georgetown County, his performance fell below an objective standard of reasonableness.

As he argued below, the Petitioner does not dispute that, under normal circumstances, the possibility that a conviction may be able to enhance a future sentence would be a collateral consequence of a plea. However, exceptional circumstances existed in this case such that the normal rule should not apply. Defense counsel represented the Petitioner on multiple CSC charges in multiple counties. A conviction for either CSC charge would *automatically* elevate the other CSC charge's penalty to *only* life without the possibility of parole. The application of

the recidivist statute was a mandatory and unavoidable consequence of the plea. See S.C. Code Ann. §17-25-45(G).

Where, as here, a defense attorney represents a criminal defendant on multiple charges, that defense attorney should be required to inform the defendant how the consequences of a plea to some, but not all, of the charges will affect the sentences of the remaining charges. Such lack of advice is akin to failing to advise a defendant that pleading to multiple offenses could result in consecutive sentences. The failure to give that advice is unquestionably deficient performance. See generally Tate v. State, 758 So.2d 1188, 1189 (Fla. 3rd DCA 2000) (finding ineffective assistance of counsel where defense counsel failed to advise his client that his "plea of guilty would result in consecutive sentences"). Similarly, where a plea to one charge affects the potential sentence of another pending charge, the existence of which is known to defense counsel, the failure to give comprehensive and appropriate advice regarding the direct consequences of the plea on the remaining charges should constitute deficient performance.

The difference between a direct consequence and a collateral consequence of a plea is "whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment." Cuthrell v. Director, Patuxent Inst., 475 F.2d 1364, 1366 (4th Cir. 1973). It is telling that defense counsel's testimony at the PCR hearing was not defensive because defense counsel had all the tools at his disposal to give the proper advice to the Petitioner at the time the Petitioner pleaded guilty. Defense counsel was horrified at the lack of advice he had given because he knew exactly how the direct consequences of the Petitioner's plea to CSC in Georgetown County would affect the range of his punishment on the CSC charge pending in Williamsburg County. He acknowledged that he made a "mistake" because he

"didn't pay attention." App. p. 192, lines 8-10. His lack of advice was constitutionally deficient, and there is no probative evidence to support the PCR court's ruling to the contrary on this issue.

2. The Petitioner's Decision to Plead Guilty Was not Knowingly, Voluntarily, or Intelligently Made

Had defense counsel given the constitutionally mandated proper advice to the Petitioner, there can be no doubt that the Petitioner would not have pleaded guilty to the CSC charge in Georgetown County. The PCR court misinterpreted the facts when it denied the Petitioner's request for relief on this ground. The PCR court found:

> This Court is convinced that counsel would have worked vigorously to secure a lewd act plea in Williamsburg giving the Applicant a sentence concurrent with the Georgetown sentences, and this Court believes that he most likely would have succeeded. This Court also finds that the Applicant was fully advised about this and was strongly urged to accept such an arrangement. Had he agreed to do so, he most likely would not have served any additional time in prison, and he absolutely would not currently be serving a life without parole sentence. Therefore, this Court finds that the Applicant knowingly and voluntarily proceeded to trial in Williamsburg with full awareness that he would receive life without parole if convicted, and he alone had the opportunity to completely avoid what might be considered a harsh result. This Court finds that this circumstances supercedes [sic] the failure of counsel to specifically inform the Applicant regarding the two-strike law, such that the Applicant's life without parole sentence is the direct and proximate result of (1) his knowing and voluntary decision to reject the guilty plea to lewd act in Williamsburg; and (2) his ultimate conviction by jury in Williamsburg.

App. pp. 346-347. In other words, the PCR court found that the Petitioner's decision to proceed forward in Williamsburg County, regardless of the consequences, rendered his pleas in Georgetown County knowing and voluntary because he proceeded to trial in Williamsburg County anyway. This ruling is pervasive throughout the PCR court's decision and forms the central basis for the court's decision that the Petitioner would not have proceeded to trial in Georgetown County had he known the consequences of doing so.

The PCR court incorrectly focused on the penalty ultimately imposed in Williamsburg County when it reviewed whether or not the Petitioner's plea in Georgetown County was intelligently made. It is not the decision to go to trial in Williamsburg County that is the issue; to the contrary, it is whether the Petitioner would have decided to plead guilty in Georgetown County had he received the proper advice that forms the crux of his argument. The fact that the Petitioner wanted to proceed to trial in Williamsburg County should be seen as a factor *supporting* his claim that he would not have pleaded in Georgetown County. Armed with the knowledge that he would proceed to trial in Williamsburg County, it logically follows that the Petitioner would have wanted to minimize his sentencing exposure in the event of a conviction in Williamsburg County. The reality that the Petitioner went to trial in Williamsburg County in the face of a plea offer to lewd act, see App. p. 333, only reinforces this fact.

By pleading guilty in Georgetown County, the Petitioner forever lost the ability to mitigate his sentence in Williamsburg County if he exercised his constitutional right to trial. Since it is unquestioned that the Petitioner intended to exercise that right, his plea in Georgetown County needed to be made with the full understanding of its impact on the Williamsburg County charge. However, due to defense counsel's undeniable failure to advise the Petitioner regarding the direct consequences of his plea in Georgetown County to his pending charge in Williamsburg County, the Petitioner's decision to plead guilty in Georgetown County was not made knowingly, intelligently, or voluntarily. The Petitioner clearly testified that he would not have pleaded guilty in Georgetown County had he been given the proper advice. Accordingly, the

PCR court's findings on this issue are unsupported by any probative evidence, and the Petitioner is entitled to a new trial.[3]

3. The Impact of Padilla v. Kentucky, 130 S.Ct. 1473 (2010)

The foregoing discussion was based on the law of the consequences of guilty pleas set forth by this Court over the course of the last three decades. The Petitioner respectfully submits, however, that the prior decisions of this Court in this area have been at least partially abrogated by the United States Supreme Court's recent decision in Padilla v. Kentucky, ___ U.S. ___, 130 S.Ct. 1473 (2010). Accordingly, the Petitioner will address how he believes Padilla impacts this Court's decision in this matter.

In Padilla, the defendant, a legal immigrant, pleaded guilty to a marijuana offense after his attorney advised him that he did not have to worry about being deported if he pled. 130 S.Ct. at 1477-1478. After discovering that he faced deportation for his conviction, the defendant filed for post-conviction relief. Id. at 1477. The Kentucky Supreme Court found that he was not entitled to relief because immigration is a collateral consequence of a guilty plea, and that his attorney could not be found ineffective for failing to advise him of the collateral consequences of his plea. Id. at 1478.

The United States Supreme Court reversed. The Supreme Court first noted that "[w]e ... have never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance' required under Strickland." Id. at 1481 (quoting Strickland, *supra*, at 689). However, the Supreme Court did not reach the question of whether lower courts should draw a distinction between direct and collateral consequences of

[3] While the lack of advice given by defense counsel pertains only to the CSC charge in Georgetown County and how a conviction in Georgetown County would affect the pending CSC charge in Williamsburg County, the Petitioner would submit that the entire plea should be vacated because the plea deal was to resolve all of the Georgetown County charges at once. See App. p. 175, line 20-p. 176, line 2.

pleas "because of the unique nature of deportation." Id. Instead, given the extensive relationship between deportation and criminal convictions, the Supreme Court held that "[d]eportation as a consequence of a criminal conviction is ... uniquely difficult to classify as either a direct or a collateral consequence." Id. at 1482.

Having established that counsel was required to give advice about deportation, the Supreme Court turned to the question of his performance and found that

> Immigration law can be complex, and it is a legal specialty of its own. Some members of the bar who represent clients facing criminal charges, in either state or federal court or both, may not be well versed in it. There will, therefore, undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear or uncertain. The duty of the private practitioner in such cases is more limited. ... *But when the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear.*

Id. at 1483 (emphasis added). Furthermore, the Supreme Court explicitly rejected the argument that only affirmative misadvice could give rise to a claim of ineffective assistance of counsel:

> A holding limited to affirmative misadvice would invite two absurd results. First, it would give counsel an incentive to remain silent on matters of great importance, even when answers are readily available. ... Second, it would deny a class of clients least able to represent themselves the most rudimentary advice on deportation even when it is readily available.

Id. at 1484.

While Padilla's impact is felt most strongly in deportation cases, the Petitioner respectfully submits that the decision has far-reaching repercussions in all collateral consequences cases. First, the Supreme Court explicitly rejected the direct/collateral dichotomy, which has been the bedrock of this Court's decisions in this area for the last three decades,[4] and

[4] See Griffin, *supra*.

identified at least one consequence of a plea—deportation—that occupies a "middle" ground. Second, the Supreme Court also rejected a claim that only affirmative misadvice about a collateral consequence could give rise to a claim of ineffective assistance of counsel, which has also been the foundation of this Court's decisions in this area.[5] Third, the Supreme Court appears to advocate a common-sense approach to evaluating claims of ineffective assistance of counsel when it comes to an attorney's advice, or lack thereof, regarding "collateral" consequences: apply a sliding scale about the importance and inevitability of the consequence. When the consequence is virtually certain to be imposed, an attorney should give correct advice about that consequence. However, when the application of the consequence is unclear, then the attorney's role is much more limited.

The Petitioner respectfully submits that each of these changes in the law support his claim that he received ineffective assistance of counsel in this case.[6] As shown above, the "collateral" consequence in this case—the elevation of the Williamsburg County CSC charge's sentence to LWOP—was absolutely certain at the time the Petitioner pleaded guilty in Georgetown County. Due to the inevitability of this consequence, the Petitioner respectfully submits that the recidivist nature of his plea, like deportation, became a consequence that defense counsel was required to give advice about. Furthermore, the Petitioner should not be barred from obtaining relief on this ground simply because defense counsel remained silent instead of giving incorrect advice about the consequence. Defense counsel represented the Petitioner on all of the charges, and he should have been required to give correct advice about how a plea in one

[5] See Brown, *supra*.

[6] The Petitioner would also submit that the Supreme Court made clear its intent that Padilla should be applied to cases pending on collateral review. See Padilla, *supra*, at 1485 ("It seems unlikely that our decision today will have a significant effect on those convictions already obtained as the result of plea bargains"). Given the Supreme Court's explicit reference to Padilla's impact on cases where convictions have already been obtained, the Supreme Court has indicated that Padilla is a case which should apply to collateral actions, such as this one.

county would affect his charges in the other county. His failure to do so constituted ineffective assistance of counsel, and the Petitioner is entitled to relief.

II. The PCR court erred in finding that defense counsel was not ineffective for failing to conduct a sufficient investigation into the CSC charge.

A. How the Issue Arose Below

The arrest warrant charging the Petitioner with criminal sexual conduct with a minor in the second degree in Georgetown County stated that "between the date[s] of June 01, 1999 and July 30, 1999 the defendant, Robert Troy Taylor, did commit a sexual battery on the 11-year-old male victim." App. p. 87. The State described this offense during the plea as follows:

> [This offense] was as a result of a sanctioned church event where Troy Taylor was the head pastor. These boys went to the beach. I believe it was at Pawleys Island but they went to the beach in Georgetown County. They were waiting on a shower after coming out of the beach at one of these public showers, and Mr. Taylor kindly offered to not make Mr. – the victim wait in line for a shower. So he invited him to come back to his house where he could shower, and while in the shower Mr. Taylor came into the shower with him and sodomized him.

App. p. 13, lines 6-14. Defense counsel testified that the June 1, 1999 through July 30, 1999 time frame were the most definite dates of the offense that he had received from the State prior to the Petitioner's plea. App. p. 149, lines 11-15; see also App. p. 127, lines 20-24.

However, prior to the Petitioner's plea, defense counsel was provided with a copy of an indictment, which had not been true-billed by the grand jury, that narrowed the dates of the offense to "on or about August 5, 1999 through August 7, 1999." App. p. 86. Despite receiving these new dates at such a late juncture, defense counsel did not request more time to investigate the charge. He also did not raise any objection when the dates were announced by the State during the guilty plea proceeding. See App. p. 15, lines 1-12.

After the Petitioner's plea, he and his family began to independently investigate the time frame in which he was alleged to have committed the CSC offense in Georgetown County. They

realized that the Petitioner was involved in a church-sanctioned event known as "World Changers" which involved multiple members of the church, including the Petitioner, going to local homes and performing repair work. On August 5-7, 1999, the Petitioner was involved in repairing the mobile home of Kimberly Cook, which caused him to be with her in her "home from breakfast time until late afternoon each of the dates listed." App. p. 291 (Affidavit of Kimberly Cook). The "World Changers" event was memorialized in a church bulletin provided to defense counsel in discovery by the State. See App. p. 287. Numerous witnesses testified at the PCR hearing and provided affidavits that the Petitioner was present at Ms. Cook's home during the time of the alleged assault. See App. pp. 198-205; p. 209; pp. 212-217; p. 238; pp. 288-296. Two witnesses also testified that the Petitioner was not a part of the beach trip in August. See App. pp. 223-229. Finally, multiple witnesses testified that the showers at the church were not operational at the time that the Petitioner allegedly committed this offense. See App. pp. 198-202; pp. 212-215. Given such a comprehensive defense, the Petitioner testified that "[h]ad we had the dates ... I would have never pled guilty." App. p. 251, lines 13-14.

However, the PCR court denied relief on this issue. See App. pp. 347-354. In particular, the PCR court found that "there exists a sharp contrast between the Applicant's unequivocal admission of guilt to the CSC offense on the dates of August 5-7, 1999, and his current allegation that he has an alibi for those very dates." App. p. 349. In response, the Petitioner filed a Rule 59(e), SCRCP, motion, arguing that "[t]he revelation of a firm timeline, different from that ever disclosed to the Applicant or his parents, at that late date deprived the Applicant of the opportunity to develop an alibi for this crime." App. p. 358. The PCR court denied this motion in a form order. See App. p. 365. The Petitioner now respectfully contends that these rulings were in error.

B. Discussion

> [C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.

Strickland v. Washington, *supra*, at 691. See also Wiggins v. Smith, 539 U.S. 510, 522-523 (2003) ("our principal concern ... [is] whether the investigation ... *was itself reasonable*") (emphasis in original).

In the present case, it is clear that defense counsel failed in his duty to make a reasonable investigation. The evidence is uncontroverted that defense counsel and the Petitioner were provided no information regarding a specific date of the offense beyond that which was contained in the arrest warrant—a two month span of time—prior to the plea. While it might be reasonable to assume that an investigation into a two month period of time which occurred over six years prior to the arrest might be a completely fruitless endeavor, the same assumption of reasonableness does not apply when deciding not to investigate a three-day period of time.

