

# The Supreme Court of South Carolina

Thomas Jermaine Evans,                      Petitioner,

v.

State of South Carolina,                      Respondent.

The Honorable Deadra L. Jefferson  
Charleston County  
Trial Court Case No. 2010-CP-10-04552

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## ORDER

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The request for an extension until May 7, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Drenda J. Shasky*  
Clerk

Columbia, South Carolina *Chief Deputy*

April 6, 2012

cc: Appellate Defender Kathrine H. Hudgins  
Assistant Attorney General Ashleigh Wilson



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

April 5, 2012

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

(1)

RECEIVED  
APR - 5 2012  
S.C. Supreme Court

Re: Thomas Jermaine Evans v. The State

Dear Mr. Shearouse:

The Petition for Writ of Certiorari and accompanying appendix are 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 Freidman, Esquire, of the Attorney General's Office, of my request.

Sincerely,

Kathrine H. Hudgins  
Appellate Defender

KHH/lec

cc: Matthew Freidman, Esquire



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

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FEB 06 2012

February 6, 2012

S.C. Supreme Court

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

Dear Mr. Shearouse:

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

Thomas Jermaine Evans v. State of South Carolina (04552) 2/6/2012

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

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

November 2, 2011

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S.C. Supreme Court

Ms. Anne Bouley Meyer  
Circuit Court Reporter  
P O Box 12093  
Charleston, SC 29422

Dear Ms. Meyer:

Please provide us with the following transcript:

Thomas Jermaine Evans v. State of South Carolina      Case #:      10-CP-10-04552

County: Charleston      Date of Trial: September 14, 2011

Presiding Judge: Deadra L. Jefferson

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,

  
Loriene French  
Legal Services Coordinator

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



✓

Post Office Box 630 | Charleston, SC 29402  
129 Broad Street | Charleston, SC 29401  
Tel: (843) 722-3300 | Fax: (843) 722-3379

snettlles@pritchard-elliott.com

October 20, 2011

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

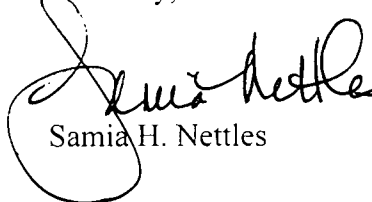
Re: Thomas J. Evans v. State of South Carolina  
Case No. 2010-CP-10-4552

Dear Mr. Shearhouse:

Enclosed for filing please find the original and seven copies of the Notice of Appeal, Proof of Service of the Notice of Appeal and Judge Jefferson's Order Denying the Post Conviction Relief. Please return a stamped filed copy in the enclosed envelope.

Please do not hesitate to contact me if I can provide you with further information or any assistance.

Sincerely,



Samia H. Nettles

enclosures

cc: Matthew J. Friedman, Esquire  
(w/enclosures)

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OCT 21 2011  
S.C. SUPREME COURT

**RECEIVED**  
OCT 21 2011  
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas



The Honorable Deadra L. Jefferson, Circuit Court

Case No. 2010-CP-10-4552

THOMAS J. EVANS..... Appellant.

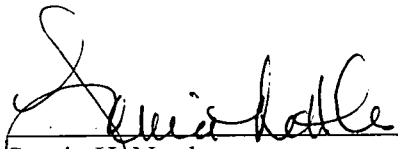
v.

STATE OF SOUTH CAROLINA .....Respondent

**NOTICE OF APPEAL**

Appellant Thomas J. Evans, by and through his undersigned counsel, appeals the *Order of Dismissal* of the Honorable Deadra L. Jefferson signed October 7, 2011 and filed on October 10, 2011. Appellant received the first written notice of entry of this Order by a mailing received on October 13, 2011 from Charleston County Clerk of Court in the State of South Carolina, which included the signed Order of Dismissal filed on October 10, 2011. This appeal stems from an application for Post Conviction Relief.

October 20, 2011

  
\_\_\_\_\_  
Samia H. Nettles  
Pritchard & Elliott, LLC  
129 Broad Street  
Charleston, South Carolina 29401  
Attorney for Appellant  
Telephone: (843) 722-3300

Other Counsel of Record:  
Matthew Friedman, Esquire  
Assistant Attorney General  
South Carolina Attorney General's Office  
P. O. Box 11549  
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

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Case No. 2010-CP-10-4552

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THOMAS J. EVANS..... Appellant.

v.

