

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 James Matthews, #258992,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

Case No.: 2011-CP-18-0875

FINAL ORDER

Cheryl...
 CLERK OF COURT
 DORCHESTER COUNTY
 2012 MAR -6 PM 2:13
 CERTIFIED

This matter comes before the Court pursuant to an application for post-conviction relief filed April 25, 2011. In its Return and Motion to Dismiss, Respondent requested that the application be summarily dismissed as successive and as barred by the one-year statute of limitations. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated September 8, 2011, and filed September 26, 2011, provisionally denying and dismissing this action. This Court gave Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated November 8, 2011, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant responded to the Conditional Order by way of a document captioned "Objections to COD" and dated October 11, 2011. In his response, Applicant argues:

- He "did not intentionally, intelligently, knowingly, and voluntarily waive the right to the criminal direct appeal."

- The community supervision program is “clearly contrary to well established federal law’ ... As judgment of court establishes a defendant’s sentence which can only be altered by the court if administrative agency changes or modifies sentence; it is wrong, contravening upon separation of power(s) principles.”

This Court has reviewed Applicant’s responses to the State’s Motion to Dismiss in its entirety, in conjunction with the original pleadings, and finds that no sufficient reason has been shown why the Conditional Order of Dismissal should not become final. While the one year statute of limitations does not apply to an allegation that Applicant was denied the right to direct appeal due to the ineffective assistance of counsel, he is nonetheless barred from raising the issue in a successive application from raising the claim as it could have been raised in his first PCR application. Graham v. State, 378 S.C. 1, 661 S.E.2d 337 (2008). Applicant’s challenge to the community supervision is not cognizable at PCR. S.C. Code Ann. § 17-27-20 (1976). To the extent that such a claim would be cognizable, Applicant has failed to demonstrate that he could not have raised such a claim in his first PCR application.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court’s Conditional Order of Dismissal and the reason set forth in this order, the application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant’s attention is directed to Rule 243, SCACR,¹ for the procedures following the filing and service of the notice of appeal.

¹ Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

AND IT IS SO ORDERED this 20 day of February, 2012.

Diane S. Goodstein

DIANE S. GOODSTEIN
Chief Judge for Administrative Purposes
First Judicial Circuit Court

Seneca South Carolina.

RECEIVED
APR 09 2012
S.C. SUPREME COURT

JAMES MATTHEWS #258992

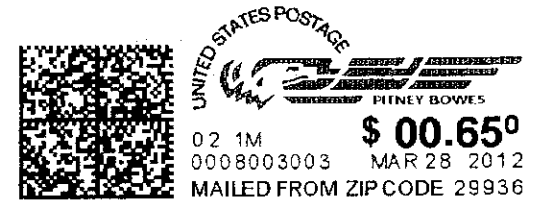
P.O. BOX 2039

RCI GA-023

RIDGELAND, S.C. 29936

THE DEPARTMENT OF CORRECTIONS ASSUMES RESPONSIBILITY FOR THE ITEM. THEREFORE, THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY FOR THE CONTENTS.

LEGAL MAIL WHICH RIDGELAND CORRECTIONAL INSTITUTION S.C. DEPARTMENT OF CORRECTIONS



HON. DANIEL SHEAROUSE
CLERK. S. C. SUPREME COURT
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

RIDGELAND CORRECTIONAL
INSTITUTION

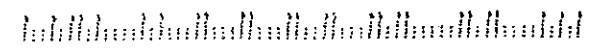
MAR 28 2012

MAILROOM

LEGAL MAIL

258992

11330



STATE OF SOUTH CAROLINA
In The Supreme Court
Appeal From Dorchester County
Diane S. Goodstein, Circuit Court Judge
Case no. 2011-CP-28-0875

James Matthews,

Appellant,

vs.

State of South Carolina,

Respondent.

