

The Supreme Court of South Carolina

Cazario Marshall,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable Perry M. Buckner
Allendale County
Trial Court Case No. 2007-CP-03-00361

ORDER

The request for an extension until May 21, 2012 to serve and file the Brief of ~~Respondent~~ ^{Petitioner} is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Shrenda J. Shealy*
Clerk

Columbia, South Carolina *Chief Deputy*

April 19, 2012

cc: Assistant Attorney General Suzanne H. White
Appellate Defender Kathrine H. Hudgins



ALAN WILSON
ATTORNEY GENERAL

April 19, 2012

RECEIVED

APR 18 2012

S.C. Supreme Court

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

Re: Cazario Marshall, #265561 v. State of South Carolina
2007-CP-03-00361


Dear Mr. Shearouse:

Petitioner

The Brief of ~~Respondent~~ in the above appeal is due to be served and filed today. I would respectfully request a 30-day extension in which to serve and file this.

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

Sincerely,


Suzanne H. White
Assistant Attorney General

SHW/arh

cc: Kathrine Hudgins, Esquire



ALAN WILSON
ATTORNEY GENERAL

March 23, 2012

RECEIVED

MAR 23 2012

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


S.C. Supreme Court

RE: CAZARIO MARCHALL v. State of South Carolina
2007-CP-03-00361

Dear Mr. Shearouse:

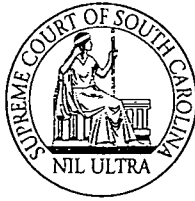
We are in receipt of the Court's request for an additional thirteen (13) bound copies of the appendix, and they are enclosed. We have calendared the State's Brief of Petitioner for on or before April 20, 2012. If this date, April 20, 2012 is incorrect or inconsistent with your records, please contact this office.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Suzanne White
Assistant Attorney General

SW/arh

cc: Appellate Defense



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

March 21, 2012

Assistant Attorney General Matthew J. Friedman
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: Marshall, Cazario v. The STATE

Dear Counsel:

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

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

Brief of Petitioner should be served and filed on or before April 20, 2012. The brief is not properly filed until we have proof of service.

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

Very truly yours,

CLERK

DES/jj

cc: Appellate Defender Kathrine H. Hudgins

The Supreme Court of South Carolina

Cazario Marshall,

Respondent,


v.

State of South Carolina,

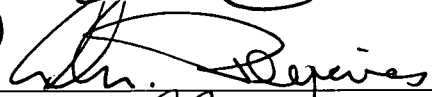
Petitioner.

ORDER

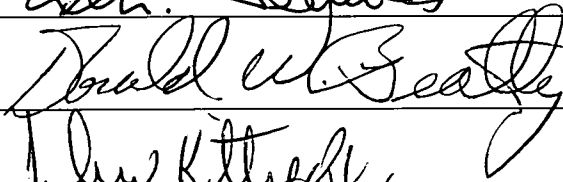
This matter is before the Court on a petition for a writ of certiorari. The petition is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.



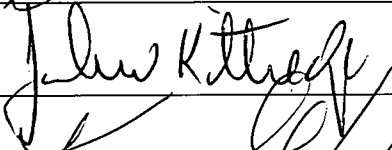
C. J.



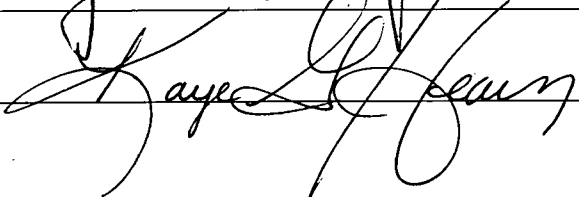
J.



J.



J.



J.

Columbia, South Carolina

March 21, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

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S.C. SUPREME COURT

ORIGINAL

Appeal From Allendale County
Perry M. Buckner, Circuit Court Judge

2007-CP-03-361

CAZARIO MARSHALL,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

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

ATTORNEYS FOR PETITIONER

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ISSUE PRESENTED

- I. Did the PCR Court err in finding that trial counsel was ineffective for allowing the co-defendant's attorney to assist him with jury selection where no confidences were exchanged, co-defendant's attorney left the courtroom as soon as he realized that he represented the co-defendant, and Respondent failed to demonstrate any prejudice from trial counsel's deficiency?

STATEMENT OF THE CASE

The Respondent is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Allendale County Clerk of Court. The Respondent was indicted at the May 2004 term of the Allendale County Grand Jury for burglary – 1st degree (2004-GS-03-0069), assault and battery of a high and aggravated nature (ABHAN) (2004-GS-03-0070), armed robbery (2004-GS-03-0071), kidnapping (2004-GS-03-0125), and possession of a firearm during commission of certain crimes (2004-GS-03-0130). J.D. Bryan, Esquire, represented the Respondent. On August 25, 2004, the Respondent proceeded to trial, in which the jury found him guilty as indicted. The Honorable Paul M. Burch sentenced him to confinement for life for burglary – 1st degree, thirty (30) years each for armed robbery and kidnapping, ten (10) years for ABHAN, and five (5) years for possession of a firearm. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Respondent 's behalf and an appeal was perfected. Robert M. Dudek of the South Carolina Office of Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Respondent 's appeal. State v. Marshall, Op. No. 2007-UP-034 (S.C. Ct. App. filed January 19, 2007). The Remittitur was issued on April 20, 2007.

The Respondent filed an application for post-conviction relief on December 31, 2007. An evidentiary hearing into the matter was convened on April 7, 2010 at the Colleton County Courthouse. The Respondent was present at the hearing and was represented by H. Woodrow Gooding, Esquire. Matthew J. Friedman of the South Carolina Attorney General's Office represented the State. By Order dated May 10, 2010, the Honorable Perry M. Buckner granted post-conviction relief. The Petitioner filed a timely Notice of Appeal. This Petition follows.

STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

I. **The PCR court erred in finding that trial counsel was ineffective for allowing the co-defendant's attorney to assist him with jury selection where no confidences were exchanged, co-defendant's attorney left the courtroom as soon as he realized that he represented the co-defendant, and Respondent failed to demonstrate any prejudice from trial counsel's deficiency.**

The PCR Court found that trial counsel was ineffective for allowing co-defendant's attorney to assist him with jury selection because the co-defendant subsequently testified for the State at Respondent's trial. Petitioner submits that the PCR Court erred in so finding.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler, 286 S.C. 441, 334 S.E.2d 813. Where the application alleges ineffective assistance of counsel 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, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 300 S.C. 115, 386 S.E.2d 624.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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.

J.D. Bryan, Esquire, represented Respondent at trial. At the PCR hearing, counsel testified that he was a contract public defender for Allendale County at the time of the trial, but he worked out of Colleton County. (App. p. 169, lines 23-25). He testified that Stephen Plexico, Esquire, was the public defender for Allendale County and worked out of the Hampton County office. (App. p. 170, lines 2-10). Counsel asserted that he and Mr. Plexico would usually help each other select juries unless they represented co-defendants. (App. p. 172, lines 11-18). In this case, he testified that he would not have let Mr. Plexico help him select the jury if he had realized that Mr. Plexico represented the co-defendant. (App. p. 172, lines 11-18; p. 173, lines 8-18). Counsel testified that he had the final decision on all jurors and he would often sit jurors that Mr. Plexico did not like. (App. p. 189, lines 7-14; p. 188, lines 5-10). He asserted that he lived in Colleton County and Mr. Plexico lived in Allendale County so Mr. Plexico was more familiar with the jury pool in this case. (App. p. 175, line 19 – p. 176, line 2; p. 188, lines 11-20). Counsel testified that he did not believe any confidences were exchanged between he and Mr. Plexico regarding the substance of Respondent's defense. (App. p. 188, lines 21-23).

At the PCR hearing, Mr. Plexico testified that he assisted trial counsel in the jury selection for Respondent, but he left the courtroom as soon as he realized that he represented the co-defendant. (App. p. 200, line 7 – p. 201, line 16). He testified that Solicitor Rowell brought the potential conflict to his attention. (App. p. 198, lines 1-24; p. 200, line 12 – p. 201, line 3). Mr. Plexico testified that he left before the entire jury had been selected, and he asserted that counsel made the final decision on each potential juror. (App. p. 203, lines 12-14). Mr. Plexico testified that Respondent sat at the table between him and counsel. (App. p. 201, lines 11-13). He asserted that he

told Respondent to take notes and not say anything unless he knew a potential juror. (App. p. 203, line 15 – p. 204, line 12). Mr. Plexico testified that he and counsel did not exchange any confidences related to the representation of their respective clients. (App. p. 204, lines 13-16). He asserted that he had no evil intent in assisting with the jury selection. (App. p. 202, lines 9-10). Mr. Plexico testified that he would usually assist counsel in jury selection because counsel did not live in Allendale County, but counsel had the final decision on all jurors. (App. p. 203, lines 3-14).

Petitioner acknowledges that trial counsel was deficient for allowing Mr. Plexico, who represented the co-defendant, to assist in jury selection during Respondent's trial. Trial counsel should not have allowed Mr. Plexico to assist in jury selection. However, Petitioner submits that there was no resulting prejudice from trial counsel's deficiency. Counsel testified that Mr. Plexico lived in Allendale County and had more knowledge of the local jury pool. Mr. Plexico testified that no confidences were exchanged and that he had no evil intent in assisting counsel. Both attorneys testified that Mr. Plexico left the courtroom as soon as he realized that he represented the co-defendant. Petitioner submits that counsel's actions have the appearance of a conflict, but no actual conflict materialized and Respondent was not prejudiced in any manner. Respondent has failed to show how Mr. Plexico's assistance during jury selection adversely affected the outcome of the trial.

The mere possibility of a conflict of interest is insufficient to impugn a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335 (1980)). Until a defendant shows that his attorney actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation. Id. This Court finds that Mr. Plexico did not represent Respondent; rather, he merely used his knowledge of the local jury pool to help counsel select a jury. Counsel ultimately decided which jurors to select or strike.

The Respondent failed to meet his burden of establishing prejudice and has, thus, failed to demonstrate the second prong of Strickland. Consequently, Respondent has failed to demonstrate ineffective assistance of counsel and the PCR Court erred in granting relief. Accordingly, this Court should grant the Petition for Writ of Certiorari and reverse the PCR Court.

CONCLUSION

For the foregoing reasons, the Court should grant the petition and reverse the findings of the lower court.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: 
ATTORNEYS FOR THE PETITIONER

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

October 22, 2010.

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ALLENDALE COUNTY
In The Court of Common Pleas

The Honorable Perry M. Buckner, Circuit Court Judge

Case No. 2007-CP-03-361

CAZARIO MARSHALL,

Respondent,


v.

STATE OF SOUTH CAROLINA,

Petitioner.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true copies of the Petition for Writ of Certiorari have been served upon opposing counsel, Kathrine H. Hudgins, this 22nd day of October, 2010.


Molly A. Flowers
Legal Assistant for Petitioner

SWORN to before me this
22nd day of October, 2010.

 (L.S.)
Notary Public for South Carolina.
My Commission Expires: 9/25/19

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Allendale County

Perry M. Buckner, Circuit Court Judge

 ORIGINAL

RECEIVED

APR 20 2011

S.C. Supreme Court

CAZARIO MARSHALL,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

RETURN TO PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR RESPONDENT

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QUESTION PRESENTED

Did the PCR judge correctly grant post conviction relief finding that trial counsel was ineffective in allowing the attorney representing the co-defendant, where the co-defendant was also the State's main witness against respondent, to assist in the selection of respondent's jury and finding that the deficient performance significantly undermined confidence in the outcome of the trial?