It was incumbent upon defense counsel to make an effort to investigate the August 5-7, 1999, period of time prior to the Petitioner's plea.[7] Had he done so, it is extremely likely that a two-pronged defense of alibi and factual inaccuracies in Victim 3's claims would have developed. This is especially true considering that the "World Changers" event which provided the Petitioner's alibi was noted in a church bulletin given to defense counsel by the State.

[7] Even if defense counsel did not know that the dates had changed prior to the plea, the August 5-7, 1999, dates were announced *during* the plea. See App. p. 15, lines 1-12. At a bare minimum, defense counsel should have taken some action during the plea. See generally Davie v. State, 381 S.C. 601, 610, 675 S.E.2d 416, 421 (2009) ("Even if counsel is given the benefit of the doubt that he was not aware of the plea offer until after the expiration date, we find counsel was deficient in not objecting at the plea hearing ... [to] in some way indicate to the court that he had no knowledge of the original plea offer").

Defense counsel's failure to conduct *any* investigation into this three-day period of time was deficient.

Furthermore, it is clear that the Petitioner would not have pleaded guilty had he known he could present such a comprehensive defense to the CSC charge in Georgetown County. The PCR court's decision to the contrary placed an inordinate amount of emphasis on the fact that the Petitioner pleaded guilty to this offense. The decision to plead guilty was made because it was the only way to avoid a trial at which he would not be able to provide a sufficient defense. As this Court has stated

> [W]e recognize that a defendant, for a host of legitimate reasons, may plead guilty to an offense for which a valid legal challenge may exist. The difference in such circumstances between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea.

Berry v. State, 381 S.C. 630, 635, 576 S.E.2d 425, 427 (2009). Furthermore, it is unquestioned that an individual who believes that he is innocent may still plead guilty to an offense due to the nature of the State's evidence against him. See generally North Carolina v. Alford, 400 U.S. 25 (1970). Accordingly, the validity of a guilty plea turns on "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Id. at 31.

At the time the Petitioner pleaded guilty, his two options were to plead guilty or go to trial without a defense. "[A]mong the alternative courses of action open" to him, the decision to plead guilty appears an easy one. Alford, *supra*, at 31. However, had a proper investigation been undertaken by defense counsel, the Petitioner would have been able to demonstrate at trial that: (1) he was at the "World Changers" event during the time of the alleged offense; (2) even if he was not at the "World Changers" event, he was not on the beach trip; and (3) the showers at

the church were not operational, which would have disputed Victim 3's claims that he was taken to the Petitioner's home to shower because the showers at the church were all being used by other children. Given the option between presenting this comprehensive a defense and pleading guilty, there can be no question that the decision to go to trial would have been the Petitioner's choice.[8] Accordingly, the PCR court's rulings on this issue are not supported by any probative evidence, and the Petitioner is entitled to a new trial.[9]

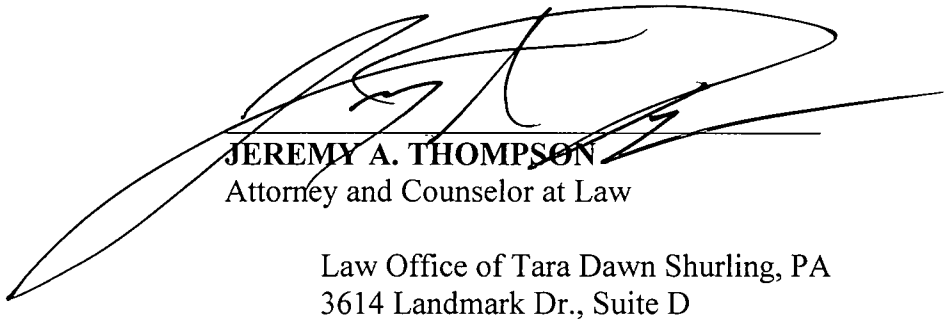
[8] None of the foregoing should be construed as arguing that a lack of a viable defense would have prevented the Petitioner from making the decision to proceed to trial had he known the direct consequences of his plea in Georgetown County on his pending CSC charge in Williamsburg County. As was demonstrated above, the Petitioner would not have pleaded guilty had he received the proper advice from defense counsel about the direct consequences of his plea in Georgetown County. However, if defense counsel had undertaken both constitutionally required activities—giving the proper advice to the Petitioner and preparing a defense for the Petitioner—there can be no doubt whatsoever that the Petitioner would have proceeded to trial in Georgetown County on the CSC charge.

[9] As with the prior issue, while defense counsel's lack of investigation pertains only to the investigation of the CSC charge, the Petitioner would submit that the entire plea should be vacated because the plea deal was to resolve all of the Georgetown County charges at once. See App. p. 175, line 20-p. 176, line 2.

CONCLUSION

For the reasons stated, the Petitioner asks this Court to grant the petition and allow full briefing on these issues.

Respectfully submitted,



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ATTORNEY FOR THE PETITIONER

This 8th day of June, 2010.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2007-CP-22-475

ROBERT TROY TAYLOR, #315084,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Amended Petition for a Writ of Certiorari in the above-entitled case has been served upon opposing counsel, Christina J. Catoe, Assistant Attorney General, by depositing in the U.S. Mail, postage prepaid, this 8th day of June, 2010.

JEREMY A. THOMPSON
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 8th day of June, 2010.

Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
The Honorable Michael G. Nettles, Circuit Court Judge

Case No. 2007-CP-22-476

ROBERT TROY TAYLOR, # 315084, PETITIONER,

v.

STATE OF SOUTH CAROLINA, RESPONDENT.

RETURN TO AMENDED PETITION FOR A WRIT OF CERTIORARI

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ISSUES PRESENTED

I. **The PCR court properly concluded that Petitioner was not entitled to relief where he pled guilty with knowledge of the direct consequences of his plea and where he was not misadvised regarding any consequences.**

II. **The PCR court properly concluded that Petitioner was not entitled to relief based upon counsel's investigation of the criminal sexual conduct with a minor charge.**

STATEMENT OF THE CASE

Petitioner was indicted in 2004 and 2005 in Georgetown County for two counts of lewd act upon a minor. (App. p. 77-83). He was later charged with criminal sexual conduct ("CSC") with a minor in the second degree. (App. p. 85-87). On April 20, 2006, Petitioner pled guilty before the Honorable Edward B. Cottingham. (App. p. 1-46). Petitioner waived grand jury presentment on the CSC with a minor charge. (See App. p. 84). Regarding each of the three charges, Judge Cottingham sentenced Petitioner to eight years, suspended upon the service of five years and three years of probation. (App. p. 45, lines 10-16). All sentences were to run concurrently. (See App. p. 77; p. 81; p. 84). No direct appeal was filed.

Petitioner filed an Application for post-conviction relief on April 3, 2007. (App. p. 47-71). The State made a Return on July 27, 2007. (App. p. 72-76). An evidentiary hearing was convened before the Honorable Michael G. Nettles on November 20-21, 2008. (App. p. 93-286). At the conclusion of the hearing, Judge Nettles requested Memorandums of Law from the parties. (See App. p. 300-333). Thereafter, on January 27, 2009, Judge Nettles filed an Order of Dismissal With Prejudice. (App. p. 334-55). Petitioner filed a Rule 59(e), SCRCP, motion on February 9, 2009, and the State made a Response on February 18, 2009. (App. p. 357-64). Petitioner's Rule 59 Motion was denied in an order filed March 30, 2009. (App. p. 365). A timely notice of appeal was served and filed. A Petition for a Writ of Certiorari was served on March 22, 2010. However, on May 14, 2010, this Court granted Petitioner's motion to submit an Amended Petition for a Writ of Certiorari. The Amended Petition for a Writ of Certiorari was served on June 8, 2010, and this Return follows.

ARGUMENT

I. **The PCR court properly concluded that Petitioner was not entitled to relief where he pled guilty with knowledge of the direct consequences of his plea and where he was not misadvised regarding any consequences.**

An attorney's performance is reasonable under Strickland v. Washington if he informs his guilty plea client regarding all direct consequences of a plea and does not misadvise him regarding any consequences. See Griffin v. Martin, 278 S.C. 620, 621-22, 300 S.E.2d 482, 483 (1983); Brown v. State, 306 S.C. 381, 382-83, 412 S.E.2d 399, 400-401 (1991); Smith v. State, 329 S.C. 280, 284, 494 S.E.2d 626, 628 (1997); Knox v. State, 340 S.C. 81, 86, 530 S.E.2d 887, 889 (2000); Meyer v. Branker, 506 F.3d 358, 367-68 (4th Cir. 2007). "Direct" consequences are consequences having a "definite, immediate and largely automatic effect" on the range of the defendant's punishment for that offense. Williams v. State, 378 S.C. 511, 515, 662 S.E.2d 615, 617 (Ct. App. 2008) (*quoting* Cuthrell v. Director, Patuxent Institution, 475 F.2d 1364 (4th Cir. 1973)); State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975) (*citing* Cuthrell, *supra*); Page v. State, 364 S.C. 632, 637,615 S.E.2d 740, 742 (2005).

Accordingly, a guilty plea is not rendered involuntary by virtue of the fact that the defendant was not informed of the collateral consequences of his conviction. Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citation omitted) (parole eligibility is collateral); Smith v. State, *supra* (a crime's designation as "violent" is collateral); Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004) (85% service requirement is collateral); Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002) (community supervision

is collateral) Page v. State, *supra* (sexually violent predator civil commitment is collateral).[1]

Respondent submits that the PCR court properly concluded that the two-strikes law ("LWOP" statute) is a collateral consequence of a guilty plea under South Carolina law. Compare State v. Jones, 344 S.C. 48, 59, 543 S.E.2d 541, 546 (2001) (concluding that the two-strikes law does not violate the *ex post facto* clause since it does not operate as a punishment for the predicate offense; instead it is a "stiffened penalty" for the subsequent offense). Contrary to Petitioner's argument, the imposition of an LWOP sentence in Williamsburg was far from a "certainty" at the time of Petitioner's Georgetown plea. It was not an "immediate" or "automatic" result of the Georgetown plea. See Williams v. State, *supra*. Nor did the two-strike law have any effect whatsoever on the "range of punishment" for the Georgetown offenses. See id. Petitioner's subsequent receipt of an LWOP sentence required application of legal

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[1] See also Wright v. U.S., 624 F.2d 557, 561 (5th Cir. 1980) ("a plea's possible enhancing effect on a subsequent sentence is merely a collateral consequence of the conviction; it is not the type of consequence about which a defendant must be advised before the defendant enters the plea"); U.S. v. Brownlie, 915 F.2d 527, 528 (9th Cir. 1990) (the possibility that a defendant will be convicted of another offense in the future and will receive an enhanced sentence based upon the instant conviction is not a direct consequence of a guilty plea); U.S. v. Edwards, 911 F.2d 1031, 1035 (5th Cir. 1990) (uncounseled defendant who pled guilty to receive a "time-served" sentence in state court needed not be advised that her plea could be used to enhance her sentence in a pending federal case; such consequence was merely collateral); U.S. v. Lambros, 544 F.2d 962, 966 (8th Cir. 1976) (the possibility of enhanced punishment for a subsequent similar conviction is not a direct consequence of a guilty plea); U.S. v. Salmon, 944 F.2d 1106, 1130 (3rd Cir. 1991) (the effect of a conviction on sentencing for a later offense under "career offender" law is a collateral consequence of which a defendant need not be advised; defendant need not be advised of even "foreseeable" collateral consequences in order for his plea to be voluntary under the constitution; defendant need only be advised of the direct consequences); McCarthy v. U.S., 320 F.3d 1230, 1234 (11th Cir. 2003) (the fact that defendant's guilty plea could have sentencing consequences in subsequent federal prosecution were clearly collateral, and neither the court nor McCarthy's counsel were constitutionally required to make him aware of them); Fee v. U.S., 207 F.Supp. 674 (1962) (defendant's guilty plea, which was later used to enhance the sentence on a subsequent conviction, was not involuntary where he was not informed that the plea could be used to enhance the subsequent sentence under a "third offender" provision); King v. Dutton, 17 F.3d 151 (6th Cir. 1994) (defendant's guilty plea to murder was not involuntary where he was not informed that the plea could be used as an "aggravating circumstance" to elevate the sentence to death in a then-pending, but unrelated, murder charge from another county).

principles entirely extraneous to the criminal statutes involved in the Georgetown guilty plea. Appleby v. Warden, Northern Regional Jail and Correctional Facility, 595 F.3d 532, 540 (4th Cir. 2010).

The future imposition of an LWOP sentence was entirely contingent upon events occurring after Petitioner's guilty plea, and upon actions taken by individuals other than the plea court. See United States v. Littlejohn, 224 F.3d 960, 965 (9th Cir.2000). The most obvious contingency was, of course, Petitioner's subsequent conviction on a "most serious" charge. See Weinstein v. U.S., 325 F.Supp. 597, 600 (1971) (it is proper to "assume that the defendant will not be guilty of a subsequent offense") (citation omitted); Coffin v. United States, 156 U.S. 432, 453 (1895) (the presumption of innocence in favor of the accused is axiomatic and elementary). In addition, contingencies occurring well before the trial/conviction stage could have also precluded imposition of an LWOP sentence. For instance, the Williamsburg prosecutor could have decided to dismiss the charges entirely or to prosecute lesser offenses. The Williamsburg prosecutor could have (and did in this case) decided to offer a plea bargain to a lesser-included offense that did not subject Petitioner to life without parole. (See App. p. 110, lines 3-19; p. 269-70; p. 333). Alternatively, the legislature could have altered or repealed the LWOP statute such that it was not applicable to Petitioner. The existence of these future contingencies and possibilities necessarily rendered the LWOP statute a collateral consequence of Petitioner's Georgetown guilty plea. (See cases cited *supra* at p. 4-5).

Accordingly, notwithstanding the regret expressed by Petitioner's former counsel that he did not advise Petitioner regarding this collateral consequence, counsel did not render *objectively* unreasonable performance by failing to do so. (See App. p. 191, line

19 – p. 192. line 12). See Foye v. State, 335 S.C. 586, 590, 518 S.E.2d 265, 267 (1999) (the court may properly disregard opinions of trial counsel going to the ultimate issues in a PCR case). Counsel's performance did not fall below reasonable professional norms where he advised Petitioner regarding all direct consequences of his Georgetown plea and where he did not provide any erroneous advice regarding consequences of the plea. (See App. p. 164, lines 16-18). See, e.g., Knox v. State, *supra*. Therefore, the PCR judge's denial of relief on this ground should be upheld. Compare Appleby v. Warden, Northern Regional Jail and Correctional Facility, *supra* (guilty plea upheld even though the defendant was not informed that the State could institute a recidivist proceeding and have him sentenced to life without parole for *the very crime* to which he pled guilty).

