



ORIGINAL



**SCCID**

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

April 13, 2012

RECEIVED

APR 13 2012

S.C. Supreme Court

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

Re: Cheves D. Heyward v. State of South Carolina

Dear Mr. Shearouse:

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

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

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Wanda H. Carter  
Deputy Chief Appellate Defender

WHC/kam

cc: Karen Ratigan



# SCCID

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Facsimile: (803) 734-1397

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

February 14, 2012

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

RECEIVED

FEB 14 2012

S.C. Supreme Court

Dear Mr. Shearouse:

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

Cheves D. Heyward v. State of South Carolina

2/13/2012

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Loriene French  
Legal Services Coordinator



# SCCID

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

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

November 22, 2011

Ms. Theresa Johnson  
Circuit Court Reporter  
Post Office Box 2812  
Greenville, SC 29602

Dear Ms. Johnson:

Please provide us with the following transcript:

Cheves D. Heyward v. State of South Carolina10 Case #: -CP-23-03255.

County: Greenville Date of Trial: May 9, 2011

Presiding Judge: G. Edward Welmaker

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

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

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

Sincerely,

  
Lorlene French  
Legal Services Coordinator

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



# SCCID

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Columbia, South Carolina 29201-3332  
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Facsimile: (803) 734-1397

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

RECEIVED

NOV 22 2011

November 22, 2011

S.C. Supreme Court

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

Re: Cheves D. Heyward v. State of South Carolina

Dear Mr. Shearouse:

I have had to reorder the transcript in the above-captioned case. The first request was done in a timely manner, but the court reporter has informed us that she did not take the proceedings. I would respectfully request that you start our time schedule for ordering the transcript from today's date.

If you have any questions concerning this matter, please do not hesitate to contact me. Thank you for your assistance in this matter.

Sincerely,

  
Lorie French  
Legal Services Coordinator

cc: Attorney General's Office



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

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

August 22, 2011

RECEIVED

AUG 22 2011

S.C. Supreme Court

Ms. April P. Herron  
Circuit Court Reporter  
P O Box 17675  
Greenville, SC 29606

Dear Ms. Herron:

Please provide us with the following transcript:

Cheves D. Heyward v. State of South Carolina Case #: -CP-23-03255.

County: Greenville Date of Trial: May 9, 2011

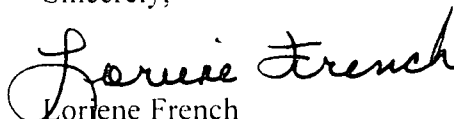
Presiding Judge: G. Edward Welmaker

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

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

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

Sincerely,

  
Lorlene French  
Legal Services Coordinator

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

pcr

ELIZABETH WYIGUL  
ATTORNEY AT LAW

(864) 608-1059  
(864) 235-0200 facsimile  
eli.wyigul@gmail.com

101 Whitsett Street  
Greenville, SC 29601

August 1, 2011

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

RE: Cheves D. Heyward, 276057, Appellant v. State of South Carolina,  
Respondent, Case No. 2010-CP-23-3255

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case pursuant to S.C.  
APP. CT. R. 243(a). Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the order which is to be challenged on appeal.

Please note that a copy of this letter, along with enclosures, has been  
forwarded to the Office of Appellate Defense, in anticipation of that office  
providing Appellant representation on this appeal.

Sincerely,

RECEIVED

AUG 04 2011

S.C. SUPREME COURT

*Elizabeth P. Wygul*

Elizabeth P. Wygul  
101 Whitsett Street  
Greenville, SC 29601  
(864) 608-1059  
(864) 235-0200 facsimile

CC:

Karen C. Ratigan  
Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211-1549

Office of Appellate Defense  
ATTN: Emily Bryson  
PO Box 11433  
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2011 AUG -1 P 1:28

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2010-CP-23-3255

Cheves D. Heyward, 276057, Appellant.

v.

State of South Carolina, Respondent.

RECEIVED  
AUG 04 2011  
S.C. SUPREME COURT

NOTICE OF APPEAL

Cheves D. Heyward appeals the order of the Honorable G. Edward Welmaker dated July 1, 2011. Appellant received written notice of entry of this order on July 9, 2011.