DENISON RESPONSE AND NOTICE OF
MOTION TO CONSOLIDATE

Appellant submits this Denison response as the final order mentioned correctly "the one year statute of limitation does not apply to allegation that Applicant was denied the right to direct appeal" (p. 2). The final order wrongfully declared, "challenged the community supervision is not cognizable at PCR" (p. 2). The final order averred wrongfully, "Applicant has failed to demonstrate that he could not have raised such a claim in his first" APCR (p. 2). See Rule 71.1(b) of South Carolina Rules of Civil Procedure (SCRCP); *Drayton v. Exatt* 430 S.E.2d 517, 520 (1993)

What and/or why the current APCR should be allowed to proceed

Is Was Matthews' guilty plea intelligently, knowingly and voluntarily entered where trial counsel failed to inform him of the collateral consequence of community supervision program (CSP) under *Pedilla v. Kentucky* 130 S. Ct. 1473 (2010)

II. Where Rule 71-1(b) of SCACP prohibits APCR action while direct appeal is pending and *Drayton v. Eyatt*, 130 S.E2d 517, 520 (1993). mentions APCR "is not substitute for appeal" applicant should be granted right to press CSP due process and separation of POWERS claims in direct appeal;

III. That CSP part of guilty plea contract under *Reed v. Becka*, 511 S.E2d 369 (S.C. App. 1999) which is also a belated direct appeal claim,

CSP which is administered by an Administrative Agency is part of the sentence annexed; it would represent an exception to the contemporaneous objection state rule. Thus it would be ripe for direct appeal claim(s).

CONSOLIDATION

Appellant respectfully requests that this Court would seriously consider consolidation under SCACP 214 along with the initial APCR which is pending before the Court on appeal.

Respectfully submitted this 20 day of March 20

2012

James Matthews

James Matthews, 258992
Rt. 23, P.O. B 2039
Ridgeland, SC 29936

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the 'Dennison Response etc.' and attachment to be mailed, postage prepaid, Mary S. Williams, P.O. B 11549, Columbia, SC 29211, this 20 day of March

2012

James Matthews

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From: Dorchester County
Diane S. Goodstein, Circuit Court Judge

case no. 2011-CP-28-0875

James Matthews,

Appellant,

v/s

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Appellant appeals the 'Final Order' of the Honorable
Diane S. Goodstein, dated 2-20-12 which was received
by Matthews on or about 3-19-12.

March 28, 2012

James Matthews

Other Counsel of Record:

Mary S. Williams
Ass. Attorney General
POB 11549

Columbia, SC 29211-1549

RECEIVED

APR 02 2012

S.C. SUPREME COURT

PROOF OF SERVICE

I certify that I have served the 'Notice of Appeal' on the State by depositing a copy of it in the United States Mail, postage prepaid, on March 20, 2012, addressed to the state's attorney, Mary S. Williams, POB 11549, Columbia, S.C. 29211

Sam Mathews

Also served: Cheryl Graham
Clerk of Court, Dorchester
County
5200 East Tim Bilton Blvd
St. George, SC 29477

March 2012

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

Re Matthews v. State, 2011-CP-28-0875
Appeal from Dorchester County

Dear Mr. Shearouse:

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

1. Proof of service of notice of appeal on respondent;
2. A copy of the order which is to be challenged on appeal;
3. Dennison's response

He refers the Court to SCACR 203(d)(1)(B)(iii)

Respectfully submitted,

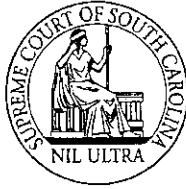
James Matthews

James Matthews,
PCT, SA-23, POB 2039
Bridgeland, SC 29936

RECEIVED

APR 09 2012

S.C. SUPREME COURT



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
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

TO: James Matthews SCDC# 258992
DATE: 4-3-12

We are in receipt of your notice of appeal. It will be necessary for you to provide this office with the following required documents within **ten (10)** days of the date of this notice. Failure to provide the requested documents may result in dismissal of this matter.

proof of service showing notice of appeal was served on opposing counsel,
(Attorney General's Office)

a copy of the final order of dismissal

a copy of the conditional order of dismissal (if one was issued)

a copy of the conditional order of dismissal dated Sept 8, 2011.

2011-CP-18-0875

all orders on appeal.

Please return this sheet with the requested documents. Thank you!