Petitioner argues that the recent United States Supreme Court case of Padilla v. Kentucky supports his claim for relief, asserting that Padilla has "far-reaching repercussions" in all collateral consequences cases. See Padilla v. Kentucky, __ U.S. __, 130 S.Ct. 1473 (2010). In Padilla, the Court held that because "virtually mandatory" deportation pursuant to federal immigration law is such a unique consequence, it is not appropriately classified as either direct or collateral. See Padilla at 1478; p. 1481-82. Therefore, the Court set forth a bright-line rule that defense counsel must inform a non-citizen guilty plea defendant regarding the risk of deportation. Id.

Respondent submits that, contrary to Petitioner's contentions, Padilla is not applicable to plea consequences created pursuant to state law - such as the two-strikes law at issue in this case - which are readily capable of classification as either direct or collateral. The Padilla court repeatedly emphasized the unique nature of the consequence of deportation, and the opinion implies that a bright-line rule is appropriate

in deportation cases only because the law of deportation has its roots in a comprehensive federal statutory scheme which is applicable nationwide. See id. at 1477-80; p. 1480 ("as a matter of federal law," deportation is an "integral part" of a non-citizen's penalty); p. 1482-83.).

Accordingly, Respondent submits that Padilla only abrogated the direct/collateral consequence dichotomy, and the law regarding misadvice/erroneous plea advice, as it pertains to federal deportation consequences. See id at 1481-87; see also Brown v. Goodwin, 2010 WL 1930574, slip op. at 13 (D.N.J. filed May 11, 2010) (pointing out that while Padilla's implications for deportation cases are clear, the holding does not seem importable to cases involving collateral consequences other than deportation). Padilla is further distinguishable from Petitioner's case because Padilla dealt with a consequence resulting directly *because of* that particular plea and conviction. Padilla at 1477-78. The consequence in Petitioner's case – a life without parole sentence – resulted from a subsequent and separate conviction in another county. In sum, because Padilla is both legally *and* factually distinguishable, it cannot serve as a basis for relief in Petitioner's case.

Further, even if counsel's performance had been deficient, the PCR court's denial of relief should still be upheld where the court concluded that Petitioner failed to prove prejudice. (See App. p. 345-46). After making thorough findings regarding Petitioner's lack of credibility, the PCR judge concluded that Petitioner failed to prove that had he known of the two-strikes law, he would not have pled guilty. (See App. p. 340; p. 345; p. 353-54). See Griffin v. Martin, *supra*. The PCR judge found that because Petitioner believed he would be exonerated on the Williamsburg CSC charge, the application of the

LWOP statute - as a distant future contingency - would not have changed Petitioner's mind about pleading guilty in Georgetown to receive a favorable sentence on those charges. (See App. p. 14-20; p. 40-45; p. 103-104; p. 115, lines 5-10; p. 126, lines 22-24; p. 175, line 23 – p. 176, line 2; p. 187, lines 5-8; p. 240, line 10 – p. 241, line 11; p. 252, lines 15-21; p. 345). The court further found that Petitioner's decision to plead was based on a variety of other factors and considerations, including overwhelming evidence on the two lewd act charges and a very damaging tape recording that could have been used against him at trial. (See Respondent's Exhibit # 1 - CD - 2003 Telephone Conversation - on file with this Court; see App. p. 144-47; p. 256-60; p. 352; p. 353-54). Importantly, contrary to Petitioner's argument on page 10 of his Amended Petition, the "prejudice" finding discussed above was separate and distinct from the court's *additional* findings regarding Petitioner's ability to avoid LWOP by pleading guilty to lewd act in Williamsburg. (See App. p. 345 & p. 346-47).

Accordingly, where Petitioner failed to convince the PCR judge that he would have proceeded to trial had he known about the LWOP statute, the denial of relief should be upheld. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 n6 (2001) (noting that even if a defendant proves that he was not fully advised of the consequences of a plea, he must also prove that he was in fact prejudiced thereby); Foye v. State, *supra*, Solomon v. State, 313 S.C. 526, 529, 443 S.E.2d 540, 542 (1994), and Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (great deference must be afforded the PCR court's findings and conclusions, especially where matters of credibility are involved, since the appellate court lacks the opportunity to directly observe the witnesses during their testimony); Robinson v. State, 387 S.C. 568, 574, 693 S.E.2d 402, 405 (2010) (the

findings of the PCR court must be upheld if there is "any evidence" supporting its findings).

II. **The PCR court properly concluded that Petitioner was not entitled to relief based upon counsel's investigation of the criminal sexual conduct with a minor charge.**

The discovery materials provided prior to the guilty plea designated a two-month span of time (June and July of 1999) during which the CSC could have occurred. (See App. p. 13-15; p. 87; p. 116, lines 20-25). Unsurprisingly, due to the passage of approximately six years from the date of the assault to the report date, the victim had been unable to pinpoint a specific date, although he was certain that the assault occurred during the summertime of 1999. (See App. p. 87; p. 116-23; p. 349-50). At the guilty plea, the solicitor presented the court with a proposed indictment indicating the assault occurred "on or about" August 5-7, 1999. (App. 15, lines 1-12; p. 85-86). This indictment was never true-billed since Petitioner elected to waive grand jury presentment. (App. p. 5, line 22 – p. 6, line 1). Therefore, the victim never confirmed the dates listed in the proposed indictment and never confirmed any date in particular. (See App. p. 24, lines 8-23; p. 85-87). There is no evidence in the record conclusively establishing why the solicitor included those particular dates in the proposed indictment. (See App. p. 5-15; p. 85-87; p. 120-23; p. 195-96; p. 199, lines 19-25; p. 349-50).

At the PCR hearing, Petitioner asserted that since the time of his plea, he had discovered an alibi for the dates listed on the proposed indictment. (See App. p. 202-213; p. 223-29; p. 238, lines 5-15). He also asserted that the victim's claim regarding use of the church showers could have been impeached with evidence that those showers had been inoperable since the spring of 1999. (App. p. 200, line 17 –p. 202, line 7; p. 214,

lines 7-20). Petitioner claimed that if counsel had investigated these matters, he would have proceeded to trial and asserted these defenses. (See App. p. 302).

The PCR judge rejected Petitioner's allegations, concluding that Petitioner failed to prove ineffective assistance with respect to counsel's investigation of the Georgetown CSC charge. (See App. p. 347-54). First, counsel's performance was not deficient where he was not given a reason to further investigate the CSC charge or the dates listed in the proposed indictment. (See App. p. 347-51). In discussions regarding pleading guilty, counsel emphasized to Petitioner the duty to tell the absolute truth at the plea proceeding. (App. p. 123, lines 19-20; p. 124, lines 5-7; p. 161, lines 3-12; p. 186, lines 22-25; p. 354). Petitioner – the only person other than the victim who knew whether or not he was truly guilty – was in the best position to decide whether the date change would impact his decision to plead guilty. (See App. p. 5-15; p. 199, line 14 – p. 200, line 10; p. 348-49). If he believed there was a potential defense based upon the date, it was incumbent upon him to speak up and tell counsel that the dates made a difference. (See App. 348-49; p. 351). However, Petitioner mentioned nothing about wanting more time and nothing about potential defenses regarding the new dates. (See App. p. 160-64). Petitioner also never mentioned any problem with the church showers, even though this defense was not affected by the date change in the proposed indictment. (App. p. 127, lines 16-19; p. 147, lines 11-18; p. 201, lines 19-21; p. 350-51).

Instead, Petitioner decided to plead guilty, and he told the plea judge on three separate occasions that he was, in fact, guilty of the offenses to which he was pleading. (App. p. 17, lines 9-10; p. 17, line 23; p. 19, lines 2-9). As mentioned above, his admissions of guilt are particularly significant considering that counsel specifically told

Petitioner he was required to tell the truth at the plea. (App. p. 123, lines 19-20; p. 124, lines 5-7; p. 161, lines 3-12; p. 186, lines 22-25; p. 354). See Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed.") (citation omitted). Petitioner also told the court in no uncertain terms that he was completely satisfied with counsel's services. (See App. p. 19, line 24 – p. 20, line 12; p. 351). Accordingly, considering that counsel had already conducted an independent investigation prior to the plea (which uncovered only information that was harmful to Petitioner), he was not required to further investigate after receiving the proposed new dates where he justified in believing that Petitioner was telling the truth about being guilty of assaulting the victim. (See App. p. 19, lines 2-5; p. 124, lines 5-7; p. 123-27; p. 149-55; p. 161, lines 3-12; p. 177, line 13 – p. 179, line 10; p. 183, lines 18-19). See Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006) (counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgments).

Even if counsel had been given reason to further investigate, the denial of relief should nevertheless be upheld where Petitioner failed to convince the PCR court that his alleged defenses were credible or sufficient. See Roscoe v. State, *supra*. As the PCR judge pointed out, Petitioner's purported "alibi" did not, in fact, make it physically impossible for Petitioner to have committed the CSC, considering that the victim had always been unable to provide a specific date for the offense and considering that the proposed indictment listed the dates as "*on or about*" August 5-7, 1999. (App. p. 86-87;

p. 118-127; p. 162, lines 6-17; p. 348-50). See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (pointing out that a purported alibi which leaves it possible for the accused to be guilty of the crime is no alibi at all) (citation omitted). In light of the passage of time since the offense; the victim's young age at the time of the offense; the fact that the victim had never been able to specify a particular date for the offense; and the fact that no dates were ever confirmed before a grand jury, the PCR court did not believe that the victim would have in fact testified that the assault occurred specifically on August 5, 6, or 7. (See App. p. 348-50). Therefore, Petitioner's alleged alibi, which was strictly limited to the dates of August 5-7, 1999, was insufficient. (See App. p. 202-203; p. 349). His potential defense regarding inoperability of the church showers was similarly insufficient, where the information was at best merely impeaching of the victim. (See App. p. 351). In fact, inoperability of the showers could have easily been turned around to favor the victim's version of events since it established an obvious reason for Petitioner to let the victim shower at his house.[2]

In sum, where Petitioner did not give counsel reason to investigate the matters he raised at the PCR hearing, counsel's performance was not deficient. Further, Petitioner failed to prove prejudice where his alleged defenses were insufficient and would not have conclusively refuted his guilt. Accordingly, where Petitioner failed to meet his burden of proof, the PCR court's denial of relief should be upheld. See Robinson v. State, *supra*

---

[2] Considering the passage of several years from the date of the CSC to the time of reporting, it would not have been surprising if the young victim had blended together several childhood memories involving church beach trips. (See App. p. 178, lines 18-25). Compare State v. Kirton, 381 S.C. 7, 18-19, 671 S.E.2d 107, 112 (Ct. App. 2008) (expert witness discussing the nature of childhood memories of sexual assaults). Nevertheless, a jury could have still concluded that the critical aspects of the victim's account – that Petitioner did sexually assault the victim – were in fact true.

(the findings of the PCR court must be upheld if there is "any evidence" supporting its findings).

CONCLUSION

For the reasons discussed above, Respondent submits that this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, the Respondent asks permission under the rules to fully brief the issues discussed above.

Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

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

ATTORNEYS FOR RESPONDENT

August 9, 2010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
The Honorable Michael G. Nettles, Circuit Court Judge

RECEIVED
AUG - 9 2010
S.C. SUPREME COURT

Case No. 2007-CP-22-476

ROBERT TROY TAYLOR, # 315084 PETITIONER,

v.

STATE OF SOUTH CAROLINA, RESPONDENT.

AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Return to Amended Petition for a Writ of Certiorari** in the above-referenced case has been served upon the person(s) listed below, by U.S. mail, this 9th day of **August, 2010**:

Jeremy A. Thompson, Esquire
Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite D
Columbia, SC 29204

CHRISTINA J. CATOE
Assistant Attorney General
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

SWORN to before me this 9th day of August, 2010.

Notary Public for South Carolina,
My Commission Expires: 10/28/2014

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
AUG 31 2010
S.C. SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

ORIGINAL

Case No. 2007-CP-22-475

ROBERT TROY TAYLOR, #315084,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

REPLY TO RETURN TO AMENDED PETITION FOR A WRIT OF CERTIORARI

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite D
Columbia, SC 29204
(803) 738-8622
(803) 738-1600 (FAX)

ATTORNEY FOR PETITIONER.

INDEX

ARGUMENT IN REPLY[1]

I. The PCR court erred in finding that defense counsel was not ineffective for failing to advise the Petitioner that his plea to criminal sexual conduct with a minor in the second degree would be considered a "most serious" strike pursuant to S.C. Code Ann. §17-25-45.

In its Return, the Respondent argues that there are numerous factors that made "[t]he future imposition of an LWOP sentence ... entirely contingent," including: the "Petitioner's subsequent conviction on a 'most serious' charge"; the possibility that the Williamsburg County solicitor could choose not to prosecute the Petitioner or offer him a plea deal; or the possibility that "the legislature could have altered or repealed the LWOP statute such that it was not applicable to Petitioner." Return at 6. However, these factors do not turn the LWOP consequence from a direct consequence to a collateral consequence. If the Respondent's position were adopted by this Court, there would be no direct consequences to any plea.

Take, for example, a defendant charged with murder who has had a death notice served on him. If the defendant pleaded guilty, he would still be eligible for the death penalty. See S.C. Code Ann. Section 16-3-20(B). Under the Respondent's logic, the possible sentence of death would not be a direct consequence of his plea. Such a consequence would be contingent on numerous factors, including: the defendant's appeals being unsuccessful; the possibility that the Governor could commute his sentence or issue a pardon; or the possibility that "legislature could have altered or repealed the [death penalty] statute such that it was not applicable to [the defendant]." Return at 6. The fact that subsequent factors may remove a penalty does not change the penalty at the time of the plea.

[1] Due to the number of issues involved in this case, and in order to maintain consistency throughout the briefs and to limit confusion, the Petitioner will use the issue headings from his Petition for a Writ of Certiorari to order his corresponding arguments in this Reply.

The same logic holds true in this case. When the Petitioner pleaded guilty in Georgetown County, the penalty on his charges in Williamsburg County, which defense counsel represented him on, became automatic life without parole that could not be waived by any party to the action. See S.C. Code Ann. §17-25-45(G) (Supp. 2006). This is not a case where the Petitioner could possibly face some amorphous threat in the future that could not be readily ascertained at the time of the hearing. Instead, the Georgetown County's plea to criminal sexual conduct created an immediate and automatic penalty in Williamsburg County. As the United States Supreme Court recently noted,

> [W]ere a defendant's lawyer to know that a particular offense would result in the client's deportation and that, upon deportation, the client and his family might well be killed due to circumstances in the client's home country, any decent attorney would inform the client of the consequences of his plea. ... We think the same result should follow when the stakes are not life and death but merely "banishment or exile."