STATEMENT OF THE CASE

In May of 2004, the Allendale County Grand Jury indicted Marshall for burglary first degree, assault and battery of a high and aggravated nature [ABHAN], armed robbery, kidnapping and possession of a firearm during the commission of a violent crime, indictments #2004-GS-03-69, 70, 71, 125, 130. On August 25, 2004, Marshall proceeded to jury trial before the Honorable Paul M. Burch. Attorney J.D. Bryan represented Marshall at trial. The jury found Marshall guilty as charged. Judge Burch sentenced Marshall to life imprisonment or burglary, 30 years concurrent for armed robbery and kidnapping, 10 years concurrent for ABHAN, and 5 years concurrent for the weapons charge. A direct appeal was perfected on Marshall's behalf and a brief was filed pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal. State v. Marshall, Op. No. 2007-UP-34 (S.C. Ct.App. filed January 19, 2007).

On December 31, 2007, Marshall filed an application for post conviction relief. The State filed a return on October 31, 2008. An evidentiary hearing was held before the Honorable Perry M. Buckner on April 7, 2010. Attorney H. Woodrow Gooding represented Marshall for the PCR hearing. In a written order dated May 10, 2010, Judge Buckner granted post conviction relief. The State filed a petition for writ of certiorari on October 22, 2010. This brief of respondent follows.

ARGUMENT

The PCR judge correctly granted post conviction relief finding that trial counsel was ineffective in allowing the attorney representing the co-defendant, where the co-defendant was also the State's main witness against respondent, to assist in the selection of respondent's jury and finding that the deficient performance significantly undermined confidence in the outcome of the trial?

The State conceded that trial counsel was deficient in allowing the attorney who represented the co-defendant, who was also the State's main witness against Marshall, assist in selecting Marshall's jury. "Petitioner acknowledges that trial counsel was deficient for allowing Mr. Plexico, who represented the co-defendant, to assist in jury selection during Respondent's trial." (Petition for Writ of Certiorari p. 6). The State argues, however, that Marshall failed to show prejudice. In the order granting relief, the PCR judge wrote, "This court simply cannot ignore the severity of the conflict of interest that arose out of Mr. Bryan's allowing Plexico to strike Marshall's jury when Mr. Bryan knew that Plexico's client would be the State's key witness. This error in judgment creates a reasonable probability sufficient to significantly undermine the Court's confidence in the outcome of Marshall's trial. Moreover, there was no other overwhelming evidence of Marshall's guilt." (App. pp. 217 – 218).

"To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001). "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). "However, a defendant need not demonstrate prejudice if there is an actual conflict of interest." State v. Gregory, 364 S.C. 150,

153, 612 S.E.2d 449, 450. “ ‘But until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.’ ” Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (quoting Cuyler v. Sullivan, 446 U.S. 335, 350, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980)).

The record reflects that attorney Plexico, representing Marshall at jury selection, while simultaneously representing the co-defendant, the State’s star witness against Marshall, actively represented conflicting interests. The conflict in the present case was an actual conflict and not just the mere possibility of a conflict of interest. As the PCR judge noted in the order granting relief, “Mr. Plexico, counsel for the co-defendant, has acknowledged that his client was testifying against Marshall under the belief that the State was not ‘interested in pursuing [DeLoach] if they got Marshall.’ PCR Transcript p. 38, lines 12-13. Without a doubt, it was in Mr. Plexico’s client’s best interest for Marshall to be convicted - a conviction for Marshall meant freedom for DeLoach.” (App. p. 217).

Marshall demonstrated an actual conflict of interest and was not required to show prejudice in order to be entitled to post conviction relief. See Lomax v. State, 379 S.C. 93, 103, 665 S.E.2d 164, 169 (2008) (holding that because petitioner demonstrated an actual conflict of interest, she did not have to demonstrate prejudice in order to be entitled to post-conviction relief.); Thomas v. State, 346 S.C. 140, 143-45, 551 S.E.2d 254, 256 (2001) (holding petitioner in PCR proceeding demonstrated actual conflict of interest that affected her counsel's performance given counsel jointly represented Petitioner and her husband in a case where solicitor offered a plea bargain that would allow the charge against one spouse to be dismissed if the other spouse would plead guilty to the entire amount of cocaine); Staggs v. State, 372 S.C. 549, 551-52, 643 S.E.2d 690, 691-92 (2007) (petitioner in PCR proceeding demonstrated actual conflict of interest that

adversely affected counsel's trial performance where his counsel, who represented him on the charge of murder, also simultaneously represented Petitioner's father, mother, and brother on related accessory after the fact of murder charges).

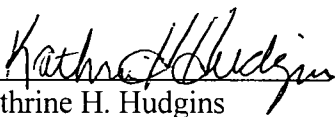
In the present case, the PCR judge went one step further finding that counsel's error in judgment in allowing the conflicted representation created a reasonable probability sufficient to significantly undermine the Court's confidence in the outcome of Marshall's trial. The PCR judge also correctly found that there was not overwhelming evidence of Marshall's guilt. In the order granting relief the PCR judge wrote, "At Marshall's trial, Marshall's co-defendant was the only witness who identified Marshall as the assailant. The co-defendant's testimony was devastating to Marshall's case. Even Mr. Bryan admits that the co-defendant's testimony was 'essentially [the State's] case,' PCR Transcript, p. 14, lines 6) and that 'Mr. Plexico's client single-single handedly convicted [his] client'" (App. p. 217).