James Matthews, 258992
RCI, GA-23
P. O. Box 2039
Ridgeland, S. C. 29936

RIDGELAND CORRECTIONAL
INSTITUTION

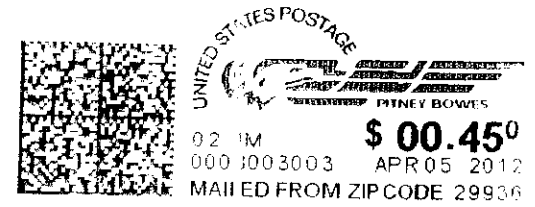
APR 05 2012

MAILROOM

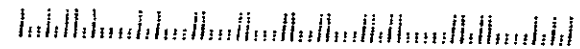
LEGAL MAIL

#258992

29211+1330



DANIEL E. SHEAROUSE, CLERK
SOUTH CAROLINA SUPREME COURT
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211



STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
FILED - RECORD)
2011 SEP 26 PM 2:10)
IN THE COURT OF COMMON PLEAS 2012

RECEIVED

James Matthews, 258992,)
CHERYL)
CLERK)
DORCHESTER)

2011-CP-18-0087)
S.C. SUPREME COURT

Applicant,)

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 25, 2011. In its Return, Respondent requested that the application be summarily dismissed.

PROCEDURAL HISTORY

This Court has before it a copy of the records of the Dorchester County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and prior PCR records. The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. The Applicant was indicted at the December 2006 term of the Dorchester County Grand Jury for Criminal Sexual Conduct with a Minor, First Degree (2006-GS-18-1679). He was represented by Kenneth G. Cooper, Esquire. On August 7, 2007, the Applicant pled guilty to the charge. He was sentenced to by the Honorable James C. Williams, Jr., to imprisonment for a period of ten (10) years. The Applicant did not appeal his guilty plea or sentence.

The Applicant subsequently filed an application for post-conviction relief (PCR) on November 14, 2007 (C.A. No. 2007-CP-18-2132). The Applicant raised the following issues in his

first PCR:

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

The State made its Return on or about April 9, 2008. An evidentiary hearing was convened on January 7, 2009, before the Honorable Diane S. Goodstein. Applicant was present and represented by counsel. Judge Goodstein dismissed the application with prejudice by written order dated June 27, 2010 and filed August 3, 2010. A timely Notice of Appeal was filed. The appeal is currently pending with the South Carolina Supreme Court.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Community Supervision Program [CSP] violates the separation of power(s) clause."
 - a. "The imposition of CSP on applicant violates the separation of power(s) principle of S.C. and U.S. Constitution(s). State Ex Rel Condon v. Hodges, 562 S.E.2d 623 (2002) as CSP is administered and/or given out by S.C. Department of Probation, Parole and Pardon Services (DPPPS)."
2. "CSP was not announced by criminal defense counsel as a collateral consequence of guilty plea so he receive the actual Ineffective Assistance of Counsel."
 - a. "Matthew's criminal defense counsel render the actual ineffective assistance of counsel where counsel failed to advise applicant of the many collateral consequences (i.e. CSP) that he would be subjected thereto by entering the guilty plea; further, counsel was ineffective in failing to investigate the relevant law(s) of the lesser or lesser included offense of that applicant was indicted for. Had he been informed of the CSP and etc., he would not have entered the guilty plea. Earley v. Murray, 451 F.3d 71 (CA2 200), 79 (rL 405 (2006))."
3. "CSP violates Due Process Clause."
 - a. "Applicant's sentence of CSP is not given by the trial and/or sentencing judge and it violates the due process clause, State v. Picklesimer, 695 S.E.2d 845 (2010) Padilla v. Kentucky, 130 S.Ct. 1473 (2010)."

b. "CSP was simply not part of his plea bargain."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court finds, further, that this Application for Post-Conviction Relief should be



summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2007). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on August 7, 2007. The Applicant was therefore required to file his application on or before August 8, 2008. This Application was filed on April 25, 2011, more than two (2) years beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.


Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of

this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Dorchester County Clerk of Court and shall serve opposing counsel at the following address:

FILED - RECORD
2011 SEP 26 PM 2:10
CHERYL
CLERK OF COURT
DORCHESTER COUNTY

Office of the Attorney General
Attn: Rob D. Corney, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

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


EDGAR W. DICKSON
Chief Judge for Administrative Purposes
First Judicial Circuit

Orangeburg, South Carolina

RECEIVED
APR 09 2012
S.C. SUPREME COURT

 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, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

June 26, 2012

RECEIVED

JUN 26 2012

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

S.C. Supreme Court

Re: James Matthews 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 Megan Harrigan, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Susan B. Hackett for

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/eab

cc: Megan Harrigan

The Supreme Court of South Carolina

James Matthews, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-210671

The Honorable Diane Schafer Goodstein
Dorchester County
Trial Court Case No. 2011CP1800875

ORDER

The request for an extension to serve and file the Petition for Writ of Certiorari and Appendix is granted and extended until July 26, 2012. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 (www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01), any further extension request must be based on a showing of good cause.

FOR THE COURT

BY *Shirley J. Stealy*
Chief Deputy CLERK

Columbia, South Carolina

June 27, 2012

cc: Mary Shannon Williams
Wanda H. Carter

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

RECEIVED

JUL 26 2012

S.C. Supreme Court

JAMES MATTHEWS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-210671

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

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

1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.
2. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Kerwin Parker in the Court of Appeals on July 20, 2012. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Curtis Gerald

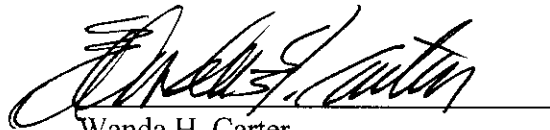
in the Court of Appeals on July 16, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Cheves Heyward v. State in this Court on July 13, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Marcus Martin v. State in this Court on July 13, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of James Willie Elkins, Jr v. State in this Court on July 9, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Marcus Farr v. State in this Court on July 9, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of State v. Darnell Getter in this Court on June 28, 2012. Counsel filed the Petition for Rehearing in the case of Kevin Jerome Gilliard v. State in the Court of Appeals on June 28, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Colvin P. Washington v. State in this Court on June 20, 2012. Counsel filed the initial brief of appellant and designation of matter in the case of Anthony Lewis v. State in the Court of Appeals on June 18, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Leroy Folkes v. State with this Court on June 11, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Alonzo Key v. State in this Court on June 8, 2012. Counsel had an oral argument in the case of State v. Rafael Horlbeck in the Court of Appeals on June 6, 2012. Additionally, Counsel filed the initial brief of appellant and designation of matter in the case of Issac McDaniel v. State in the Court of Appeals on June 6, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Timothy Young v. State in this Court on May 29, 2012. Counsel filed the brief of appellant and designation of matter in the case of State v. Joshua Aaron Balkind

in the Court of Appeals on May 24, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Werner Scott Haddon v. State in this Court on May 23, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Thomas O. White v. State in this Court, and the petition for writ of certiorari and accompanying appendix in the case of State v. Vashaun Ravenel in the Court of Appeals on May 16, 2012. Counsel had an oral argument in the Court of Appeals in the case of Barrett Bernard Harris v. State on May 9, 2012.

3. This request is made in good faith, and not for purposes of delay.

WHEREFORE, the undersigned counsel would respectfully request a thirty-day extension in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wanda H. Carter", is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

July 26, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

JAMES MATTHEWS,

PETITIONER,

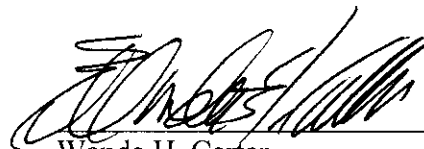
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Megan Harrigan, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 26th day of July, 2012.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 26th day of July, 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 2, 2013.

The Supreme Court of South Carolina

James Matthews, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-210671

The Honorable Diane Schafer Goodstein
Dorchester County
Trial Court Case No. 2011CP1800875

ORDER

For good cause shown, the request for an extension to serve and file the Petition for Writ of Certiorari and Appendix is granted and extended until August 27, 2012. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 (www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01), any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

FOR THE COURT

BY *Shanda J. Stealy*
Chief Deputy CLERK

Columbia, South Carolina

July 27, 2012

cc:

Megan Elizabeth Harrigan

Wanda H. Carter

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

 ORIGINAL

JAMES MATTHEWS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-210671

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

The undersigned counsel would respectfully request a **final thirty-day extension, until September, 26, 2012**, in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by two prior orders of this Court.