Padilla v. Kentucky, ___ U.S. ___, 130 S.Ct. 1473, 1484 (2010) (footnote 11) (quoting Delgadillo v. Carmichael, 332 U.S. 388, 390-391). The stakes in this case were just as high. The Petitioner's plea in Georgetown County resulted in his life being at stake in Williamsburg County. "Any decent attorney" should have informed the Petitioner of this direct consequence. Id. Since defense counsel did not do so in this case, he was ineffective, and the lower court clearly erred in denying the Petitioner a new trial.

With regard to the other arguments advanced by the Respondent on this issue as to why the circuit court's decision should be affirmed, including the more general applicability of Padilla to this case, the Petitioner would rely upon the arguments raised in his Amended Petition for a Writ of Certiorari.

II. The PCR court erred in finding that defense counsel was not ineffective for failing to conduct a sufficient investigation into the CSC charge.

In its Return, the Respondent argues that the Petitioner "was in the best position to decide whether the date change would impact his decision to plead guilty," and since the Petitioner did not "speak up and tell counsel that the dates made a difference," defense counsel cannot be ineffective for failing to sufficiently investigate the new dates. Return at 11. This argument, however, overlooks the critical principle of law that every "criminal defense attorney has a duty to perform a reasonable investigation" into the facts and circumstances of every case. Lounds v. State, 380 S.C. 454, 460, 670 S.E.2d 646, 649 (2008). Furthermore, this reasonable investigation includes an "**independent** investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 332, 642 S.E.2d 590, 597 (2007) (emphasis in original) (internal quotes and citation omitted).

According to defense counsel, who the lower court found credible,[2] he did not discover the change in the dates of the criminal sexual conduct charge until the plea. See App. p. 149, lines 11-15; see also App. p. 127, lines 20-24. Since defense counsel received the change in dates at such a late point in time in the proceedings, it was his responsibility to alert the plea court that he had not had a sufficient amount of time to investigate these new dates. While the Respondent wants to place the duty to investigate, and the corresponding duty to realize specific changes in the State's evidence, on the Petitioner, this duty falls squarely on defense counsel's shoulders. Defense counsel's utter failure to take any action after hearing a new offense date cannot be anything less than deficient performance.

[2] See App. p. 340.

Additionally, the Respondent appears to suggest that Victim 3 may never have testified to the dates contained in the indictment presented to the Petitioner at the guilty plea, and so the Petitioner cannot have an alibi defense to those dates sufficient to overturn his plea. See Return at 12-13. The Respondent's suggestion on this point is a very dangerous proposition. If, as the Respondent contends, the dates contained in the indictment are not certain, then there may very well be no factual basis for the Petitioner's plea because "[a] guilty plea is a solemn, judicial admission of the truth of the charges against an individual." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). If the facts of the charge against the Petitioner were subject to change, then the Petitioner effectively admitted to nothing at the guilty plea proceeding.

Moreover, the Respondent's contention on this point calls into question the ethics of the prosecutor who prepared the indictment and presented the case against the Petitioner at the guilty plea proceeding. If Victim 3 was not going to testify that the allegations occurred between August 5-7, 1999, then the prosecutor had the Petitioner plead guilty to a possibly false allegation and he also falsely informed the plea court that this offense occurred "[b]etween August 5th and August 7th." App. p. 15, lines 6-7. While the Petitioner is certain that the Respondent does not mean to impugn the reputation of the prosecutor in this case, this Court's adoption of the Respondent's factual and legal premise would do just that.

The Petitioner urges this Court to find that the dates stated in the indictment are dates that can be reliably assumed to be the dates Victim 3 would have testified that the assault occurred between. As detailed at length in his certiorari petition, the Petitioner had a comprehensive alibi defense to those charges that went undiscovered prior to the plea because of defense counsel's failure to conduct a sufficient investigation. Had he known he could present such a defense,

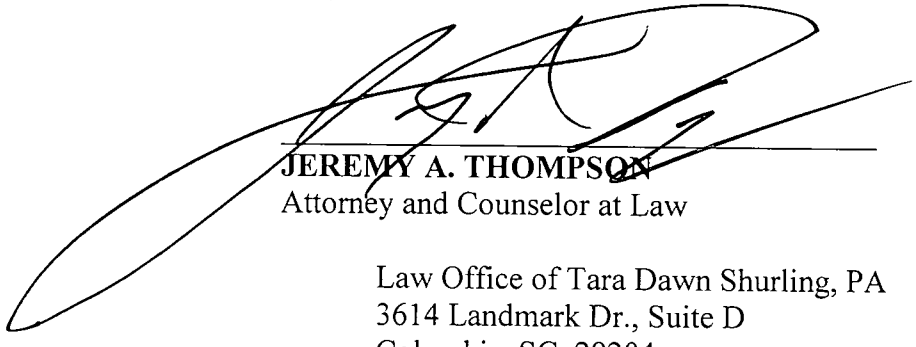
there can be no question that the Petitioner would not have pleaded guilty. Accordingly, the Petitioner is entitled to a new trial on this ground.

With regard to the other arguments advanced by the Respondent on this issue as to why the circuit court's decision should be affirmed, the Petitioner would rely upon the arguments raised in his Amended Petition for a Writ of Certiorari.

CONCLUSION

The Petitioner's petition for a writ of certiorari should be granted.

Respectfully submitted,



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ATTORNEY FOR THE PETITIONER

This 30th day of August, 2010.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2007-CP-22-475

ROBERT TROY TAYLOR, #315084,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Petitioner's Reply to Return to Amended Petition for a Writ of Certiorari in the above-entitled case has been served upon opposing counsel, Christina J. Catoe, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing in the U.S. mail with proper postage, this 30th day of August, 2010.

JEREMY A. THOMPSON
ATTORNEY FOR THE PETITIONER

SWORN TO BEFORE me this 30th day
of August, 2010.

Sharon H. McAllister (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan 16, 2017

The Supreme Court of South Carolina

Robert Troy Taylor, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Michael G. Nettles
Georgetown County
Trial Court Case No. 2007-CP-22-00476

ORDER

The request for an extension until August 30, 2010 to serve and file the Reply to the Return to the Petition for Writ of Certiorari 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 Linda J. Shealy
Clerk

Columbia, South Carolina Chief Deputy

August 25, 2010

cc: Jeremy Adam Thompson, Esquire
Assistant Attorney General Christina J. Catoe

LAW OFFICE OF

TARA DAWN SHURLING, PA

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August 18, 2010

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

RE: Robert Troy Taylor, #315084 v. State of South Carolina; 2007-CP-22-0476.

Dear Mr. Shearouse:

My Reply to the State's Return to Amended Petition for Writ of Certiorari is due for filing tomorrow. Because of my heavy work schedule I will be unable to complete my work on this document. I now respectfully request a 10-day extension of time in which to prepare and submit my Reply on behalf of this client.

There have been no previous extension requests in this matter. By copy of this letter, I am advising opposing counsel, Christina J. Catoe, Assistant Attorney General, of this request. With my thanks for the Court's assistance in this matter, and my best regards, I am,

Yours sincerely,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
cc: Christina J. Catoe, Assistant Attorney General
Robert Troy Taylor, #315084
Anthony Taylor

HENRY MCMASTER
ATTORNEY GENERAL

August 9, 2010

VIA HAND DELIVERY

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

RE: Robert Troy Taylor v. State of South Carolina
PCR Appeal - Georgetown County

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the State's **Return to Amended Petition for a Writ of Certiorari**, along with **Proof of Service**, in the above-referenced case, which I am today serving upon opposing counsel as shown below.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,

Christina J. Catoe
Assistant Attorney General

CJC/

Enclosures

cc: Jeremy A. Thompson, Esquire
Trisha Allen, Victim Services

The Supreme Court of South Carolina

Robert Troy Taylor, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Michael G. Nettles
Georgetown County
Trial Court Case No. 2007-CP-22-00476

ORDER

The request for an extension until August 9, 2010 to serve and file the Return to the Petition for Writ of Certiorari 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

July 8, 2010

cc: Jeremy Adam Thompson, Esquire
Assistant Attorney General Christina J. Catoe

HENRY MCMASTER
ATTORNEY GENERAL

July 7, 2010

VIA HAND DELIVERY

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

RE: Robert Troy Taylor v. State of South Carolina
PCR Appeal - Georgetown County

Dear Mr. Shearouse:

The Return to Petition for Writ of Certiorari in the above-referenced case is due to be served and filed tomorrow, July 8, 2010. Due to my unusually large workload at the present time, I am respectfully requesting a 30-day extension in which to file this Return. No previous extensions have been requested regarding this Return.

By copy of this letter, I am informing opposing counsel of this request.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,

Christina J. Catoe
Assistant Attorney General

cc: Jeremy A. Thompson, Esquire
Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite D
Columbia, SC 29204

LAW OFFICE OF

RECEIVED

JUN 09 2010

S.C. SUPREME COURT

TARA DAWN SHURLING, PA
Attorneys and Counselors at Law
3614 Landmark Drive
Suite D
Columbia, South Carolina 29204

Jeremy A. Thompson
Associate Attorney

(803) 738-8622
Fax (803) 738-1600
E-Mail: jthompson @shurlinglaw.com

June 8, 2010

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

RE: Robert Troy Taylor, #315084 v. State of South Carolina; 2007-CP-22-0476.

Dear Mr. Shearouse:

Enclosed for filing please find the original and seven (7) copies of the Amended Petition for a Writ of Certiorari. I would appreciate your filing the original and six (6) copies of the Amended Petition, clocking the extra copy, and returning the extra copy to me in the envelope provided. Thank you for your assistance in this matter. With my best regards, I am,

Yours sincerely,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/sg
Enclosures
cc: Christina J. Catoe, Assistant Attorney General (w/ enclosures)
Robert Troy Taylor, #315084 (w/ enclosures)
Anthony Taylor (w/ enclosures)

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

May 14, 2010

Jeremy Adam Thompson, Esquire
Law Office of Tara D. Shurling
3614 Landmark Dr., Ste. D
Columbia, SC 29204

Re: Taylor, Robert Troy v. The State

Dear Mr. Thompson:

The following Order has been endorsed on your Motion to File Amended Petition for Writ of Certiorari in the above entitled case on appeal.

"Motion granted.

s/ Jean H. Toal C.J.
For the Court
Justice Donald W. Beatty, not participating

May 14, 2010."

Please be advised your amended Petition should be filed and served within thirty (30) days of the date of this letter.

Very truly yours,

Daniel E. Shearouse
DS
CLERK

DES/jj

cc: Assistant Attorney General Christina J. Catoe

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

ORIGINAL

Case No. 2007-CP-22-475

ROBERT TROY TAYLOR, #315084,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

MOTION TO FILE AMENDED PETITION FOR A WRIT OF CERTIORARI

Motion granted.

For the Court C.J.

Justice Donald W. Beatty, not participating

May 14, 2010

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite D
Columbia, SC 29204
(803) 738-8622
(803) 738-1600 (FAX)

ATTORNEY FOR PETITIONER.

NOW COMES the Petitioner in the above-captioned action, acting by and through undersigned counsel, respectfully moving this Court to permit him to submit an Amended Petition for a Writ of Certiorari. In support of this motion, the Petitioner would show unto this Honorable Court the following:

The Petitioner requested, and received, three thirty-day extensions of time in which to file his certiorari petition. The petition was due, and was filed, on March 22, 2010. One of the primary motivating factors for requesting these extensions was that counsel for the Petitioner was aware that the United States Supreme Court had granted certiorari in Kentucky v. Padilla, 253 S.W.3d 482 (Ky. 2008), cert. granted 129 S.Ct. 1317 (2009), and he was waiting for it to be decided before preparing his arguments. However, inasmuch as counsel did not know when Padilla would be decided or to what extent it might affect established law on the duties of criminal defense attorneys to advise their clients of the consequences of their pleas, counsel for the Petitioner did not believe that he could meet the high burden set forth by this Court to request a fourth extension, since the sole basis for such a request would be that Padilla had not yet been decided. See In re Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings, S.C. Sup. Ct. Order filed March 18, 2009. The first issue in the Petitioner's certiorari petition deals extensively with defense counsel's failure to advise the Petitioner of the consequences of his plea in Georgetown County.

On March 31, 2010, the United States Supreme Court decided Padilla v. Kentucky, ___ U.S. ___, 2010 WL 1222274 (2010), which eschewed any reliance on the standard direct consequence/collateral consequence dichotomy that has been adopted by this Court as the appropriate inquiry in cases like this. Compare Padilla, Slip Op. at 7-9 with Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). Furthermore, Padilla held that the applicable standard for

reviewing these claims should not be "limited to affirmative misadvice," another standard that has been adopted by this Court. Compare Padilla, Slip Op. at 13 with Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991).

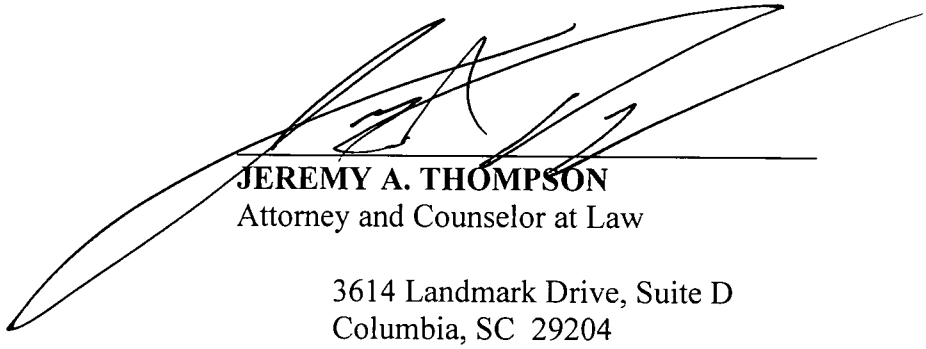
Assuming, *arguendo*, that Padilla applies to cases pending on collateral review, Padilla has the potential to greatly impact the arguments of counsel in this case and on this Court's eventual decision. The Petitioner would assert that the Respondent should not be the first party to prepare these arguments, especially since they have the benefit of an already-filed certiorari petition. If the Petitioner was not allowed to file an amended certiorari petition, the Petitioner would be limited to making arguments about the application of Padilla in a Reply, a document that is obviously intended to be limited in scope.

Finally, the Petitioner would request that if this Court grants his motion, that the Court permit him twenty (20) days to prepare an Amended Petition for a Writ of Certiorari with the express limitation that no extensions of time in which to file the Amended Petition be granted. Additionally, the Petitioner would not change anything in the original certiorari petition that was not affected by Padilla.

CONCLUSION

WHEREFORE, having set forth his grounds, the Petitioner, Robert Troy Taylor, #315084, asks that this Court permit him to file an Amended Petition for a Writ of Certiorari.