An appellate court gives great deference to the post-conviction relief (PCR) courts findings of fact and conclusions of law." Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005). In reviewing the PCR court's decision, an appellate court is concerned only with whether any evidence of probative value exists to support that decision. Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006). An appellate court will uphold the findings of the PCR court when there is any evidence of probative value to support them. Suber v. State, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007). The record in the present case contains evidence of probative value to support the PCR judge's findings.

CONCLUSION

Based on the above argument, the petition for writ of certiorari should be denied.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 20th day of April, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Allendale County

Perry M. Buckner, Circuit Court Judge

CAZARIO MARSHALL,

RESPONDENT,

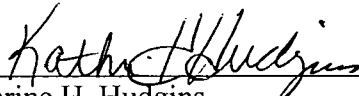
V.

STATE OF SOUTH CAROLINA,

PETITIONER

CERTIFICATE OF SERVICE

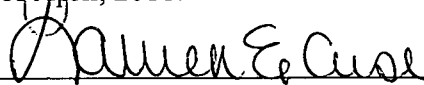
I certify that a true copy of the return to petition for writ of certiorari in this case have been served on Matthew J. Friedman, Esquire, this 20th day of April, 2011.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 20th day
of April, 2011.



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

The Supreme Court of South Carolina

Cazario Marshall,

Respondent,

v.

State of South Carolina,

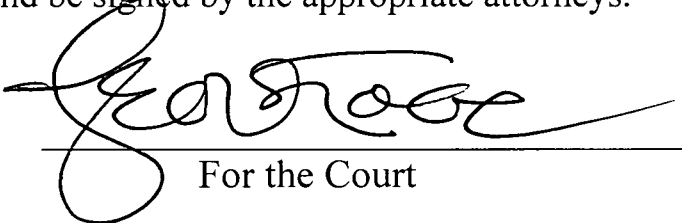
Petitioner.

The Honorable Perry M. Buckner
Allendale County
Trial Court Case No. 2007-CP-03-00361

ORDER

Petitioner seeks an extension until April 20, 2011 to serve and file the Return to the Petition for Writ of Certiorari, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension 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 actions are being taken to insure that no further extensions will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.



For the Court C.J.

Columbia, South Carolina

April 11, 2011

cc: Assistant Attorney General Matthew J. Friedman
Appellate Defender Kathrine H. Hudgins

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Allendale County
Perry M. Buckner, Circuit Court Judge

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APR - 6 2011

S.C. Supreme Court

CAZARIO MARSHALL,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER

(5)

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

Counsel for Cazario Marshall, petitions the Court for a **final two week extension until April 20, 2011** in which to file the return to petition for writ of certiorari in this case. In support of this petition, counsel shows:

1. The return to petition for writ of certiorari is due to be filed with the Court today.
2. Counsel for Mr. Marshall respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. Counsel filed the initial brief of appellant and designation of matter in State v. Roshune Carelock on February 22, 2001. The petition for writ of certiorari and accompanying appendix in Gary Glymph v. State and the initial brief of appellant and designation of matter in State v. Mack Jordan were filed on February 25, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Shenard Abraham and the return to petition for rehearing in State v. William

Martin on February 28, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Boyd Evans on March 9, 2011. The initial brief of appellant and designation of matter in State v. Milciades Alcantara was filed on March 11, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in Lewis Gowens v. State and the initial brief of appellant and designation of matter in State v. Eliana King on March 18, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Jermaine T. McKelvey on March 24, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Travell Hill on March 30, 2011.

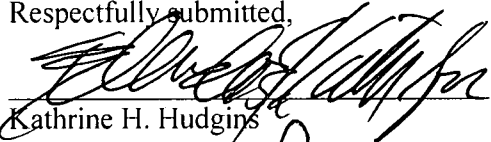
4. Counsel has not had time to complete the return to petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the return to petition for writ of certiorari and accompanying appendix. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

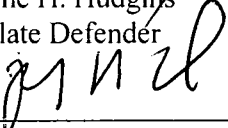
5. As indicated by signature below, Matthew Freidman, of the South Carolina Attorney General's Office, does not oppose this request

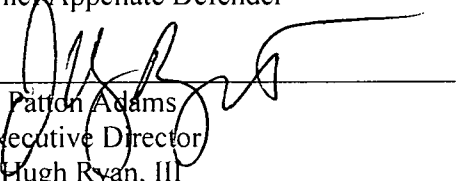
6. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully request a **final two week extension until April 20, 2011** in which to file the return to petition for writ of certiorari in this case based upon the above circumstances.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender


Robert M. Dudek
Chief Appellate Defender


T. Patton Adams
Executive Director
J. Hugh Ryan, III
General Counsel

April 6, 2011

I do not oppose:


Matthew Freidman

The Supreme Court of South Carolina

Cazario Marshall,

Respondent,

v.

State of South Carolina,

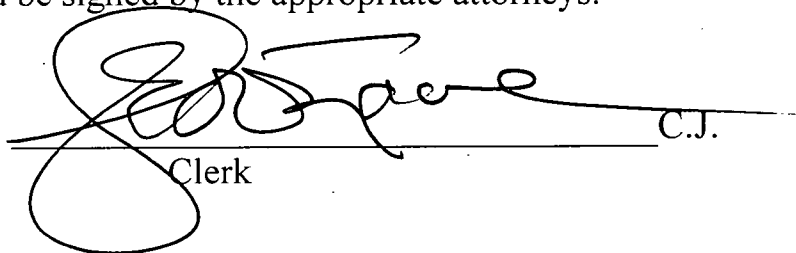
Petitioner.

The Honorable Perry M. Buckner
Allendale County
Trial Court Case No. 2007-CP-03-00361

ORDER

Petitioner seeks an extension until April 6, 2011 to serve and file the Return to the Petition for Writ of Certiorari, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension 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 actions are being taken to insure that no further extensions will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.


Clerk C.J.