STATE OF SOUTH CAROLINA .....Respondent.

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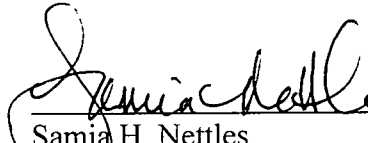
**PROOF OF SERVICE**

---

I certify that I have served Appellants' Notice of Appeal on Respondent, State of South Carolina, by sending a copy in the United States Mail, postage prepaid, on October 20, 2011, addressed to its attorney of record as follows:

Matthew Friedman, Esquire  
Assistant Attorney General  
South Carolina Attorney General's Office  
P. O. Box 11549  
Columbia, SC 29211

October 20, 2011



---

Samia H. Nettles  
Pritchard & Elliott, LLC  
129 Broad Street  
Charleston, South Carolina 29401  
Attorney for Appellant  
Telephone: (843) 722-3300

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Thomas Jermaine Evans, #328618, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2010-CP-10-4552

ORDER OF DISMISSAL

FILED  
 2011 OCT 10 AM 10:06  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

Presiding Judge:	Deadra L. Jefferson
Applicant's Attorney:	Samia Hanafi Nettles, Esq.
Respondent's Attorney:	Matthew J. Friedman, Esq.
Trial Counsel:	William Runyon, Esq.
Date of Hearing:	September 14, 2011
Court Reporter:	Anne Meyer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 3, 2010. The Respondent filed its Return on October 5, 2010. Applicant's memorandum in support of his application for PCR was filed September 15, 2011. An evidentiary hearing into the matter was convened on September 14, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Samia Hanafi Nettles, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, William Runyon, Esquire, and Applicant's counsel on a previous plea, Donna Taylor, Esquire, also testified at the hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Final Anders Brief of Appellant, the Court of Appeals'

*10/11*  
*[Signature]*

opinion dismissing the appeal, the Remittitur dated March 1, 2010, the PCR application and amended application, the State's Return thereto, the written Plea Agreement, and the transcript from the prior guilty plea hearing (2007-GS-10-7508).<sup>1</sup> The testimony from the hearing on the Applicant's other PCR case (2010-CP-10-10353), also heard September 14, 2011, was incorporated into this case. This Court takes judicial notice of the arguments presented regarding sentencing from the prior hearing.

### **PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the June 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-7477). William Runyon, Esquire, represented the Applicant. The Applicant proceeded to trial on October 6–8, 2008, after which a jury found him guilty as indicted. The Honorable Thomas W. Cooper, Jr. sentenced the Applicant to confinement for life without parole (LWOP).

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Pachak of the South Carolina Commission on Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals subsequently dismissed the appeal. State v. Evans, Op. No. 2010-UP-123 (S.C. Ct. App. filed February 11, 2010). The Remittitur was issued on March 1, 2010.

### **ALLEGATIONS**

The Applicant alleges he is being held in custody unlawfully for the following reasons:

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<sup>1</sup> Applicant entered into a written plea agreement with the State prior to his guilty plea to another armed robbery charge on April 24, 2008 (2007-GS-10-7508). At this time Applicant had approximately sixteen (16) pending armed robbery charges in Charleston, Berkeley, and Dorchester counties. Under the agreement, Applicant agreed to plead guilty on 2007-GS-10-7508 and all subsequent charges, and in exchange the State agreed to not seek LWOP.

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1. Ineffective assistance of trial counsel in that counsel
  - a. Failed to perform his duties by allowing Applicant to be tried without indictment.
  - b. Did not attack prosecutor's case fully.
  - c. Did not find out about Applicant's warrantless arrest by the U.S. Marshals.
  - d. Failed to object to sentencing at trial and failed to inform the court of the agreement reached with the State prior to sentencing at trial.
  - e. Failed to make proper and necessary objections.
  - f. Failed to adequately consult with Applicant.
  - g. Failed to move the court to hold a hearing outside of the presence of the jury to determine the voluntariness of the statements given.
  - h. Failed to obtain impaneling documents.
  - i. Failed to provide Applicant with a copy of his indictment.
  - j. Failed to investigate Applicant's mental and emotional state.
  - k. Failed to retain an investigator to interview witnesses.
  - l. Allowed Applicant to be tried without an indictment.
2. Violations of 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendment Rights.
3. Ineffective assistance of appellate counsel for filing an Anders brief and not exploring all grounds for appeal.