Respectfully submitted,



JEREMY A. THOMPSON
Attorney and Counselor at Law

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E-mail: jthompson@shurlinglaw.com

ATTORNEY FOR PETITIONER

This 7th day of April, 2010.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2007-CP-22-475

ROBERT TROY TAYLOR, #315084,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Motion to File Amended Petition for Writ of Certiorari has been served upon opposing counsel, Christina J. Catoe, Assistant Attorney General, by depositing in the U.S. Mail, postage prepaid, this 7th day of April, 2010.

JEREMY A. THOMPSON
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 7th day of April, 2010.

Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

RECEIVED

APR 16 2010

S.C. SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
The Honorable Michael G. Nettles, Circuit Court Judge
2007-CP-22-475

ROBERT TROY TAYLOR,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO MOTION TO FILE AMENDED PETITION FOR A WRIT OF CERTIORARI

The State of South Carolina hereby responds to Petitioner's Motion to File Amended Petition for a Writ of Certiorari, served on April 7, 2010, as follows:

Respondent objects to Petitioner's Motion. First, Respondent submits that the case of Padilla v. Kentucky, ___ U.S. ___, 2010 WL 1222274 (2010), was not decided at the time of the alleged ineffective assistance of counsel, nor was it decided when the PCR judge issued his Order of Dismissal. Accordingly, because Padilla v. Kentucky was not argued to the lower court, the lower court made no rulings pursuant to this case. Therefore, it would be inappropriate for Petitioner to now use the case as a ground for relief on appeal, or for re-briefing his previously-filed Petition for Writ of Certiorari. Respondent respectfully submits that, instead, a more appropriate procedure would be to allow Petitioner to submit the case as a "supplemental citation" in a similar fashion to that described in Rule 208 (b)(7), SCACR. Assuming, *arguendo*, that the case of Padilla v. Kentucky in fact supports the arguments already made by Petitioner, the Rule 208(b)(7) procedure would be appropriate to bring the issues to the attention of this Court.

WHEREFORE, Respondent respectfully requests that this Court deny the Motion to File Amended Petition for a Writ of Certiorari.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit

Christina J. Catoe

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

April 16, 2010

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

APR 16 2010

S.C. SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
The Honorable Michael G. Nettles, Circuit Court Judge
2007-CP-22-475

ROBERT TROY TAYLOR,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Return to Motion to File Amended Petition for a Writ of Certiorari** in the above-referenced case has been served upon the person(s) listed below, by U.S. mail, this **16th** day of **April 2010:**

Jeremy A. Thompson, Esquire
Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite D
Columbia, SC 29204

CHRISTINA J. CATOE
Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

SWORN to before me this 16th day of April, 2010.

Notary Public for South Carolina.
My Commission Expires: 10/28/2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
The Honorable Michael G. Nettles, Circuit Court Judge

Case No. 2007-CP-22-476

ROBERT TROY TAYLOR, # 315084 PETITIONER,

v.

STATE OF SOUTH CAROLINA, RESPONDENT.

TRANSPORTATION ORDER FOR EXHIBIT

Upon request of counsel for the Respondent, it is hereby ORDERED, pursuant to Rule 210(f) of the South Carolina Appellate Court Rules, that Respondent's Exhibit # 1 (CD - 2003 Telephone Conversation), be released to the Office of the Attorney General, or its designee, for transporting to the Supreme Court of South Carolina for review in the above-referenced appeal.

IT IS SO ORDERED.

JEAN HOEFER TOAL, CHIEF JUSTICE

By: _____
Daniel E. Shearouse, Clerk of Court

Columbia, South Carolina

April 23, 2010

cc: The Honorable Alma Y. White, Georgetown County Clerk of Court
Christina J. Catoe, Esquire
Jeremy A. Thompson, Esquire

HENRY MCMASTER
ATTORNEY GENERAL

April 21, 2010

VIA HAND DELIVERY

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

RE: Robert Troy Taylor v. State of South Carolina
PCR Appeal - Georgetown County

Dear Mr. Shearouse:

Enclosed please find a proposed **Transportation Order** regarding an exhibit in the above-referenced PCR appeal.

I communicated with opposing counsel, Jeremy A. Thompson, Esquire, on April 7, 2010, and he stated that he had no objection to entry of this Order.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,

Christina J. Catoe
Assistant Attorney General

CJC/

Enclosure

cc: Jeremy A. Thompson, Esquire

HENRY MCMASTER
ATTORNEY GENERAL

RECEIVED
APR 16 2010
S.C. SUPREME COURT

April 16, 2010

VIA HAND DELIVERY

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

RE: Robert Troy Taylor v. State of South Carolina
PCR Appeal - Georgetown County

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the State's **Return to Motion to File Amended Petition for a Writ of Certiorari**, along with **Proof of Service**, in the above-referenced case, which I am today serving upon opposing counsel as shown below.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,

Christina J. Catoe
Assistant Attorney General

CJC/

Enclosures

cc: Jeremy A. Thompson, Esquire

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorneys and Counselors at Law
3614 Landmark Drive
Suite D
Columbia, South Carolina 29204

(803) 738-8622
Fax (803) 738-1600
E-Mail: jthompson @shurlinglaw.com

Jeremy A. Thompson
Associate Attorney

April 7, 2010

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

RE: Robert Troy Taylor, #315084 v. State of South Carolina; 2007-CP-22-0476.

Dear Mr. Shearouse:

Enclosed please find the original and seven (7) copies of the Motion to File Amended Petition for a Writ of Certiorari in this case. I would appreciate your filing the original and six (6) copies, clocking the extra copy, and returning the clocked copy to me in the envelope provided. Thank you for your assistance in this matter. With my best regards, I am,

Yours sincerely,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
Enclosures
cc: Christina J. Catoe, Assistant Attorney General (w/ enclosure)
Robert Troy Taylor, #315084 (w/ enclosure)
Anthony Taylor (w/ enclosure)

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorneys and Counselors at Law
3614 Landmark Drive
Suite D
Columbia, South Carolina 29204

Jeremy A. Thompson
Associate Attorney

(803) 738-8622
Fax (803) 738-1600
E-Mail: jthompson @shurlinglaw.com

March 22, 2010

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

RE: Robert Troy Taylor, #315084 v. State of South Carolina; 2007-CP-22-0476.

Dear Mr. Shearouse:

Enclosed for filing please find the original and six (6) copies of the Petition for a Writ of Certiorari and the original and one (1) copy of the Appendix in this case. I also enclose an additional copy each of the Petition and Appendix Cover. I would appreciate your returning one (1) clocked copy of the Petition for a Writ of Certiorari and one (1) clocked copy of the Appendix Cover to me in the envelope provided. Thank you for your assistance in this matter. With my best regards, I am,

Yours sincerely,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/sm
Enclosures
cc: Christina J. Catoe, Assistant Attorney General (w/ enclosures)
Robert Troy Taylor, #315084 (w/ enclosures)
Anthony Taylor (w/ enclosures)

The Supreme Court of South Carolina

Robert Troy Taylor, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Michael G. Nettles
Georgetown County
Trial Court Case No. 2007-CP-22-00476

ORDER

For good cause shown, the request for an extension until March 22, 2010 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 18, 2010

cc: Jeremy Adam Thompson, Esquire
Assistant Attorney General Christina J. Catoe

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorneys and Counselors at Law
3614 Landmark Drive
Suite D
Columbia, South Carolina 29204

Jeremy A. Thompson
Associate Attorney

(803) 738-8622
Fax (803) 738-1600
E-Mail: jthompson@shurlinglaw.com

February 17, 2010

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

RE: Robert Troy Taylor, 315084 v. State of South Carolina; 2007-CP-22-0476.

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of the Petitioner's Motion for Extension of Time and my Certificate of Service in the above-captioned case. I would appreciate your returning two (2) clocked copy of the Motion in the envelope provided. Thank you for your assistance in this matter. With my best regards, I am,

Yours sincerely,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/sm
Enclosures
cc: Christina J. Catoe, Assistant Attorney General
Robert Troy Taylor, 315084
Anthony Taylor

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
The Honorable Michael G. Nettles, Circuit Court Judge

Case No. 2007-CP-22-0476

ROBERT TROY TAYLOR, 315084,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

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PETITIONER'S MOTION FOR EXTENSION OF TIME

THIS MATTER comes before the Court by way of an appeal from a Post-Conviction Relief Order. The Petition for Writ of Certiorari is due for filing on February 18, 2010. Because of my heavy schedule, I will be unable to complete this Petition by that date and, for that reason, I now respectfully request a 30-day extension of time in which to prepare and submit my Petition for Writ of Certiorari on behalf of this client.

Since this is my third extension request, both opposing counsel, Christina J. Catoe, Assistant Attorney General, and my supervising attorney have consented to this request by their signatures below. (In compliance with *In Re: Extensions in Criminal and Post-Conviciton Relief Cases,* S. C. Sup. Ct. order dated March 18, 2009) (Davis Adv. Sh. No. 13 at 1).

Respectfully submitted,

JEREMY A. THOMPSON
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER

I Consent:

Christina J. Catoe
Assistant Attorney General

Tara Dawn Shurling
Attorney and Counselor at Law

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
The Honorable Michael G. Nettles, Circuit Court Judge

Case No. 2007-CP-22-0476

ROBERT TROY TAYLOR, 315084,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Petitioner's Motion for Extension of Time in the above-entitled case have been served upon opposing counsel, Christina J. Catoe, Assistant Attorney General, by depositing in the U.S. Mail, postage pre-paid, this 17th of February, 2010.

Sharon McCollister
Sharon McCollister
Paralegal to Jeremy A. Thompson
Law Office of Tara Dawn Shurling, PA

SWORN TO BEFORE me this 17th day
of February, 2010.

Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/12/2013

The Supreme Court of South Carolina

Robert Troy Taylor, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Michael G. Nettles
Georgetown County
Trial Court Case No. 2007-CP-22-00476

ORDER

For good cause shown, the request for an extension until February 18, 2010 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 21, 2010

cc: Jeremy Adam Thompson, Esquire
Assistant Attorney General Christina J. Catoe

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
The Honorable Michael G. Nettles, Circuit Court Judge

Case No. 2007-CP-22-0476

ROBERT TROY TAYLOR, 315084,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

PETITIONER'S MOTION FOR EXTENSION OF TIME

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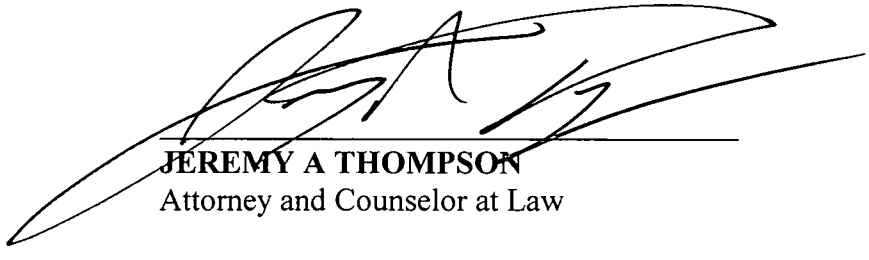
THIS MATTER comes before the Court by way of an appeal from a Post-Conviction Relief Order. The Petition for Writ of Certiorari is due for filing on January 19, 2010. Because of my heavy work schedule, I will be unable to complete this Petition by that date and, for that reason, I now respectfully request a 30-day extension of time in which to prepare and submit my Petition for Writ of Certiorari on behalf of this client.

Since this is my second extension request, opposing counsel, Christina J. Catoe, Assistant Attorney General, has consented to this request by phone.

Respectfully submitted,



JEREMY A THOMPSON
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER.

This 19th day of January, 2010

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
The Honorable Michael G. Nettles, Circuit Court Judge

Case No. 2007-CP-22-0476

ROBERT TAYLOR, 315084,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petitioner's Motion for Extension of Time in the above-entitled case have been served upon opposing counsel, Christina J. Catoe, Assistant Attorney General, by depositing in the U.S. Mail, postage prepaid, this 19th day of January, 2010.

JEREMY A THOMPSON
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 19th day of January, 2010.

Sharon H. McCollister (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan. 16, 2017

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorneys and Counselors at Law
3614 Landmark Drive
Suite D
Columbia, South Carolina 29204

(803) 738-8622
Fax (803) 738-1600
E-Mail: jthompson@shurlinglaw.com

Jeremy A. Thompson
Associate Attorney

January 19, 2009

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

RE: Robert Troy Taylor, #315084 v. State of South Carolina; 2007-CP-22-0476.

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of the Petitioner's Motion for Extension of Time and my Certificate of Service in the above-captioned case. I have enclosed an extra copy and would appreciate your clocking and returning it in the envelope provided. Thank you for your assistance in this matter. With my best regards, I am,

Sincerely yours,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/sm
Enclosures
cc: Christina J. Catoe, Assistant Attorney General
Robert Troy Taylor, #315084
Anthony Taylor

The Supreme Court of South Carolina

Robert Troy Taylor, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Michael G. Nettles
Georgetown County
Trial Court Case No. 2007-CP-22-00476

ORDER

The request for an extension until January 18, 2010 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 21, 2009

cc: Jeremy Adam Thompson, Esquire
Assistant Attorney General Christina J. Catoe

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorneys and Counselors at Law
3614 Landmark Drive
Suite D
Columbia, South Carolina 29204

Jeremy A. Thompson
Associate Attorney

(803) 738-8622
Fax (803) 738-1600
E-Mail: jthompson@shurlinglaw.com

December 17, 2009

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

Re: Robert Troy Taylor, 315084 v. State of South Carolina; 2007-CP-22-0476.

Dear Mr. Shearouse:

I am retained counsel for this client for the perfection of his appeal. This is an appeal from a post-conviction relief matter. My Petition for Writ of Certiorari and Appendix are due for filing on today's date. Because of my heavy work schedule I will be unable to complete my work on these documents, I now respectfully request a 30-day extension of time in which to prepare and submit my Petition for Writ of Certiorari and Appendix on behalf of this client.

There have been no previous extension requests in this matter. By copy of this letter, I am advising opposing counsel, Christina J. Catoe, Assistant Attorney General, of this request. With my thanks for the Court's assistance in this matter, I am,

Yours sincerely,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/sm
cc: Christina J. Catoe, Assistant Attorney General
Robert Taylor, 315084
Anthony Taylor

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorneys and Counselors at Law
3614 Landmark Drive
Suite D
Columbia, South Carolina 29204

(803) 738-8622
Fax (803) 738-1600
E-Mail: jthompson@shurlinglaw.com

Jeremy A. Thompson
Associate Attorney

November 19, 2009

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P O Box 11330
Columbia, SC 29211-1330

RE: Robert Troy Taylor, #315084 v. State of South Carolina; 2007-CP-22-476.