2. Counsel is preparing to file the petition for writ of certiorari and accompanying appendix in the case of Steven. R. Johnson v. State in this Court by August 31, 2012. Counsel filed the petition for writ of certiorari and accompanying

appendix in the case of James Farrow v. State in this Court on August 20, 2012. Counsel filed the petition for writ of certiorari in the case of Tyrone Perry Edwards v. State in this Court on August 13, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Clifton D. Lyles v. State in this Court on July 30, 2012. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Kerwin Parker in the Court of Appeals on July 20, 2012. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Curtis Gerald in the Court of Appeals on July 16, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Cheves Heyward v. State in this Court on July 13, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Marcus Martin v. State in this Court on July 13, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of James Willie Elkins, Jr v. State in this Court on July 9, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Marcus Farr v. State in this Court on July 9, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of State v. Darnell Getter in this Court on June 28, 2012. Counsel filed the Petition for Rehearing in the case of Kevin Jerome Gilliard v. State in the Court of Appeals on June 28, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Colvin P. Washington v. State in this Court on June 20, 2012. Counsel filed the initial brief of appellant and designation of matter in the case of Anthony Lewis v. State in the Court of Appeals on June 18, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Leroy Folkes v. State with this Court June 11, 2012. Counsel filed the petition for writ of certiorari and accompanying

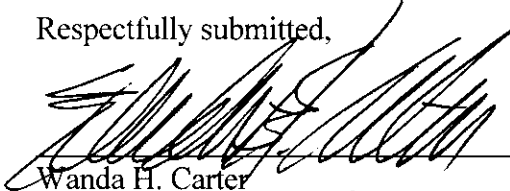
appendix in the case of Alonzo Key v. State in this Court on June 8, 2012. Counsel had an oral argument in the case of State v. Rafael Horlbeck in the Court of Appeals on June 6, 2012. Additionally, Counsel filed the initial brief of appellant and designation of matter in the case of Issac McDaniel v. State in the Court of Appeals on June 6, 2012.

3. This request is made in good faith, and not for purposes of delay. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

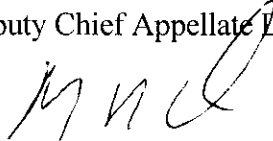
4. As indicated by her consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final thirty-day extension, until September, 26, 2012**, in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



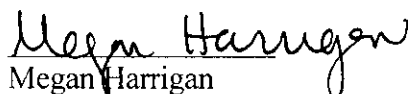
Wanda H. Carter
Deputy Chief Appellate Defender



Robert M. Dudek
Chief Appellate Defender

August 27, 2012

I DO NOT OPPOSE:



Megan Harrigan

The Supreme Court of South Carolina

James Matthews, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-210671

ORDER

For good cause shown, the request for an extension to serve and file the Petition for Writ of Certiorari and Appendix is granted and extended until September 26, 2012. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 (www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01), any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

FOR THE COURT

BY

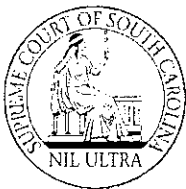


Clerk

Columbia, South Carolina

August 28, 2012

cc: Megan Elizabeth Harrigan
Wanda H. Carter



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
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

September 18, 2012

James Matthews, # 258992
Ridgeland correctional Institution
P.O. Box 2039
Ridgeland, SC 29936

Re: James Matthews v. The State
Appellate Case No. 2012-210671

Dear Petitioner:

Your counsel has submitted a petition for writ of certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition and Appendix.

You may, within forty-five (45) days of the date of this letter, file with this Court a *pro se* response to the petition filed by your counsel. In this response, you may raise and argue any issues you believe the Court should consider in this appeal. Upon receipt of your *pro se* response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

If you do decide to file a *pro se* response, the response must be either typewritten or legibly hand printed, and must have at least a one inch margin on all sides.