August 1, 2011

  
Elizabeth P. Wiygul  
101 Whitsett Street  
Greenville, SC 29601  
(864) 608-1059  
(864) 235-0200 facsimile

Other Counsel of Record:  
Karen C. Ratigan  
Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211-1549

RECEIVED  
AUG 04 2011  
S.C. SUPREME COURT

2011 AUG -1 PM 1:30

FILED-CLERK OF COURT  
GREENVILLE CO S C.  
PAUL B. WICKENSIMER

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2010-CP-23-3255

Cheves D. Heyward, 276057, Appellant.

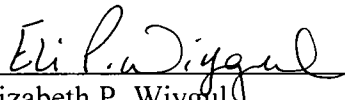
v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on August 1, 2011, addressed to Assistant Attorney General Karen Ratigan, Post Office Box 11549, Columbia, SC 29211-1549.

August 1, 2011

  
Elizabeth P. Wiygul  
101 Whitsett Street  
Greenville, SC 29601  
(864) 608-1059  
(864) 235-0200 facsimile

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Cheves D. Heyward, )  
 S.C.D.C. No. 276057, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2010-CP-23-3255

**ORDER OF DISMISSAL**

FILED-CLERK OF COURT  
 GREENVILLE CO. SC  
 PAUL B. WICKENSHAM  
 2011 JUL -6 P 2:31P

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 22, 2010. The Respondent made its return on August 20, 2010. An evidentiary hearing into the matter was convened on May 9, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Elizabeth P. Wiygul, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Steven W. Sumner, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the October 2007 term of the Greenville County Grand Jury for armed robbery

1 

(2007-GS-23-8510), assault and battery with intent to kill (ABIK) (2007-GS-23-8511), and first-degree burglary (2007-GS-23-8512) and at the December 2008 term for armed robbery (2008-GS-23-9038) and ABIK (2007-GS-23-9039). He was represented by Steven W. Sumner, Esquire.

After the State called the case for trial, the Applicant chose to plead guilty pursuant to a negotiated plea agreement. On April 28, 2009, the Honorable Eugene C. Griffith sentenced the Applicant to concurrent terms of ten (10) years for each count of armed robbery, fifteen (15) years suspended on service of ten (10) years and five (5) years probation for each count of ABIK, and fifteen (15) years suspended on service of ten (10) years and five (5) years probation for second-degree burglary (violent). The Applicant did not appeal.

### **ALLEGATIONS**

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

1. Ineffective assistance of counsel:
  - a. Did not explain the plea in detail.
  - b. Did not keep the Applicant informed of all proceedings in the two years before the plea hearing.
  - c. Did not attempt to negotiate a better plea recommendation.
  - d. Did not properly advise regarding sentencing guidelines.
  - e. Did not file a motion to suppress.
  - f. Did not file a speedy trial motion.
  - g. Did not argue Rule 3(c), SCRCrimP.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

2  


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

### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he and plea counsel reviewed both the State’s evidence and his version of events. The Applicant stated, however, that plea counsel was not prepared for trial and that they had not discussed either trial strategy or defenses. The Applicant stated he rejected the State’s first plea offer because he wanted to go to trial. The Applicant stated plea counsel said he would not call any witnesses at a trial because he would then lose the final closing argument. The Applicant stated he stopped the trial and pled guilty because plea counsel told him he would lose the trial. The Applicant stated plea counsel told him that he would plead guilty to a ten (10) year offer and that he would be out of prison within eight (8) years. The

Applicant stated he believed he was pleading guilty to the lesser charges of strong arm robbery and assault and battery of a high and aggravated nature. The Applicant stated he did not understand what a negotiated sentence was but went along with the plea process because it was what plea counsel told him to do.