Dear Mr. Shearouse:

I am in receipt of a copy of the letter which you sent to Elizabeth A. Franklin-Best, Appellate Defender, in which you state that I am to notify your office upon receipt of all relevant case documents. I received a copy of the PCR transcript from Appellate Defense on November 17, 2009. I would ask that my time limits for filing my Petition for a Writ of Certiorari and the Appendix be set from that date. By my calculation, these documents would be due for filing on December 17, 2009. If my calculations are incorrect, please let me know. With my thanks for the Court's assistance in this matter, and my best regards, I am,

Yours sincerely,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
cc: Christina J. Catoe, Assistant Attorney General
Robert Troy Taylor, #315084
Anthony Taylor

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 13, 2009

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

Re: Taylor, Robert Troy v. The State

Dear Counsel:

Enclosed is the consent order issued in the above entitled matter.

By copy of this letter and order, we are advising all interested parties of the action by the Court.

We have marked our records to reflect that Mr. Thompson is now counsel of record. He is advised to notify this office immediately upon receipt of all case documents.

Very truly yours,

CLERK

DES/jj

cc: Jeremy Adam Thompson, Esquire
Assistant Attorney General Christina J. Catoe
Robert Troy Taylor #315084

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Case No: 2007-CP-22-476

ROBERT TROY TAYLOR, 315084,

PETITIONER,

v.

STATE OF SOUTH CAROLINA

RESPONDENT.

CONSENT ORDER FOR SUBSTITUTION OF COUNSEL

The Petitioner has asked that Jeremy A. Thompson be substituted as counsel of record in the above-captioned direct appeal. This appeal is currently being perfected by Elizabeth Franklin-Best, Assistant Appellate Defender. Jeremy A. Thompson has been retained by the Petitioner's family as counsel in this case. Counsel Thompson and the Petitioner have indicated their consent to this substitution by their signatures below. Opposing counsel, Christina J. Catoe, Assistant Attorney General, and Elizabeth Franklin-Best, have likewise entered their consent below.

WHEREFORE, Elizabeth Franklin-Best is hereby relieved as counsel in the above-captioned case and Jeremy A. Thompson is substituted as the Petitioner's counsel of record.

IT IS SO ORDERED.

Jean Hoefer Toal, Chief ~~Judge~~ Justice

By: _____
Clerk

This 13th day of November, 2009.

WE CONSENT:

_____
Elizabeth Franklin-Best
Assistant Appellate Defender

This _____ day of _____, 2009.

_____
Jeremy A. Thompson
Attorney and Counselor at Law

This 26th day of October, 2009.

_____
Christina J. Catoe
Assistant Attorney General

This _____ day of _____, 2009.

_____
Robert Troy Taylor, 315084

This 27th day of October, 2009.

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorneys and Counselors at Law
3614 Landmark Drive
Suite D
Columbia, South Carolina 29204

Jeremy A. Thompson
Associate Attorney

(803) 738-8622
Fax (803) 738-1600
E-Mail: jthompson@shurlinglaw.com

November 3, 2009

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211-1330

RE: Robert Troy Taylor, 315084 v. State of South Carolina; Case No: 2007-CP-22-476..

Dear Mr. Shearouse:

I have been retained in the above-captioned pending PCR appeal. I enclose an original and one (1) copy of the proposed Consent Order of Substitution of Counsel, signed by Elizabeth Franklin Best, current counsel of record, Christina Catoe, Assistant Attorney General, my client and myself. If the enclosed order meets with the Court's needs, please file and return the clocked copy to me in the enclosed self-addressed, stamped envelope. I thank you for your assistance with this matter. With my best regards, I am,

Sincerely yours,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/sm
Enclosures
cc: Christina A. Catoe, Assistant Attorney General (w/enclosure)
Elizabeth Franklin-Best, Assistant Appellate Defender (w/enclosure)
Robert Troy Taylor, 315084 (w/enclosure)
Tony Taylor (w/enclosure)

The Supreme Court of South Carolina

Robert Troy Taylor, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Michael G. Nettles
Georgetown County
Trial Court Case No. 2007-CP-22-00476

ORDER

The request for an extension until November 11, 2009 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

October 13, 2009

cc: Appellate Defender Elizabeth A. Franklin-Best
Assistant Attorney General Christina J. Catoe

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

RECEIVED
OCT 12 2009
S.C. SUPREME COURT

October 12, 2009

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

Re: Robert Troy Taylor 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 (30) day extension in which to file this petition. No prior extensions have been requested in this case.

By copy of this letter to Assistant Attorney General Christina J. Catoe, I am informing her of this request.

Thank you for your assistance in this matter.

Sincerely,

EA Franklin-Best

Elizabeth A. Franklin-Best
Appellate Defender

EAF/fkb

cc: Christina J. Catoe, Esquire

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

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

August 11, 2009

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.

Robert Troy Taylor v. State of South Carolina 8/11/2009

I would appreciate you beginning our time limits from the above dates, 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

Sharon A. Graham
Administrative Coordinator

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

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

May 15, 2009

Ms. Patricia A. McDaniel
Circuit Court Reporter
P O Box 386
Florence, SC 29503-0386

Dear Ms. McDaniel:

Our office has been requested to perfect the appeal arising out of:

Robert Troy Taylor v. State of South Carolina Indictment #: 07-CP-22-476

County: Georgetown Date of Trial: November 20, 2008

Presiding Judge: Michael G. Nettles

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript 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. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

Sharon A. Graham

Sharon A. Graham
Administrative Coordinator

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

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Michael G. Nettles, Presiding Judge

RECEIVED
APR 16 2009
S.C. SUPREME COURT

2007-CP-22-0476

ROBERT TROY TAYLOR, 315084,

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Order of Dismissal denying his Post-Conviction Relief dated January 16, 2009, and the Order Denying the Applicant's Motion to Alter or Amend, issued by the Honorable Michael G. Nettles, presiding judge. The Order of Dismissal was filed with the Georgetown County Clerk of Court on January 27, 2009 and the Order Denying the Applicant's Motion pursuant to Rule 59(e) SCRCP was filed with the Georgetown County Clerk of Court on March 30, 2009.

Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Drive, Suite D
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 15th day of April, 2009.

Other Counsel of Record:
Christina J. Catoe, Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Michael G. Nettles, Presiding Judge

2007-CP-22-0476

RECEIVED
APR 16 2009
S.C. SUPREME COURT

ROBERT TROY TAYLOR, 315084,

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Christina J. Catoe, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 15th day of April, 2009.

Suzanne Graham

Suzanne Graham
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE me this 15th day
of April, 2009.

Sharon H. McCollister (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan. 16, 2017

LAW OFFICE OF

TARA DAWN SHURLING

Attorney and Counselor at Law, PA
3614 Landmark Drive
Suite D
Columbia, South Carolina 29204

Jeremy A. Thompson
Associate Attorney

(803) 738-8622
Fax (803) 738-1600
E-Mail: tdslaw@shurlinglaw.com

April 15, 2009

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

Re: Robert Troy Taylor, 315084 v. State of South Carolina; 2007-CP-22-0476.

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal on behalf of the above-captioned Post-Conviction Relief client. I would appreciate your returning two (2) clocked copies to me in the envelope provided. Although I was retained in this matter, I may be turning this file over to the South Carolina Office of Appellate Defense for perfection of this appeal. I believe this client may be indigent. I was retained by his family and my fee agreement expressly excludes representation on appeal. The family has not yet advised me whether they intend to hire me to handle this appeal. I am asking that they make this decision immediately. I will advise the Court within ten days whether I will be remaining on as counsel or requesting to be relieved. With my thanks for your assistance in this matter, as always, I remain,

Sincerely yours,

Tara D. Shurling

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosures
cc: Christina J. Catoe, Assistant Attorney General
Sharon Graham, South Carolina Office of Appellate Defense
Robert Troy Taylor, 315084
Tony Taylor

LAW OFFICE OF

TARA DAWN SHURLING

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Jeremy A. Thompson
Associate Attorney

(803) 738-8622
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E-Mail: tdslaw@shurlinglaw.com

April 15, 2009

The Honorable Alma Y. White
Clerk of Court of Georgetown County
Post Office Drawer 421270
Georgetown, SC 29942-1270

RE: Robert Troy Taylor, 315084 v. State of South Carolina; 2007-CP-22-0476

Dear Ms. White:

Enclosed please find for filing a copy of the Notice of Appeal in the above-captioned matter. As you can see from the enclosed Certificate of Service, opposing counsel has been served with this Notice. The original is on file with the Supreme Court of South Carolina. Thank you for your assistance. As always, I remain,

Sincerely,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosure
cc: The Honorable Daniel E. Shearouse
Christina J. Catoe, Assistant Attorney General

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Robert Troy Taylor, # 315084,	)	2007-CP-22-0476
Applicant,	)	
v.	)	**ORDER OF DISMISSAL WITH PREJUDICE**
State of South Carolina,	)	
Respondent.	)	

This matter came before the Court pursuant to an Application for post-conviction relief filed April 3, 2007, by Robert Troy Taylor. Respondent made its Return on July 27, 2007. An evidentiary hearing was convened at the Horry County Courthouse on Thursday, November 20, 2008. The Applicant was present in court and represented by Tara Dawn Shurling, Esquire. The 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 orders of commitment from Georgetown County and Williamsburg County. The Applicant, a former pastor of a Murrells Inlet church, was indicted in Georgetown County for two counts of lewd act upon a minor (2004-GS-22-44 & 2005-GS-22-523). On April 20, 2006, the Applicant waived grand jury presentment on another Georgetown County charge, criminal sexual conduct ("CSC") with a minor in the second degree (2006-GS-22-361), and pled guilty to all three charges. The Applicant was represented by R. Scott Joye, Esquire, and Delton W. Powers, Jr., Esquire, at his plea, although Attorney Joye served as Applicant's primary counsel. The Honorable Edward B. Cottingham sentenced the Applicant to concurrent eight-year terms, suspended to five

years of active time and three years of probation. The Applicant did not file a direct appeal regarding these convictions.

Meanwhile, during the pendency of the Applicant's Georgetown charges, he was also charged with kidnapping and criminal sexual conduct with a minor in Williamsburg County. The victim was the same victim from the Georgetown CSC charge. Attorney Joye represented the Applicant on the Williamsburg County charges for a period of time until Charles David Barr, Esquire, replaced him as counsel. The Applicant proceeded to trial in July 2007 on the Williamsburg offenses and was found guilty as charged. Based on the Applicant's prior "most serious" CSC conviction in Georgetown County, the trial judge in Williamsburg sentenced the Applicant to life without parole pursuant to S.C. Code Ann. § 17-25-45. An appeal from this conviction is currently pending.

ALLEGATIONS

In his PCR Application, Mr. Taylor alleged that his custody is unlawful for the following reasons:

1. Ineffective assistance of counsel; and
2. Involuntary guilty plea.

He alleged generally that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his guilty plea. At the evidentiary hearing, the Applicant more narrowly defined his allegations, and this Court considers these allegations to be proper amendments to his Application for post-conviction relief. See Simpson v. Moore, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006); Rule 15(b), SCRCP. Specifically, he alleged the following:

1. Plea counsel was ineffective for failing to sufficiently advise the Applicant that a conviction for criminal sexual conduct with a minor in the second degree was a "most serious" strike and that it could be used as a predicate offense for his Williamsburg County charges.

2. The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered where they were entered without the knowledge that his convictions could be used to enhance his sentence on his Williamsburg County charges.

3. Plea counsel was ineffective for failing to sufficiently investigate the factual circumstances surrounding the criminal sexual conduct charge.

4. Plea counsel was ineffective for failing to move for a continuance once he discovered the precise factual circumstances surrounding the criminal sexual conduct charge.

5. The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered inasmuch as they were entered without the knowledge that he could effectively impeach the credibility of the complaining witness on the criminal sexual conduct charge.

6. The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered inasmuch as they were entered without the knowledge that he could present an alibi defense on the criminal sexual conduct charge.

7. Plea counsel was ineffective for failing to advise the Applicant that if he did not plead guilty on April 20, 2006, he would not proceed to trial immediately on the CSC with a minor charge because he had not yet been indicted on that charge.

8. The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered inasmuch as they were entered without the knowledge that he could have had more time to prepare for a trial on the most serious charge if he chose not to waive grand jury presentment on the criminal sexual conduct charge in Georgetown County.

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 (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-part 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).

At the PCR hearing, this Court had before it the Applicant's PCR file, the records of the Georgetown County Clerk of Court regarding the convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Both the Applicant and his attorney, R. Scott Joye, Esquire, testified at the hearing. In addition, the Applicant called witnesses on his behalf, and the parties stipulated to the admission of several Affidavits, which were entered as exhibits in the Applicant's case. This Court carefully considered the testimony of the witnesses and heard the arguments of counsel. Thereafter, this Court ordered that the parties submit briefs on the pertinent issues in the case, which both parties did on December 19, 2008. In addition, at the Court's request, the State submitted an Affidavit signed by Kimberly V. Barr, Assistant Solicitor in Williamsburg County. This Court has now fully considered the briefs of both parties, in

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

The Guilty Plea Record

In considering the Applicant's allegation that his guilty plea was involuntary due to ineffective assistance of counsel, this Court first looks to the extensive and thorough record created at the guilty plea itself. The plea record reflects that the Applicant was advised of the nature of the charges against him and the maximum penalties for each offense.[1] He was informed that each of the two lewd act charges carried a maximum of fifteen years, and that the CSC charge carried a maximum of twenty years. He was also advised that he would be required to serve 85% of the sentence, and register as a sex offender. He was informed of the factual basis for the charges, the evidence against him, and the witnesses who would testify against him.

The Applicant was also advised, by the plea court and by his attorneys, regarding the constitutional rights he was waiving by pleading guilty. First, he told the court that he understood that he had the right to have the grand jury review the CSC charge, and that twelve of the eighteen members would have to find probable cause before that case could proceed to trial. He told the court that he understood that procedure, wished to waive that procedure, and he stated that he had signed a document confirming his understanding and waiver of that procedure. He told the court that he understood the indictments and the serious nature of the charges. The Applicant further told the court that he was pleading freely and voluntarily, without any coercion, threats, or promises made, and without any reservations whatsoever. He told the court that his mind was clear and that he fully understood the proceeding. The court informed him that he could change his mind even at

[1] The plea judge pointed out that the Applicant had pending charges in Williamsburg, and clarified that although there may have been some hope of possible concurrent sentencing, another court in Williamsburg County would have to deal with that case separately in the future.

that moment, and change his plea to "not guilty" if he wished to do so. The Applicant elected to proceed with his plea, and told the court that if he had any questions, he would advise the court.