Columbia, South Carolina

March 9, 2011

cc: Assistant Attorney General Matthew J. Friedman
Appellate Defender Kathrine H. Hudgins

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Allendale County
Perry M. Buckner, Circuit Court Judge

RECEIVED

MAR 07 2011

S.C. Supreme Court

CAZARIO MARSHALL,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

(4)

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

Counsel for Cazario Marshall, petitions the Court for a thirty day extension in which to file the return to petition for writ of certiorari in this case. In support of this petition, counsel shows:

1. The return to petition for writ of certiorari is due to be filed with the Court today.
2. Counsel for Mr. Marshall respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. Counsel filed the petition for writ of certiorari and Anders brief pursuant to White v. State in Tamel Davis v. State on February 2, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Taurus Watts on February 7, 2011. On February 8, 2011, counsel filed the petition for writ of certiorari in Kevin Fulton v. State. Counsel filed the petition for rehearing in State v. Wesley Smith on February 10, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in Dexter Wigfall v. State on February 17, 2011. Counsel filed the initial brief of appellant

and designation of matter in State v. Roshune Carelock on February 22, 2001. The petition for writ of certiorari and accompanying appendix in Gary Glymph v. State and the initial brief of appellant and designation of matter in State v. Mack Jordan were filed on February 25, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Shenard Abraham and the return to petition for rehearing in State v. William Martin on February 28, 2011.

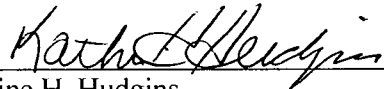
4. Counsel has not had time to complete the return to petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the return to petition for writ of certiorari and accompanying appendix. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. As indicated by signature below, Matthew Freidman, of the South Carolina Attorney General's Office, does not oppose this request

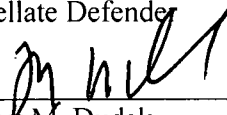
6. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully request a thirty day extension in which to file the return to petition for writ of certiorari in this case based upon the above circumstances.

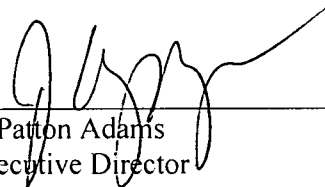
Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender



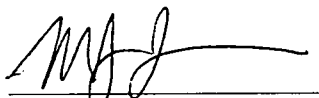
Robert M. Dudek
Chief Appellate Defender



T. Patton Adams
Executive Director
J. Hugh Ryan, III
General Counsel

March 7, 2011

I do not oppose:



Matthew Freidman

The Supreme Court of South Carolina

Cazario Marshall,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable Perry M. Buckner
Allendale County
Trial Court Case No. 2007-CP-03-00361

ORDER

For good cause shown, the request for an extension until March 7, 2011 to serve and file the Return to the Petition for Writ of Certiorari 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
Clerk

Columbia, South Carolina

February 7, 2011

cc: Assistant Attorney General Matthew J. Friedman
Appellate Defender Kathrine H. Hudgins

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Allendale County
Perry M. Buckner, Circuit Court Judge

RECEIVED

FEB 04 2011

S.C. Supreme Court

CAZARIO MARSHALL,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

(3)

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

Counsel for Cazario Marshall, petitions the Court for a thirty day extension in which to file the return to petition for writ of certiorari in this case. In support of this petition, counsel shows:

1. The return to petition for writ of certiorari is due to be filed with the Court today.
2. Counsel for Mr. Marshall respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. Counsel filed the petitions for writ of certiorari and accompanying appendices in Bobby Canada v. State and Sylvester Singletary v. State on December 3, 2010. Counsel also filed the petition for writ of certiorari and accompanying appendix in Rickey Hill v. State on December 6, 2010. Counsel filed the petitions for writ of certiorari and accompanying appendices in Larry Turner v. State and Gregory McHam v. State and the initial brief of appellant and designation of matter in State v. James Kershaw on December 8, 2010. The initial brief of appellant and designation of matter in State v. Anthony

Mattison were filed December 10, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Leandra M. on December 22, 2010. Counsel filed the initial brief of respondent and designation of matter in State v. Bryant Kinloch on January 20, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in Rodney Murray v. State on January 27, 2011. Counsel filed the petition for writ of certiorari in Tamel Davis v. State on February 2, 2011.

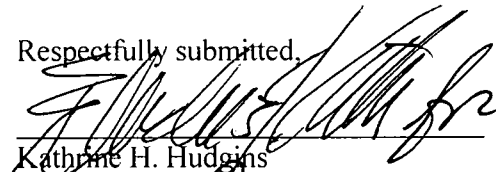
4. Counsel has not had time to complete the return to petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the return to petition for writ of certiorari and accompanying appendix. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. As indicated by signature below, Matthew Freidman, of the South Carolina Attorney General's Office, does not oppose this request

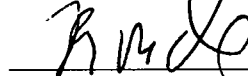
6. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully request a thirty day extension in which to file the return to petition for writ of certiorari in this case based upon the above circumstances.