Plea counsel testified the Applicant was the most difficult client he ever had and that they had numerous antagonistic meetings. Regardless, plea counsel testified they extensively reviewed the discovery, charges, elements of the offenses, potential sentences, and defenses over the course of several meetings. Plea counsel testified he did not recall a prior plea offer and that the Applicant always wanted to take the case to trial. Plea counsel testified the Applicant never gave him the names of witnesses to contact. Plea counsel testified he did not recall why the Applicant decided to plead guilty during the trial. Plea counsel testified he would have explained the nature of a negotiated sentence with the Applicant. Plea counsel testified he would have explained the nature of a suspended sentence to the Applicant but that he did not tell the Applicant either that he would serve a straight ten (10) year sentence or that the armed robbery and ABIK charges would be reduced.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.213). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty and was satisfied with counsel. (Plea transcript, pp.212-13).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have spent more time reviewing his case and discussing it with him. This Court finds this allegation is not supported by either the PCR testimony or the record. Plea counsel provided detailed testimony from his notes about numerous meetings with the Applicant<sup>1</sup> and the Applicant testified that he met with plea counsel several times to both review the State's evidence and discuss his version of the facts. Further, the Applicant did not register any complaints with any individuals during the guilty plea hearing. (Plea transcript, p.209). This Court finds the Applicant has failed to articulate what more plea counsel should have done in order to investigate his case and prepare it for trial. See, e.g., Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have contacted potential witnesses in his case. Initially, this Court notes plea counsel testified the Applicant never gave him the names of any possible witnesses. This Court finds plea counsel's testimony is credible. Regardless, as these alleged witnesses did not testify at the PCR hearing, any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.")

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<sup>1</sup> This Court notes plea counsel had also informed the plea judge of the various meetings and discussions he had with the Applicant in preparation for trial. (Plea transcript, pp.10-12).

(emphasis in original).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly explain the negotiated plea agreement. Plea counsel testified he would have explained the nature of a negotiated plea to the Applicant. Plea counsel also testified he told the Applicant the sentence he would receive and that it would involve suspended sentences. This Court finds plea counsel's testimony is credible. This Court finds the Applicant was fully informed of the details of the negotiated plea, including the "violent" classification of the armed robbery charges, that he was receiving the minimum sentence for armed robbery, and that his sentences would be concurrent. (Plea transcript, pp.211-12; p.214).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### **All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

6 

**CONCLUSION**

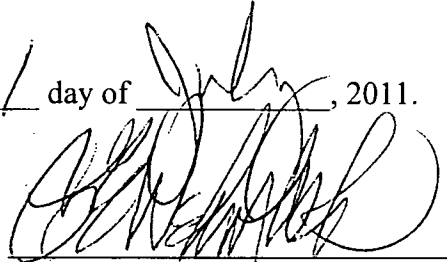
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 1 day of July, 2011.



G. Edward Welmaker  
Resident Judge  
Thirteenth Judicial Circuit

  
South Carolina.

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

Cheves D. Heyward, 276057 )

Plaintiff )

v. )

State Of South Carolina )

Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
2010-CP-23-3255

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney: Elizabeth P. Wiygul, Esquire, Bar No. Address: 101 Whitsett Street Greenville SC 29601 phone: (864) 608-1059 fax: (864) 235-0200 e-mail: other:	Defendant's Attorney: Karen C. Ratigan, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
--	---

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

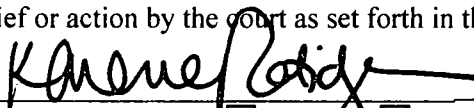
Nature of Motion: \_\_\_\_\_

Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

  
 Signature of Attorney for  Plaintiff  Defendant

Date submitted: June 22, 2011

**SECTION III: Motion Fee**

PAID - AMOUNT: \_\_\_\_\_  
 EXEMPT:

(check reason)

Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRCP)  
 Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_

Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE: \_\_\_\_\_  
 CODE: \_\_\_\_\_ Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

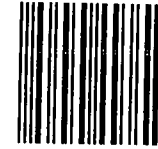
Date Filed: \_\_\_\_\_

Collected by: \_\_\_\_\_

MOTION FEE COLLECTED: \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \_\_\_\_\_



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29211

U.S. POSTAGE  
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GREER, SC  
29650  
AUG 02, 11  
AMOUNT

\$2.08  
00076098-04



ELIZABETH P. WIYGUL  
ATTORNEY AT LAW

101 Whitsett Street  
Greenville, SC 29601

Phillip A. Byrd,  
Dayvonn A. Valentine,  
Charles D.  
Steward

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