The Applicant further told the court that he understood that he was presumed innocent on all charges, and that at a trial, the State would be required to prove his guilt beyond a reasonable doubt. He further stated that he understood that, although the allegations were from many years ago, the cases were still provable. He told the court that he wished to "give up forever" any potential defenses he had to the charges, and instead plead guilty. He specifically told the court several times "without hesitation" that he was guilty, and stated "I am guilty." He told the judge that he was "very thankful" for the services of his distinguished attorneys, and that he was "absolutely" satisfied with their services. He elaborated that they had "most definitely" done everything that he had asked them to do, including calling all of the witnesses he wanted them to call, and that there was nothing further that he thought they could or should do for him. The Applicant acknowledged that there was "no question" about the fact that he was guilty of the offenses. Finally, he told the court he answered all of the questions truthfully.

Thereafter, each of the three victims spoke at the plea, describing the difficulties caused in their lives due to the offenses. Following their testimonials, the defense presented its case in mitigation, including the fact that the Applicant, as a young man, suffered abuse at the hands of certain family members. Defense counselors also presented numerous friends and family members, including former congregation members, to speak on the Applicant's behalf. Some of them confirmed the pattern of abuse that existed in the Applicant's extended family. Several letters of support were also presented to the court for consideration. Finally, the Applicant was given the opportunity to speak, and he offered an apology for his "part of the pain." He stated that he felt the solicitor had acted "very properly" in the case. He requested that the court show him mercy, so that he could return home and be a father to his three children.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

It is well-settled that "[a] guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (2007) (*citing* Blackledge v. Allison, 431 U.S. 63 (1977)). "[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (*citing* Crawford v. United States, 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). The Applicant, bearing the burden of proof, must credibly convince this Court, by the preponderance of the evidence, that the very thorough record of his guilty plea is unworthy of reliance, and that he is entitled to relief.

In this case, the Court did not generally find the Applicant's testimony to be credible. This finding is based upon the fact that his testimony at the PCR hearing was entirely self-serving, was in direct contradiction with statements he made at his guilty plea, and was at odds with statements he made when he was not aware that he was being recorded. (See Respondent's Exhibit # 1). Conversely, this Court did find Attorney Joye's testimony to be credible, candid, and more reliable than that of the Applicant. Regarding the testimony of the other witnesses presented on the Applicant's behalf, this Court has evaluated the testimony, including the Affidavits submitted, taking into account possible biases; the basis for the knowledge asserted; any contradictions between the testimony and other evidence; and the number of years that has passed between the dates of the events and the time the testimony was offered.

Allegations # 1 & 2: Involuntary Plea Due to Counsel's Failure to Advise the Applicant Regarding the Two-Strikes Law

The Applicant first alleges that plea counsel was ineffective for failing to sufficiently advise him that a conviction for CSC with a minor in the second degree was a "most serious" strike which

could be used as a predicate offense for his Williamsburg County sentence. It is clear that, prior to the plea, neither Attorney Joye nor Attorney Powers discussed with the Applicant the effect of a "most serious" strike, under S.C. Code Ann. § 17-25-45, regarding the Georgetown CSC charge to which the Applicant pled.[2] The two-strikes statute had no effect on the Georgetown County convictions, nor did it influence the penalty for those convictions. However, following the plea, when Attorney Joye realized that the still-pending Williamsburg case involved charges that would subject the Applicant to life without parole if he were to be convicted as indicted, he spoke with the prosecutor in Williamsburg, Kimberly V. Barr, Esquire, to discuss the possibility of a plea to the lesser offense of lewd act upon a minor. Ms. Barr and the victim did agree to a plea to lewd act, although Ms. Barr indicated at that time she did not feel that a sentence recommendation would be appropriate. (See Affidavit of Kimberly V. Barr.)

Attorney Joye testified that he thereafter advised the Applicant that he would avoid a sentence of life without parole if he pled to lewd act in Williamsburg. Counsel advised the Applicant that he firmly believed he would be able to work out an arrangement such that the Applicant would not serve even one additional day in prison. Counsel strongly urged the Applicant to accept such an arrangement, but the Applicant declined. The attorney-client relationship deteriorated after this discussion, before any plea agreement in Williamsburg was formalized, and Attorney Charles David Barr took over the Applicant's representation. In July 2007, the Applicant was convicted by a Williamsburg jury of both kidnapping and CSC with a minor in the second degree. The Honorable George C. James, Jr., sentenced the Applicant to two consecutive life without parole sentences, pursuant to S.C. Code Ann. § 17-25-45, due to his previous "most serious" offense.

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[2] Although Attorney Powers was not called to testify at the PCR hearing, the parties stipulated that he did not discuss the two-strikes statute with the Applicant prior to the guilty plea.

First, this Court finds that counsel cannot be deemed deficient for failing to advise the Applicant of the two-strikes law, because such a consequence is considered "collateral" to the guilty plea. The imposition of a sentence may have a number of collateral consequences, but a guilty plea defendant need only be affirmatively informed of the "direct" consequences of the plea – consequences which have a "definite, immediate and largely automatic effect" on the "range of the defendant's punishment" for that offense. Williams v. State, 378 S.C. 511, 515, 662 S.E.2d 615, 617 (Ct. App. 2008) (*quoting* Cuthrell v. Director, Patuxent Institution, 475 F.2d 1364 (4th Cir. 1973)). "Direct consequences" are the direct and immediate results of a guilty plea. State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975) (*citing* Cuthrell, supra). Even certain mandatory consequences, such as registration on the sex offender registry, are considered collateral because they have no effect on the range of defendant's punishment for the offense to which he pled. See Williams, supra.

"A guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citation omitted) (parole eligibility is collateral); see also Smith v. State, 329 S.C. 280, 284, 494 S.E.2d 626, 628 (1997) (a crime's designation as "violent" is a collateral consequence, even though a subsequent conviction for a "violent" crime would subject the defendant to a sentence with no parole); Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002) (community supervision is collateral); Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004) (85% service requirement is collateral); Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000) (defendant can only attack a guilty plea on the basis of "collateral consequences" where he is affirmatively misadvised) (overruled in part on other grounds). Counsel cannot be held ineffective for failing to advise a defendant regarding indirect consequences that do not "flow directly from his guilty plea." Page v. State, 364 S.C. 632, 637,615

S.E.2d 740, 742 (2005). Consequences that stem from a separate proceeding are collateral consequences of which a defendant need not be advised prior to entering a plea of guilty. See id.

There are no cases in South Carolina directly addressing whether a "strike" under the life without parole statute is a collateral consequence of a guilty plea. However, the recent Williams case, cited above, clearly adopts the "direct" versus "collateral" distinction that is cited repeatedly in federal case law. In addition, the cases from the federal circuit and district courts support that a consequence of this nature is collateral. See King v. Dutton, 17 F.3d 151 (6th Cir. 1994) (defendant's guilty plea to murder was not involuntary where he was not informed that the plea could be used as an "aggravating circumstance" to elevate the sentence to death in a then-pending, but unrelated, murder charge from another county); Wright v. U.S., 624 F.2d 557, 561 (5th Cir. 1980) ("a plea's possible enhancing effect on a subsequent sentence is merely a collateral consequence of the conviction; it is not the type of consequence about which a defendant must be advised before the defendant enters the plea"); U.S. v. Pearson, 910 F.2d 221, 223 (5th Cir. 1990) (the "consequences" of a guilty plea with respect to sentencing means that the defendant must understand the maximum prison term and fine for the offense charged); U.S. v. Brownlie, 915 F.2d 527, 528 (9th Cir. 1990) (the possibility that a defendant will be convicted of another offense in the future and will receive an enhanced sentence based upon the instant conviction is not a direct consequence of a guilty plea); U.S. v. Edwards, 911 F.2d 1031, 1035 (5th Cir. 1990) (uncounseled defendant who pled guilty to receive a "time-served" sentence in state court needed not be advised that her plea could be used to enhance her sentence in a pending federal case; such consequence was merely collateral); U.S. v. Long, 852 F.2d 975 (7th Cir. 1988) (a consequence cannot be "direct" where it has no effect upon the nature or length of the sentence being imposed for that offense); U.S. v. Lambros, 544 F.2d 962, 966 (8th Cir. 1976) (the possibility of enhanced punishment for a subsequent similar conviction is not a direct consequence of a guilty plea); U.S. v. Salmon, 944

F.2d 1106, 1130 (3rd Cir. 1991) (the effect of a conviction on sentencing for a later offense under "career offender" law is a collateral consequence of which a defendant need not be advised; defendant need not be advised of even "foreseeable" collateral consequences in order for his plea to be voluntary under the constitution; defendant need only be advised of the direct consequences, which include only the maximum prison term and any fine); McCarthy v. U.S., 320 F.3d 1230, 1234 (11th Cir. 2003) (the fact that defendant's guilty plea could have sentencing consequences in subsequent federal prosecution were clearly collateral, and neither the court nor McCarthy's counsel were constitutionally required to make him aware of them); see also Weinstein v. U.S., 325 F.Supp. 597, 600 (1971) (it is proper to "assume that the defendant will not be guilty of a subsequent offense") (citation omitted); Fee v. U.S., 207 F.Supp. 674 (1962) (defendant's guilty plea, which was later used to enhance the sentence on a subsequent conviction, was not involuntary where he was not informed that the plea could be used to enhance the subsequent sentence under a "third offender" provision).

Therefore, this Court finds that, in this case, the effect of the Applicant's Georgetown guilty plea upon the later Williamsburg sentence was "collateral" rather than "direct." The Williamsburg life without parole sentence was contingent upon several factors. First, the solicitor could have decided she lacked sufficient evidence to prosecute and could have dismissed the case altogether. Alternatively, the solicitor could have offered a plea to a lesser offense not subjecting the Applicant to life without parole. In addition, the Applicant could have taken the case to trial and been acquitted of the charges. Finally, the legislature could have changed or repealed the life without parole statute such that it would not apply to the Applicant. This Court finds that the Applicant's life without parole sentence was a "direct" result of a jury's finding that the Applicant committed the offenses of kidnapping and criminal sexual conduct in Williamsburg County. However, the life without parole sentence was not a direct consequence of the plea in Georgetown. Therefore, the

Applicant's attorneys did not render constitutionally deficient performance for failing to advise the Applicant of the two-strikes law, and the plea is not rendered involuntary on this basis.

Even if this Court were to find that a "most serious" strike was a consequence of which the Applicant should have been advised, this would not automatically end the Court's inquiry. The Applicant still must convince the court, through presentation of probative and credible evidence, that he would have gone to trial rather than pleading guilty. See Smith v. State, 369 S.C. 135, 139, 631 S.E.2d 260, 261-62 (2006). Mr. Taylor testified that he would have gone to trial had he known about the applicability of the statute. However, this Court did not find him to be credible, and has no reason to trust this testimony. Additionally, although the Applicant's friends and family members offered their opinions that the Applicant would not have pled guilty had he known of the statute, this Court must bear in mind that these persons cannot truly know what was in the Applicant's mind around the time he pled. Some of these same individuals expressed shock that the Applicant would have ever pled guilty to such offenses, but he nevertheless did so.

Neither the Applicant, nor the witnesses in his behalf, testified as to specific reasons why knowledge of the life without parole statute would have caused the Applicant to change his plea from guilty to not guilty. However, importantly, the Applicant indicated that he expected to be exonerated on the Williamsburg charges. Therefore, *at that time*, life without parole would have been a mere future contingency that he thought would never apply to him. Furthermore, this Court would note that the Applicant was facing fifty years, at 85%, for the Williamsburg charges. Considering that the Applicant was approximately age 36 at the time of his plea, the Applicant failed to point to specific reasons why the difference between life without parole and a fifty-year sentence was significant enough to him personally that he would have changed his mind about pleading guilty under the circumstances at the time of the plea. Accordingly, this Court was simply not convinced that the Applicant would have gone to trial rather than pleading guilty if he had

known about the two-strikes statute.

In addition, this Court finds that the assistant solicitor in Williamsburg had, in fact, extended a plea offer to the lesser offense of lewd act upon a minor, which would not have subjected the Applicant to life without parole. The Applicant's attorney advised him that he could avoid the possibility of life without parole if he would accept the plea, and advised him that he sincerely believed that he could convince the solicitor and/or the sentencing judge to have the Applicant sentenced such that he would not serve even one additional day in prison. Counsel strongly urged the Applicant to agree to accept such an arrangement offer. However, the Applicant chose to reject the offer and exercise his right to a jury trial, which ultimately resulted in his conviction and life without parole sentence.

This Court is convinced that counsel would have worked vigorously to secure a lewd act plea in Williamsburg giving the Applicant a sentence concurrent with the Georgetown sentences, and this Court believes that he most likely would have succeeded. This Court also finds that the Applicant was fully advised about this and was strongly urged to accept such an arrangement. Had he agreed to do so, he most likely would not have served any additional time in prison, and he absolutely would not currently be serving a life without parole sentence. Therefore, this Court finds that the Applicant knowingly and voluntarily proceeded to trial in Williamsburg with full awareness that he would receive life without parole if convicted, and he alone had the opportunity to completely avoid what might be considered a harsh result.[3] This Court finds that this circumstance supercedes the failure of counsel to specifically inform the Applicant regarding the two-strike law, such that the Applicant's life without parole sentence is the direct and proximate result of (1) his

[3] This Court recognizes that whether life without parole is an appropriate or suitable punishment for these offenses, or for this Applicant, is well outside the scope of review, since the legislature has determined that persons who twice commit offenses of this nature serve a sentence of life without parole.

knowing and voluntary decision to reject the guilty plea to lewd act in Williamsburg; and (2) his ultimate conviction by a jury in Williamsburg.

Allegations # 3-8: Ineffective Assistance of Counsel with Respect to the CSC Charge

As to the Applicant's remaining contentions, all regarding ineffective assistance of counsel with respect to the criminal sexual conduct charge, this Court finds that the Applicant failed to credibly prove that counsel's performance fell below prevailing professional norms, and failed to prove that he was prejudiced thereby. This Court finds that, prior to the plea, counsel and the Applicant discussed the charge, the possible penalty, and the Applicant's constitutional rights. This Court finds that the Applicant was fully advised, prior to acceptance of his plea, that he could not be tried on the CSC charge until the charge was presented to the grand jury. Counsel and the Applicant reviewed discovery prior to the plea. In addition, counsel's investigator, a former FBI agent, met with the Applicant and his family members and interviewed potential fact witnesses named by the Applicant. Counsel learned through discussions with his investigator that the pertinent witnesses had no specific memory of the events in question due to the passage of several years. However, some of the witnesses recalled facts that were harmful to the defense, including that the Applicant used to play "strip tag" with some of the boys. Counsel and the Applicant also discussed the effect of other un-indicted allegations made by one of the lewd act victims and by this victim's cousin.