### **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 hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified he was not presented with the indictment, but he knew he was being charged with armed robbery. He asserted his statement to Detective Osborne was not voluntary, and he continued to be questioned after requesting an attorney. He testified he was not called to testify at his Jackson v. Denno hearing. He testified he wanted counsel to call Daryl Louis and James Blanding, Jr. to testify as to the alleged improper conduct by Detective Osborne. Applicant testified he was visiting family in Georgia when he was arrested without a warrant. He asserted counsel did not object to the hand of one is the hand of all jury charge.

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Applicant argued counsel did not attack the statements of the co-defendants, and he believes trial counsel knew a deal was being made between the State and the co-defendants. Applicant testified he only met with counsel once before trial and does not believe counsel was prepared. Applicant testified appellate counsel only raised one issue on appeal while, in his opinion, the appeal should have included additional matters.

Trial counsel, William Runyon, Esquire, testified he was appointed to represent Applicant approximately eight (8) weeks before trial after Donna Taylor, Esquire was relieved as counsel. He testified Ms. Taylor's file was very complete, and he was adequately prepared for trial. He testified, to his recollection, he showed the indictment to the Applicant and went over all discovery and investigated all viable defenses. Counsel testified he looked into the warrantless arrest and discussed it with the Applicant. Counsel did not address it with the court because it was a baseless issue in that it was a lawful arrest under the Interstate Fugitive Act. He asserted Applicant had no basis for a defense after he gave a 28-page confession. He testified he wrote a letter to Applicant asking him if he had any defenses, and Applicant never provided him with a defense. He testified he challenged the voluntariness of Applicant's statement in a Jackson v. Denno hearing, and while he was not ultimately successful, he was at least able to get a substantial portion of the statement redacted. Counsel testified he tried to do everything Applicant requested, but he was left in a "train wreck status" due to Applicant's statement and breach of the written plea agreement with the State. He asserted Applicant backed out of the plea agreement by proceeding to trial. He testified he discussed LWOP with Applicant and informed him that he had been served with LWOP notice. Counsel testified he moved for a mistrial when a co-defendant mentioned other robberies. The motion for a mistrial was denied, but the trial court gave a curative instruction. Counsel testified he did not see any basis to object

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to the standard hand of one jury charge as it recognized by the Supreme Court and is supported by the record. He asserted he did not raise an issue with sentencing, because the Applicant breached the written plea agreement and, thus, did not have a meritorious defense.

Plea counsel, Donna Taylor, Esquire, testified she did not see any basis to challenge the indictment. She testified the indictment was true billed, and she showed the indictment to Applicant after receiving it from Assistant Solicitor Nathan Williams. She testified she was relieved before this trial. She testified she spoke with Applicant about all of his cases in the two (2) to three (3) years she was involved, but she did not discuss this trial specifically. Ms. Taylor testified at the prior PCR hearing the terms of the written plea agreement were that Applicant must plead guilty to the first and second sets of charges to avoid LWOP.

#### **Ineffective Assistance of Trial Counsel**

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). 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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386

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S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate 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 prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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." Id. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

This Court finds Applicant's testimony is not credible while also finding trial counsel's testimony is credible. This Court finds counsel is a trial practitioner who has over forty-four (44) years of experience in the trial of serious offenses. The Court finds that although counsel was appointed just eight (8) weeks prior to trial, there is no indication in the record he was not prepared for trial. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the discovery, Applicant's constitutional rights, and possible defenses or lack thereof.<sup>2</sup>

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler, 286

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<sup>2</sup> Even though the record reflects the elements of armed robbery were instructed at trial, this Court instructed Applicant on the elements again, placing particular emphasis on the fact a deadly weapon does not have to be a gun.

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S.C. at 442, 334 S.E.2d at 814. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel properly challenged Applicant's statement to law enforcement by requesting a Jackson v. Denno hearing. (Tr. 5:8-70:12.) Although the statement was admissible, counsel was successful in having a substantial portion of the statement redacted which speaks volumes of his ability. (Tr. 71:11-82:15.)

This Court finds counsel appropriately attacked the credibility of the co-defendants through cross-examination, and there was no basis for a mistrial based on the co-defendant's testimony. (Tr. 330:23-336:6, 355:17-360:17.) This Court finds that he had no basis to challenge the jury charge on the hand of one is the hand of all. (Tr. 434:3-435:4.) It was a standard jury charge and would have been charged despite an objection as it was factually applicable to this case.