Respectfully submitted,



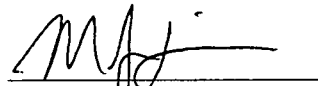
Kathrine H. Hudgins
Appellate Defender



Robert M. Dudek
Chief Appellate Defender

February 4, 2011

I do not oppose:



Matthew Freidman

The Supreme Court of South Carolina

Cazario Marshall,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable Perry M. Buckner
Allendale County
Trial Court Case No. 2007-CP-03-00361

ORDER

For good cause shown, the request for an extension until February 4, 2011 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 and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

January 7, 2011

cc: Assistant Attorney General Matthew J. Friedman
Appellate Defender Kathrine H. Hudgins

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Allendale County
Perry M. Buckner, Circuit Court Judge

RECEIVED

JAN 05 2011

S.C. Supreme Court

CAZARIO MARSHALL,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

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

(2)

Counsel for Cazario Marshall, petitions the Court for a thirty day extension in which to file the return to petition for writ of certiorari in this case. In support of this petition, counsel shows:

1. The initial brief of respondent and designation of matter are due to be filed with the Court today.
2. Counsel for Mr. Marshall respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. Counsel filed the petitions for writ of certiorari and accompanying appendices in Bobby Canada v. State and Sylvester Singletary v. State on December 3, 2010. Counsel also filed the petition for writ of

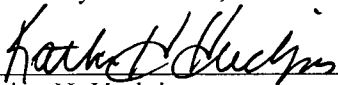
certiorari and accompanying appendix in Rickey Hill v. State on December 6, 2010. Counsel filed the petitions for writ of certiorari and accompanying appendices in Larry Turner v. State and Gregory McHam v. State and the initial brief of appellant and designation of matter in State v. James Kershaw on December 8, 2010. The initial brief of appellant and designation of matter in State v. Anthony Mattison were filed December 10, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Leandra M. on December 22, 2010. Counsel filed the petition for writ of certiorari and accompanying appendix on December 29, 2010.

4. Counsel has not had time to complete the initial brief of respondent and designation of matter in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the initial brief of respondent and designation of matter. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

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

Counsel respectfully request a thirty day extension in which to file the return to petition for writ of certiorari in this case based upon the above circumstances.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

January 5, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Allendale County
Perry M. Buckner, Circuit Court Judge

CAZARIO MARSHALL,

RESPONDENT,


V.

STATE OF SOUTH CAROLINA,

PETITIONER

CERTIFICATE OF SERVICE

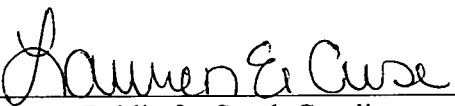
The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the petition for writ of certiorari and accompanying appendix in the above referenced case has been served upon Matthew Freidman, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 5th day of January, 2011.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me
this 5th day of January, 2011.

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

The Supreme Court of South Carolina

Cazario Marshall,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable Perry M. Buckner
Allendale County
Trial Court Case No. 2007-CP-03-00361

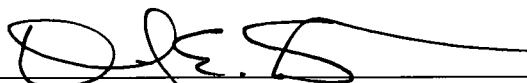
ORDER

The request for an extension until January 5, 2011 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

December 7, 2010

cc: Assistant Attorney General Matthew J. Friedman
Appellate Defender Kathrine H. Hudgins



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

Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

December 6, 2010

RECEIVED

DEC - 6 2010

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

C
S.C. Supreme Court


Re: Cazario Marshall v. The State

Dear Mr. Shearouse:

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

By copy of this letter, I am informing Matthew J. Freidman, Esquire, of the Attorney General's Office, of my request.

Sincerely,


Kathrine H. Hudgins
Appellate Defender

KHH/lec

cc: Matthew J. Freidman, Esquire



HENRY MCMASTER
ATTORNEY GENERAL

October 22, 2010

RECEIVED
OCT 22 2010
S.C. SUPREME COURT

Via Hand Delivery

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

RE: **Cazario Marshall v. State of South Carolina**
2007-CP-03-361

Dear Mr. Shearouse:

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

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/maf
Enclosures

cc: Kathrine H. Hudgins, Esquire

The Supreme Court of South Carolina

Cazario Marshall, Respondent,

v.

State of South Carolina, Petitioner.

The Honorable Perry M. Buckner
Allendale County
Trial Court Case No. 2007-CP-03-00361

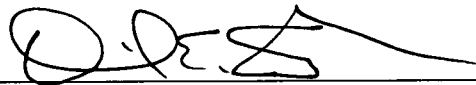
ORDER

For good cause shown, the request for an extension until November 1, 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

October 4, 2010

cc: Assistant Attorney General Matthew J. Friedman
Appellate Defender Kathrine H. Hudgins



HENRY McMASTER
ATTORNEY GENERAL

October 1, 2010

RECEIVED

OCT - 1 2010

S.C. SUPREME COURT

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

Re: Cazario Marshall v. State of South Carolina
2007-CP-03-361

(3)

Dear Mr. Shearouse:

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

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

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/maf

In compliance with:

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

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KATHRINE H. HUDGINS
Attorney for Respondent

The Supreme Court of South Carolina

Cazario Marshall,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable Perry M. Buckner
Allendale County
Trial Court Case No. 2007-CP-03-00361

ORDER

For good cause shown, the request for an extension until October 1, 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

September 2, 2010

cc: Assistant Attorney General Matthew J. Friedman
Appellate Defense



HENRY MCMMASTER
ATTORNEY GENERAL

September 1, 2010

RECEIVED

SEP - 1 2010

S.C. SUPREME COURT

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

(2)

Re: Cazario Marshall v. State of South Carolina
2007-CP-03-361

Dear Mr. Shearouse:

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

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

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/maf

cc: Appellate Defense

The Supreme Court of South Carolina

Cazario Marshall,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable Perry M. Buckner
Allendale County
Trial Court Case No. 2007-CP-03-00361

ORDER

The request for an extension until September 1, 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

August 3, 2010

cc: Assistant Attorney General Matthew J. Friedman
Appellate Defense



HENRY MCMMASTER
ATTORNEY GENERAL

August 2, 2010

RECEIVED

AUG - 2 2010

S.C. SUPREME COURT

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

Re: Cazario Marshall v. State of South Carolina
2007-CP-03-361

Dear Mr. Shearouse:

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

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

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/maf

cc: Appellate Defense



HENRY MCMASTER
ATTORNEY GENERAL

June 7, 2010

RECEIVED
JUN - 7 2010
S.C. SUPREME COURT

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

RE: **Cazario Marshall v. State of South Carolina**
2007-CP-03-361

Dear Mr. Shearouse:

We are in receipt of the post-conviction relief hearing transcript in the above captioned matter. We have calendared the State's Petition for Writ of Certiorari to be due 60 days from June 2, 2010. If this date, August 2, 2010, is incorrect or inconsistent with your records, please contact this office.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/maf

cc: Appellate Defense



RECEIVED

MAY 14 2010

S.C. SUPREME COURT

HENRY McMASTER
ATTORNEY GENERAL

May 14, 2010

M. Rebecca Hill, Court Reporter
522 Dowling Avenue
Walterboro, SC 29488

RE: Cazario Marshall v. State of South Carolina
2007-CP-03-361

Dear Ms. Hill:

Please prepare a transcript of the post conviction hearing of the above named individual taken on April 7, 2010, before the Honorable Perry M. Buckner, for the term of the Court of Common Pleas for Allendale County.

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

If you will prepare this transcript and forward it to me along with your statement, I will arrange for payment. Please note that all statements are to be signed.

Sincerely,

Molly A. Flowers, Legal Assistant to
Matthew J. Friedman, Assistant Attorney General

/maf

cc: The Honorable Daniel Shearouse, Clerk of the Supreme Court of South Carolina
Court Administration
H. Woodrow Gooding, Esquire
Appellate Defense



HENRY MCMASTER
ATTORNEY GENERAL

May 14, 2010

RECEIVED

MAY 14 2010

S.C. SUPREME COURT

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

**RE: Cazario Marshall, 265561 v. The State of South Carolina
2007-CP-03-361**

Dear Mr. Shearouse:

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

1. Proof of service of the notice of appeal on the respondent.
2. A copy of the order which is to be challenged on appeal.

With highest regards,

Matthew J. Friedman
Assistant Attorney General

MJF/maf
Enclosures

cc: H. Woodrow Gooding, Esquire
The Honorable Elaine Sabb, Clerk of Court of Allendale County
The Honorable Isaac McDuffie Stone, III, Fourteenth Circuit Solicitor
Appellate Defense
David Tatarsky, SCDC
Trisha Allen, Victims Services

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

CERTIORARI TO ALLENDALE COUNTY
COURT OF COMMON PLEAS

MAY 14 2010

S.C. SUPREME COURT

The Honorable Perry M. Buckner, Circuit Court Judge
Case No. 2007-CP-03-361

Cazario Marshall, 265561,

Respondent,

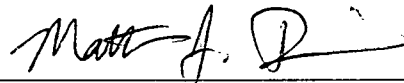
v.

State of South Carolina,

Petitioner.

NOTICE OF APPEAL

The State of South Carolina hereby appeals the Order Granting Post Conviction Relief of the Honorable Perry M. Buckner, filed May 10, 2010, and received by the undersigned on May 13, 2010.



Matthew J. Friedman, Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 14, 2010.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAY 14 2010

CERTIORARI TO ALLENDALE COUNTY
COURT OF COMMON PLEAS

S.C. SUPREME COURT

The Honorable Perry M. Buckner, Circuit Court Judge
Case No. 2007-CP-03-361

Cazario Marshall, 265561,

Respondent,

v.

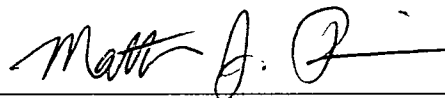
State of South Carolina,

Petitioner.

PROOF OF SERVICE

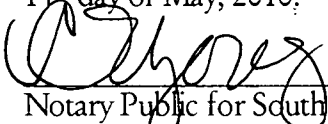
I certify that I have served the Notice of Appeal on H. Woodrow Gooding, Esquire by depositing a copy of it in the United States Mail, postage prepaid, on May 14, 2010, his attorney of record, to the address below.

H. Woodrow Gooding, Esquire
Gooding & Gooding, PA
P.O. Box 1000
Allendale, SC 29810



Matthew J. Friedman
Assistant Attorney General

SWORN to before me this
14th day of May, 2010.


Notary Public for South Carolina.

My Commission Expires: 10/28/2014

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE)	OR THE FOURTEENTH JUDICIAL CIRCUIT
CAZARIO MARSHALL,)	C/A#: 2007-CP-03-361
)	
APPLICANT,)	
)	
vs.)	ORDER
)	
STATE OF SOUTH CAROLINA,)	
)	
DEFENDANT,)	
_____)	

ALLENDALE COUNTY
 SOUTH CAROLINA
 2007 APR 13

This matter came before the Court for an evidentiary hearing on April 7, 2010, upon Cazario Marshall's Application for Post-Conviction Relief. Marshall was present and represented by H. Woodrow Gooding, Esquire, and Matthew Friedman, Esquire, appeared on behalf of the State.

#1
PMB

BACKGROUND

In May 2004, Marshall was indicted by the Allendale County Grand Jury for burglary- 1st degree (2004-GS-03-0069), assault and battery of a high and aggravated nature (ABHAN) (2004-GS-03-0070), armed robbery (2004-GS-03-0071), kidnapping (2004-GS-03-0125), and possession of a firearm during commission of certain crimes (2004-GS-03-0130). John D. Bryan, Esquire, of the Public Defender's Office was appointed to represent the indigent defendant. On August 25, 2004, Marshall proceeded to trial with Mr. Bryan as his counsel, and the jury found him guilty on all charges. The Honorable Paul M. Burch sentenced Marshall to life for burglary - 1st degree, thirty (30) years for armed robbery, thirty (30) years for kidnapping, ten (10) years for ABHAN, and five (5) years for possession of a firearm - each

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sentence to run concurrently. Marshall filed an Appeal that was dismissed by the South Carolina Court of Appeals in State v. Marshall, Op. No. 2007-UP-034 (S.C. Ct. App. filed January 19, 2007). The Remittitur was issued on April 20, 2007. Marshall filed his Application for Post-Conviction Relief (PCR) on December 31, 2007.