Counsel and the Applicant discussed the fact that if the CSC case went to trial, there would be no physical evidence presented by the State. Counsel advised the Applicant that the case would come down to a "swearing contest," if he chose to testify, and that the defense would focus on cross-examination and impeaching the credibility of the victim and other witnesses presented by the

State.[4] They also discussed the potential for Lyle evidence. They discussed possible defense strategies, including development of the victim's possible motives for fabricating the assault, and bringing out his history of drug abuse. They discussed how the Applicant's own prior sexual abuse might be viewed by a jury, as well as the potential negative effect of the Applicant's former position as a pastor to the youths. They discussed the pornography found on the Applicant's church computer, and how evidence of it might be raised at trial.

Counsel and the Applicant also discussed the range of dates encompassing the victim's allegations. The offense occurred in 1999, when the victim was 11 or 12 years old, but was not reported until 2005. The victim was therefore unable to ever pinpoint an exact date for the offense. The discovery, including the arrest warrant, incident report, and statement of the victim, indicated that the assault occurred sometime in June or July of 1999. The incident report indicated that the assault took place following a trip to Huntington Beach State Park, after which the youth group returned to the church. The victim and another young man were waiting to shower off when the Applicant approached and offered to allow them to shower at his home instead. According to the victim, the assault occurred while he was later showering at the Applicant's house. Thereafter, the Applicant told him to be quiet and not tell anyone. Shortly before the plea, a proposed indictment was prepared by the solicitor, listing the dates of "on or about August 5-7, 1999," as the time frame during which the assault occurred. The record is not clear on why the dates changed from June-July to August 5-7. Counsel was unable to recall specifically when he learned of the new proposed dates or how they were ascertained, although he did indicate that he had been pressing the solicitor for a more definite time period.

Testimony presented on the Applicant's behalf at the PCR hearing indicated that the Applicant and his family learned of the August 5-7 dates at least a week prior to the plea. This

[4] This victim testified in the Williamsburg trial and was apparently found to be a credible witness.

Court finds that the Applicant was aware of the new dates prior to the acceptance of his plea, and that at no time did the Applicant tell counsel that the new dates had an impact upon his decision to plead guilty. Instead, he told counsel he would waive presentment of the charge to the grand jury - thus waiving confirmation of the new dates - and plead guilty. The fact that the Applicant did so, and that he specifically admitted his guilt to such an offense, indicates to this Court that he knew that he committed the offense in the summer of 1999.

Clearly, there exists a sharp contrast between the Applicant's unequivocal admission of guilt to the CSC offense on the dates of August 5-7, 1999, and his current allegation that he has an alibi for those very dates. At the PCR hearing, the Applicant presented testimony and Affidavits indicating that he was involved in a repair project at the home of Kimberly Cook on the dates of August 5-7, 1999, from morning to late afternoon.[5] The alibi evidence presented was limited to August 5, 6, and 7. Meanwhile, the proposed indictment covered a time frame of "on or about August 5-7, 1999." Since the Applicant voluntarily waived confirmation of these dates by waiving presentment to the grand jury, and because the time frame in this case was never exact or definite, this Court is not convinced that the victim would have testified at trial that the offense absolutely occurred during August 5-7.

In addition, there is nothing in the record that convinces this Court that the victim's trial testimony would have tied the assault to the "World Changers" event reflected in the August 1, 1999 church bulletin (entered as an Applicant's Exhibit at the PCR hearing), although the bulletin may have triggered the victim to recall that the assault occurred around that time. The bulletin did not mention Huntington Beach State Park, or any events apparently connected to the allegations of

[5] This Court would note that one affiant came forward following the hearing and requested that his Affidavit be withdrawn, indicating that he was no longer certain about the precise dates due to the passage of so much time. This serves to illustrate the difficulties with witnesses' memories in cases of this nature.

the assault as reflected in the victim's statement. Moreover, testimony at the PCR hearing indicated that the youth group frequently took trips to the beach, since it was not far from the church. Therefore, this Court finds that the alibi evidence presented by the Applicant does not necessarily refute that the crime occurred. See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (purported alibi which leaves room for the possibility that the accused is guilty is no alibi at all).

This Court believes that, under the circumstances of this case, had the Applicant elected to go to trial, and had he notified the solicitor of an alibi defense pursuant to Rule 5(e), SCRCrimP, this would have likely prompted one of two things. First, the solicitor could have reformed the indictment to cover a period of time that would more properly reflect the victim's recollection of the time frame. See State v. Wade, 306 S.C. 79, 409 S.E.2d 780 (1991) (indictment covering a two-year period for one sexual assault incident not unconstitutionally overbroad where victim could not recall precise dates of the incident). Alternatively, the victim could have testified that the assault occurred sometime around August 5-7, i.e., "on or about" those dates, in keeping with the language of the current proposed indictment. For the above reasons, this Court does not find a reasonable probability that the Applicant's proposed alibi defense for the dates of August 5-7, 1999, would have been successful had the Applicant elected to go to trial.

The Applicant also presented testimony at the PCR hearing that, although showers were installed at the church in 1998, they froze up over the winter and were inoperable following the winter of 1999. Assuming those facts are accurate, the church showers would have been operable for a very short period of time during the Applicant's tenure as pastor. Since the discovery always clearly indicated that the offense occurred *after* the winter of 1999, the Applicant, as pastor of the church, would have in the best position to discern this discrepancy and alert his attorney. Otherwise, counsel would have no reason to investigate this particular aspect of the victim's

allegations. However, the Applicant failed to mention this to counsel as a potential matter to be investigated, and counsel was not otherwise informed of it. Further, this Court is not convinced that such a defense would have successfully or credibly refuted the victim's allegations at trial.

Under the Sixth Amendment, the right to counsel exists to "assist" the accused with his defense. Certainly, a criminal defendant must bear some responsibility for his own defense, in that he must provide his attorney with pertinent factual information to enable counsel to determine whether there exist any plausible legal or factual avenues to investigate. Counsel was not necessarily required to investigate every aspect of the victim's allegations unless given some reason to investigate. See Strickland v. Washington, 466 U.S. 668, 691 (1984) (noting that a decision not to investigate some aspect of a case must be assessed for reasonableness under all the circumstances, with heavy deference to counsel's judgments). This Court finds that the Applicant failed to prove that a potential alibi for the specific dates of August 5-7 was a matter that counsel should have investigated at the time, or that such a defense would have likely been successful at trial. This Court also finds that because counsel was not put on notice regarding a defense related to the operability of the church showers, he had no reason to pursue this issue.

Counsel performed reasonably considering the investigation he did undertake, and considering that, following discussions with counsel, the Applicant did not ask counsel to conduct any further investigations, nor did he inform counsel that he wished to have more time to look into potential defenses. Instead, approximately one week prior to the plea, the Applicant advised counsel that he felt that pleading guilty would be in his best interests in light of the evidence. Thereafter, when he did plead guilty, he told the court that his attorneys "most definitely" did everything he asked them to do, and that he was "absolutely" satisfied with their services. Therefore, this Court finds that the Applicant failed to meet his burden to prove that counsel's performance was unreasonable under the circumstances.

This Court also finds that the Applicant failed to credibly prove the requisite prejudice. The potential defenses now alleged by the Applicant, as discussed above, relate only to the CSC charge, one charge out of three. This Court finds that there were no plausible defenses whatsoever to the two lewd act charges, and therefore a guilty plea to those charges was unquestionably reasonable due to overwhelming evidence. There were no eyewitnesses who could refute the allegations. Even the Applicant's parents could not deny that it was common for the Applicant and the victims to sleep in the same bed. Both victims were prepared to testify at trial, and, in fact, one of the victims, whom counsel felt was a particularly credible witness, made a special trip from his duty in Iraq to testify at trial. For this reason, the State intended to try all three cases successively. The State planned to present Lyle evidence in each lewd act trial to prove common scheme or plan, including testimony by another young man who also professed that the Applicant molested him in a similar fashion. The State also had in evidence a tape-recorded conversation between the Applicant and his now ex-wife, which contained admissions of guilt on both lewd act charges.[6] (See Respondent's Exhibit # 1). In addition, the State could have presented admissions made by the Applicant to Georgetown Investigator Tom Digsby. Counsel and the Applicant discussed all of this evidence, and counsel advised the Applicant that the likelihood of conviction on both lewd act charges was very high.

Considering this, counsel worked to negotiate a plea that would combine all three of the Georgetown offenses and give the Applicant as little prison time as possible. Initially, the Applicant did not appear to be amenable to the idea of a plea, and he rejected an early offer for a plea to assault and battery of a high and aggravated nature. However, after receiving and listening to the tape recording mentioned above, during which he made candid admissions of inappropriate

[6] Counsel testified that, after the Applicant's wife initiated divorce proceedings, he warned the Applicant to assume all conversations with his wife would be tape-recorded. Nevertheless, this tape-recording surfaced later.

touchings of both lewd act victims, the Applicant told counsel that he had determined that the "deal" with respect to all three Georgetown charges would be in his best interests. Counsel testified that prior to the plea, and following a discussion in chambers, it was understood by all that the Applicant would receive a sentence of eight years, suspended to five years of active time and three years of probation. This was over the objection of the solicitor, who wanted at least ten years. By his plea, the Applicant avoided the possibility of receiving up to fifty years in prison had he gone to trial on each charge.

This Court finds that counsel reasonably evaluated the strength of the State's cases against the Applicant, thoroughly discussed this with the Applicant, and fully advised him of his options under the circumstances. This Court rejects the Applicant's contention that he was forced to plead because his lawyer was unprepared. It is true that counsel was not prepared for *trial* on the day of the plea; however, the reason he was not prepared for trial was because the Applicant made his decision to plead guilty in advance – regardless of whether he acknowledged this fact to all of his family members and friends. This Court finds that the Applicant's decision to combine a plea of guilty to all three charges was heavily based upon the fact that the State could have presented strong evidence against him, including a very inculpatory tape of the Applicant confessing certain acts to his ex-wife regarding the two lewd act charges. This Court also finds that the "unofficial" negotiated five-year active sentence, concurrent on all three charges, weighed into his decision, as did the fact that the solicitor stated his intentions to try the cases back-to-back. The Applicant presented no evidence at the PCR hearing that the solicitor could *not* have indicted him on the CSC charge such that the case would have been tried in the third successive week, as the solicitor told counsel he planned to do. This Court finds that the Applicant also pled because he wished to avoid the embarrassment of public trials, and the risk of receiving significantly more time if he were convicted. Furthermore, this Court has no reason to doubt that, as reflected in the plea record, the

Applicant was motivated to enter a plea in order to confess his guilt and own up to his "part of the pain." Finally, this Court finds that counsel advised the Applicant to tell only the truth at his plea. The Applicant informed the plea court that he had, in fact, told only the truth.

In sum, the Applicant's self-serving testimony at the PCR hearing was simply not credible or trustworthy, and this Court finds that the Applicant did not present sufficiently persuasive reasons to permit departure from the sworn statements he made at his guilty plea. See Dalton, supra. Accordingly, this Court finds that the Applicant failed to meet his burden to establish that but-for deficient performance of counsel, he would have proceeded to trial rather than pleading guilty. As discussed above, this Court was not convinced that, even had the Applicant known about the two-strikes law, he would have made a decision to proceed to trial instead of taking the concurrent five-year sentences. Furthermore, this Court finds that even had the Applicant elected to proceed to trial on the CSC charge, he most probably would have been convicted, and would therefore be serving exactly the same sentence he is currently serving. This is an additional reason supporting this Court's finding that the Applicant failed to prove prejudice.

CONCLUSION

In summary, this Court finds and concludes that an offense's qualification as the first of two "most serious" strikes, pursuant to S.C. Code Ann. § 17-25-45, is a collateral consequence of a guilty plea, and that the Applicant in this case entered a free and voluntary guilty plea even though his attorneys did not advise him regarding that consequence. This Court further finds and concludes that the Applicant failed to prove that counsel's performance was outside the range of competence required in criminal cases, and failed to prove that his plea was the result of ineffective assistance of counsel. Further, this Court finds and concludes that the record otherwise supports that the Applicant entered a free, knowing, voluntary, and intelligent guilty plea, having been accurately advised regarding the plea's direct consequences. Accordingly, this Court must deny post-

conviction relief as to all three convictions, due to the Applicant's failure to meet both prongs of his burden of proof under Strickland v. Washington, 466 U.S. 668 (1984), Hill v. Lockhart, 474 U.S. 52 (1985), 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. Pursuant to Rule 71.1(g), SCRCP, PCR counsel must file a notice of appeal on Applicant's behalf if Applicant wishes to pursue appellate review. Applicant and counsel are directed to Rules 203, 206, and 227 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. Robert Troy Taylor's Application for post-conviction relief is **DENIED and DISMISSED with PREJUDICE.**

2. The Applicant must remain in the custody of the State for the completion of his sentence.

AND, IT IS SO ORDERED this 16 day of January, 2009.

Michael G. Nettles
Presiding Judge, Fifteenth Judicial Circuit

Florence, South Carolina

State of South Carolina | Form 4 | Judgment in a Civil Case

County of Florence County | 2007CP-21-476

Robert Jerry Taylor

Plaintiff(s)

vs.

State of S. C.

Defendant(s)

Check one:

( ) **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

( ) **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and decision rendered.

( ) **ACTION DISMISSED** (CHECK REASON): ( ) Rule 12(b), SCRCP; ( ) Rule 41 (a), SCRCP (Vol. Nonsuit); ( ) Rule 43(k), SCRCP (Settled); ( ) Other _____

( ) **ACTION STRICKEN** (CHECK REASON): ( ) Rule 40(j) SCRCP; ( ) Bankruptcy; ( ) Binding arbitration, subject to right to restore to confirm, vacate modify arbitration award; ( ) Other _____

( ) **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ( ) Affirmed; ( ) Reversed; ( ) Remanded; ( ) Other _____
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: (✓) See attached order. (Formal order to follow) ( ) Statement of Judgment by the court:

The applicants motion to alter or amend is denied.

Dated at Florence, South Carolina, this 24 day of Feb 2009. wjc

FILED
2009 MAR 30 AM 11:0
FLORENCE COUNTY CLERK OF COURT

PRESIDING JUDGE

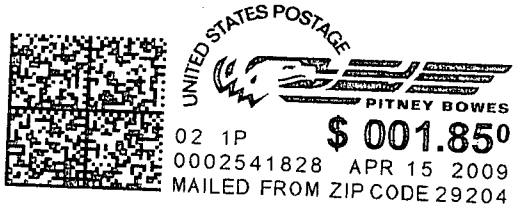
This judgment was entered on the 30th day of March 2009, and a copy mailed first class this 30th day of March 2009, to attorneys of record or to parties (when appearing pro-se) as follows.

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

Florence County Clerk of Court
Georgetown

SCCA SCRCP Form 4 Revised 06/2008



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RE: Robert Troy Taylor