This Court finds that counsel had no basis to challenge the indictment. The indictment was true-billed, and Ms. Taylor testified she showed the indictment to Applicant. This Court finds Applicant fully understood the nature of the charges against him. "[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007). Tumbleston establishes that an indictment is a notice document. Id. at 95, 654 S.E.2d at 852. Here, there is no indication the Applicant and counsel did not have adequate notice of the charges and ample time to prepare a defense.

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This Court finds trial counsel's testimony credible regarding the warrantless arrest issue. Counsel looked into the matter, discussed it with Applicant, and deemed it was not an issue since the arrest was lawful under the Interstate Fugitive Act.

This Court finds that counsel properly moved for a mistrial when a co-defendant referenced other armed robberies involving Applicant. (Tr. 344:19-23, 362:7-365:13.) The co-defendant mentioned there were two guns involved and there was a backpack which they used in another robbery. (Tr. 344:11-20.) Although the trial court denied the motion for a mistrial, the court gave a curative instruction to the jury. (Tr. 425:3-19.) The Court notes there is no evidence of the other robberies in the record that rises to the level of prejudice. The Court also notes the record is void of evidence of an agreement in place between the State and the co-defendants or that the co-defendants gave inaccurate testimony.

This Court finds Applicant knowingly backed out of his plea agreement. At his first plea hearing, it was clear Applicant was concerned about his pending charges and was well aware he would need to plead guilty to a second set of charges to avoid LWOP. This Court finds Applicant had control of avoiding a sentence of life without parole, but he made a bad decision. This Court finds counsel was not ineffective for failing to object to the sentence at trial, as there was no basis to do so given that Applicant breached the written plea agreement by failing to plead guilty to the second set of charges.

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

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Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

### **Ineffective Assistance of Appellate Counsel**

Applicant alleges ineffective assistance of appellate counsel for filing an Anders brief and failing to explore other grounds for appeal. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. See Jones v. Barnes, 463 U.S. 745, 103 S. Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Id. at 752-53, 103 S. Ct. at 3313.

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537, 397 S.E.2d at 525; Gilchrist v. State, 364 S.C. 173, 178, 612 S.E.2d 702, 705 (2005); Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). "In order to show that he was prejudiced by appellate counsel's performance, a PCR applicant must show that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Bennett v. State, 383 S.C. 303, 309-10, 680 S.E.2d 273, 276 (2009) (quoting Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625).

In this case, appellate counsel filed an Anders brief. In Anders v. California, the United States Supreme Court announced the procedure an appointed attorney should follow if the

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attorney believes the client's appeal is frivolous and without merit. Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). The United States Supreme Court held the attorney could petition for permission to withdraw from the case, but that the petition for withdrawal must be accompanied by a brief “referring to anything in the record that might arguably support the appeal.” Id. at 744, 87 S. Ct. 1400. Under Anders, the defendant must be given time to respond and to raise any additional points after his attorney submits the Anders brief. Id. The Court is then obligated to conduct a “full examination” of the record to determine whether the appeal is “wholly frivolous.” Id. According to Anders, if the reviewing court finds the appeal is frivolous, “it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires.” Id.; State v. McKennedy, 348 S.C. 270, 279, 559 S.E.2d 850, 855 (2002).

Here, appellate counsel filed an Anders brief with the South Carolina Court of Appeals. “Upon the receipt of the *pro se* brief or the expiration of the period to file a *pro se* brief, this Court will then proceed to review the record as required by Anders. If no issue of arguable merit is discovered, the appeal will be dismissed and counsel's petition to be relieved will be granted.” State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991). In light of Anders and Williams, this Court finds that there can be no legitimate allegation of ineffective assistance of appellate counsel because the reviewing court also conducted a full review of the record and found no issue of arguable merit.

#### 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.

**CONCLUSION**

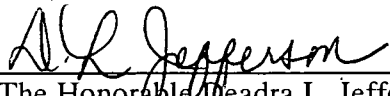
Based on the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial, sentencing, or appeal proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. 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 written notice of entry of this Order 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 served and 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 7<sup>th</sup> day of October, 2011.

  
\_\_\_\_\_  
The Honorable Deadra L. Jefferson  
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.



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**PRITCHARD & ELLIOTT**  
ATTORNEYS AND COUNSELORS AT LAW, LLC

1st Office Box 630 | Charleston, SC 29402  
Broad Street | Charleston, SC 29401

*Thomas  
D. Evans*

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