Further, you will need to only submit one copy of your response, and this copy should not be stapled or bound in any manner.

Very truly yours,



CLERK

cc: Wanda H. Carter
Megan Elizabeth Harrigan

October 18, 2013

James Matthew
1015 North Carolina Avenue
Ridgeland, South Carolina 29936
Tel: 803-781-2936

James Matthew
1015 North Carolina Avenue
Ridgeland, South Carolina 29936

James Matthew
1015 North Carolina Avenue
Ridgeland, South Carolina 29936
Tel: 803-781-2936
James Matthew
1015 North Carolina Avenue
Ridgeland, South Carolina 29936
Tel: 803-781-2936

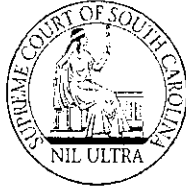
James Matthew

James Matthew
POI, C-1, DCB, 2030
Ridgeland, S. C. 29936

RECEIVED

OCT 18 2013

S.C. SUPREME COURT



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
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

October 23, 2013

James Matthews, 00258992
RCI, CA-1
P.O. Box 2039
Ridgeland, S.C. 29936

Re: James Matthews v. The State
Appellate Case No. 2012-210671

Dear Mr. Matthews:

This responds to your recent correspondence dated October 12, 2013. Your Johnson *pro-se* response has been received. Therefore, this case is still pending before this court.

Very truly yours,

CLERK

cc: Wanda H. Carter, Esquire
Megan Elizabeth Harrigan, Esquire

The Supreme Court of South Carolina

RE: TRANSFER OF CASES FROM SOUTH
CAROLINA SUPREME COURT TO THE COURT OF
APPEALS

ORDER

Pursuant to Rule 243(l), SCACR, the following post-conviction relief cases are hereby transferred to the South Carolina Court of Appeals:

1. 2010-178866 Darrell Efrid v. State
2. 2011-193110 Preston Costa v. State
3. 2011-193113 McCenia Amouri Dials v. State
4. 2011-193527 Tyrone Ransom v. State
5. 2011-193709 Reginald Davis v. State
6. 2011-195226 Marty Craig McKinsey v. State
7. 2011-196591 Juan Ramos v. State
8. 2011-196599 Phillip Antonio Byrd v. State
9. 2011-197706 Victor C. Penny v. State
10. 2011-197707 Daniel B. Stratten v. State
11. 2011-197708 Kimjaro Presley v. State
12. 2011-198349 Troy Robinson v. State
13. 2011-198472 Richard Bernard Moore v. State
14. 2011-199414 Bobby Shay Rathburn v. State
15. 2011-199417 Tyrone Lewis Jr. v. State
16. 2011-199927 Anthony Williams v. State
17. 2011-200190 Christopher J. Hickman v. State
18. 2011-200548 Quentes S. Wells v. State
19. 2011-201107 Demetrius Lewis v. State
20. 2011-201129 Chan Bun v. State
21. 2011-201146 Thaddeuss Starks v. State
22. 2011-201589 Adam Bickham v. State
23. 2011-202767 Fredrick Alphonso Irby v. State
24. 2011-202769 Drew John Monahan v. State