In his application for PCR, Marshall claims that his trial counsel rendered ineffective assistance of counsel on the following grounds:

- 1) Trial counsel failed to introduce DNA evidence to impeach the State's key witness against Marshall;
- 2) Trial counsel failed to properly cross-examine the victim; and
- 3) Trial counsel failed to properly poll the jury by allowing defense counsel for the State's key witness to poll and participate in striking Marshall's jury.

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At the PCR hearing, Marshall called two witnesses to testify, John D. Bryan and Steve Plexico. Mr. Bryan testified that he was appointed to represent Marshall on the above-referenced charges in or around March 2004. Steve Plexico was appointed to represent the co-defendant, Quincy Deloach, who was charged along with Marshall with the same charges. At all relevant times herein, Mr. Bryan and Mr. Plexico were employed by the Public Defender's office -- Mr. Plexico as public defender and Mr. Bryan as assistant public defender. Mr. Bryan was aware that Mr. Plexico had been appointed to represent Marshall's co-defendant. Mr. Bryan also knew prior to trial that Marshall's co-defendant would be testifying against Marshall at the trial. Even with such knowledge, Mr. Bryan allowed Mr. Plexico to strike Marshall's jury. PCR Transcript, p. 13. In fact, Mr. Plexico was seated next to Marshall during the jury selection. Id. at 15. According to the trial transcript, Mr. Bryan responded to a question from the Court as follows: "Mr. Plexico was sitting by my client during the jury selection process. so he was asking him most of the

questions and doing most of the talking with him.” Id. at 13. Moreover, Mr. Deloach was the only witness who identified Marshall as the assailant. Id. at 14, and Mr. Bryan admitted that “Mr. Plexico’s client single-handedly convicted [his] client.” Id. Furthermore, Mr. Plexico testified that his client (Marshall’s co-defendant) had agreed to help the State by testifying against Marshall because the State was “withholding sentencing” and was not “interested in pursuing [Deloach] if they got Marshall.” Id. at 38.

Marshall argues that he received ineffective assistance of counsel. In an action for post-conviction relief, the applicant bears the burden of proving the allegations in the PCR application. Bannister v. State, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998). “To establish a claim of ineffective assistance of counsel, the PCR applicant must prove:

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(1) counsel’s performance fell below an objective standard of reasonableness; and (2) counsel’s deficient performance prejudiced the defendant’s case.” Smith v. State of S.C., 2010 S.C. LEXIS 102, Opinion No. 26773 (S.C. Feb. 16, 2010)(citing Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 674 (1984)(other citation omitted). “To establish prejudice, the defendant is required ‘to show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability **sufficient to undermine confidence in the outcome**’” Id. (emphasis added). “Moreover, no prejudice occurs, despite trial counsel’s deficient performance, where there is otherwise overwhelming evidence of the defendants’ guilt.” Id. (citing Rosemond v. Catoe, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009).

In a PCR case, trial “[c]ounsel’s performance is accorded a favorable presumption, and [the court] proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance

and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984)). Here, Mr. Bryan’s performance fell below an objective standard of reasonableness. Not only did Mr. Bryan proceed in his representation of Marshall with knowledge that Steve Plexico was representing the co-defendant who would testify against Marshall, but Mr. Bryan also allowed Mr. Plexico to strike Marshall’s jury. This glaring conflict of interest clearly shows that Mr. Bryan did not exercise reasonable professional judgment. Moreover, Mr. Bryan conceded in his testimony that his performance as an attorney was deficient and unreasonable.

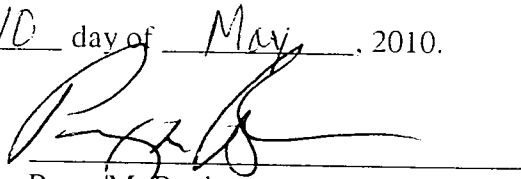
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The Court further finds that Mr. Bryan’s deficient performance prejudiced Marshall’s case. At Marshall’s trial, Marshall’s co-defendant was the only witness who identified Marshall as the assailant. The co-defendant’s testimony was devastating to Marshall’s case. Even Mr. Bryan admits that the co-defendant’s testimony was “essentially [the State’s] case,” PCR Transcript, p. 14, line 6) and that “Mr. Plexico’s client single-handedly convicted [his] client.” Id. at lines 16-18. Here, the outcome of Marshall’s case hinged on the co-defendant’s identification of Marshall as the assailant, and “there was otherwise an absence of overwhelming evidence of [Marshall’s] guilt.” Smith v. State, 2010 S.C. LEXIS 102. Mr. Plexico, counsel for the co-defendant, has acknowledged that his client was testifying against Marshall under the belief that the State was not “interested in pursuing [DeLoach] if they got Marshall.” PCR Transcript, p. 38, lines 12-13. Without a doubt, it was in Mr. Plexico’s client’s best interest for Marshall to be convicted – a conviction for Marshall meant freedom for DeLoach. This court simply cannot ignore the severity of the conflict of interest that arose out of Mr. Bryan’s allowing Plexico to strike Marshall’s jury when Mr. Bryan knew that Plexico’s client would be

the State's key witness. This error in judgment creates a reasonable probability sufficient to significantly undermine the Court's confidence in the outcome of Marshall's trial. Moreover, there was no other overwhelming evidence of Marshall's guilt.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be granted;
2. That the Applicant is entitled to a new trial; and
3. That the Respondent has 30 days to appeal this Order.

AND IT IS SO ORDERED this 10 day of May, 2010.



Perry M. Buckner
Presiding Judge
14th Judicial Circuit

Walterboro, South Carolina.