25. 2011-202770 Michael D. Day v. State
26. 2011-202773 Richard F. Whelchel v. State
27. 2011-204347 Lance Lyles v. State
28. 2011-204375 Russell Fred Spitzer v. State
29. 2011-204386 Darrell L. Goss v. State
30. 2011-204847 Kenaz Collier v. State
31. 2011-204966 Clarence Bamberg v. State
32. 2012-205988 Chadrick Cole v. State
33. 2012-206006 Richard Stegall v. State
34. 2012-206007 Dustin Tiller v. State
35. 2012-206008 Frankie Lee Bryant III v. State
36. 2012-206048 Kevin D. Cook v. State
37. 2012-206227 Tashon Sampson v. State
38. 2012-206228 Douglas L. Rice v. State
39. 2012-206648 Tippy Marie Retana v. State
40. 2012-206672 Vante R. Birch v. State
41. 2012-207129 Keith R. Bradley v. State
42. 2012-207131 David A. Fowler v. State
43. 2012-207133 James F. Russell v. State
44. 2012-207147 Cecil Allen Simmons v. State
45. 2012-207246 Andre Lee Reed v. State
46. 2012-207555 Steven R. Johnson v. State
47. 2012-207626 Archie Hoover v. State
48. 2012-207627 Stanley Bradley v. State
49. 2012-207628 Marcus Martin v. State
50. 2012-207816 Darrell Gleaton v. State
51. 2012-207817 Evelyn Buckle v. State
52. 2012-208011 James Wilkinson v. State
53. 2012-208012 Kenneth L. Young v. State
54. 2012-20826 Wiley Post James v. State
55. 2012-208047 Korrell Battle v. State
56. 2012-208666 Larry Mitchell v. State
57. 2012-208667 Wilbur G. Moses Jr. v. State
58. 2012-208889 Dennis L. Snipes v. State
59. 2012-208906 Tommie Watts v. State
60. 2012-209526 Kareem Wiley v. State
61. 2012-209532 Brian Powell v. State
62. 2012-209536 Phillip A. Hingleton v. State
63. 2012-209537 John P. Hendrix v. State
64. 2012-210228 Clark Inabinett v. State

65. 2012-210669 Sean D. Wells v. State
66. 2012-210670 Christian Harris v. State
67. 2012-210671 James Matthews v. State
68. 2012-210672 Jason D. Parker v. State
69. 2012-211090 Nathaniel Caldwell III v. State
70. 2012-211269 Nancy E. VonCannon v. State
71. 2012-211289 Christopher M. Vaughn v. State
72. 2012-211296 Douglas Thompson v. State
73. 2012-211389 Teddie Lee Grant v. State
74. 2012-211391 Jerod Juan Cook v. State
75. 2012-211592 Michael Freeman v. State
76. 2012-211874 Ackief Pauling v. State
77. 2012-212070 Vondell Sanders v. State
78. 2012-212076 Fredy Sibrian v. State
79. 2012-212079 Jamal Lindsey v. State
80. 2012-212090 DeRoyick Montgomery v. State
81. 2012-212099 Clinton F. Stephens v. State
82. 2012-212155 Terrance Tompkins v. State
83. 2012-212162 Wayne Cooley v. State
84. 2012-212227 Montavis K. Gaines v. State
85. 2012-212300 Alfred Redwine v. State
86. 2012-212303 Tyquan Jared Amir Jones v. State
87. 2012-212304 Harry N. Charles II v. State
88. 2012-212312 Tyrone A. Ravenell v. State
89. 2012-212315 Matthew William Gilliard III v. State
90. 2012-212317 Michael Anthony York v. State
91. 2012-212353 Donald Hurlbert v. State
92. 2012-212400 West Webb Mitchem v. State
93. 2012-212401 Kieve Malik Smith v. State
94. 2012-212408 Derrick F. Williams v. State
95. 2012-212411 Jason Maness v. State
96. 2012-212505 Floyd Randolph Granger III v. State
97. 2012-212520 Kimberly Taylor v. State
98. 2012-212580 Brandon Lav'ar Johnson v. State
99. 2012-212591 Robert Young v. State
100. 2012-212592 Joseph A. Dozier v. State
101. 2012-212649 Tony Lynn v. State
102. 2012-212733 Leon Billups v. State
103. 2012-212737 Harry H. Jones v. State
104. 2012-212780 Boyce Lee Nesbitt v. State

105. 2012-212783 Clarence Miller v. State
106. 2012-212785 Albert Spann v. State
107. 2012-212811 Devin Gantt v. State
108. 2012-212826 Frank Green Jr. v. State
109. 2012-212831 Stephen Paul Casillo v. State
110. 2012-212869 Jose M. Maldonado v. State
111. 2012-212877 Little Johnny Lee Mackey v. State
112. 2012-212882 Randy Bryant v. State
113. 2013-000427 Lamont Valentine Poole v. State
114. 2013-000429 Larry Prophet v. State
115. 2013-000627 Rachion Omar Robinson v. State
116. 2013-000654 Pernell Thompson v. State
117. 2013-000870 Lavar Sanders v. State
118. 2013-000872 Casio Mack Richardson v. State
119. 2012-213129 Billy Nathan Lee v. State
120. 2012-213201 Stacey Abney v. State
121. 2012-213240 Gary Waiters v. State
122. 2012-213292 Ronald Footman v. State
123. 2012-213308 Melcelus Toland v. State
124. 2012-213338 Sylvester Boone v. State
125. 2012-213420 Morris Stewart v. State
126. 2012-213562 Christopher Shell v. State
127. 2012-213573 Randy Jennings v. State
128. 2012-213619 Matthew Taylor v. State
129. 2012-213661 Robert L. Dickerson v. State
130. 2012-213667 Kamala Creighton v. State
131. 2012-213668 David Heath v. State
132. 2012-213671 Henry Lee Bradley v. State
133. 2012-213684 Christopher Dale Shirley v. State
134. 2012-213700 David Lee Rose v. State
135. 2013-000043 Steven William Roberts v. State
136. 2013-000045 Christopher Dean Johnson v. State
137. 2013-000069 Ricky Price v. State
138. 2013-000079 Anthony M. Brown v. State
139. 2013-000111 Pamela Marie Teal v. State
140. 2013-000127 (Bobby) Robert James Rippy v. State
141. 2013-000128 Travis Sentell Rice v. State
142. 2013-000137 Michael A. Williams v. State
143. 2013-000139 Timothy Stahlnecker v. State
144. 2013-000362 Stanley L. Butler v. State

145. 2012-212890 Antoine J. China v. State
146. 2012-212936 Christopher O'Neal Pringle v. State
147. 2012-213032 Angel Gonzales v. State
148. 2012-213036 David Andres Ortiz Molina v. State
149. 2012-213038 Travis D. Bellamy v. State
150. 2012-213118 Kareem J. Leaphart v. State

IT IS SO ORDERED.


CJ.
FOR THE COURT

Columbia, South Carolina

November 22, 2013

cc: Chief Appellate Defender Robert M. Dudek
Deputy Chief Appellate Defender Wanda H. Carter
Appellate Defender Robert M. Pachak
Appellate Defender Kathrine H. Hudgins
Appellate Defender LaNelle C. DuRant
Appellate Defender Susan B. Hackett
Appellate Defender Benjamin J. Tripp
Appellate Defender Carmen V. Ganjehsani
Appellate Defender David Alexander
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General John W. Whitmire
Assistant Attorney General Tyson A. Johnson
Assistant Attorney General Suzanne H. White
Assistant Attorney General Ashleigh R. Wilson
Assistant Attorney General Megan E. Harrigan
Assistant Attorney General Karen C. Ratigan
Assistant Attorney General Daniel F. Gourley
Assistant Attorney General David A. Spencer
Assistant Attorney General J. Rutledge Johnson
John Benjamin Aplin, Esquire
Tricia Blanchette, Esquire
J. Falkner Wilkes, Esquire

Tara D. Shurling, Esquire
Joshua Snow Kendrick, Esquire
Ernest Charles Grose, Jr., Esquire
Jeremy Adam Thompson, Esquire
Glenn Walters, Esquire
R. Bentz Kirby, Esquire
Hemphill P. Pride, III, Esquire
William Joseph Barr, Esquire
Arie D. Bax, Esquire
Bruce A. Bryholdt, Esquire
Tommy Thomas, Esquire
Teddie Lee Grant #342172
Wilbur G. Moses Jr. #244241
Michael Freeman #262416
Kevin D. Cook #268901
Phillip A. Hingleton #166888
Michael D. Day #318713
Larry Mitchell #264463
Korrell Battle #292294
Steven R. Johnson #245428
Frederick Alphonso Irby #339195
Andre Lee Reed #218837
Fredy Sibrian #338184
Tashon Sampson #261273
James Matthews #258992
Jason D. Parker #328223
Kimberly Taylor #316813
Nancy E. VonCannon #315528
Christopher M. Vaughn #339181
Travis D. Bellamy #323612
Terrance Tompkins #318169
Clinton F. Stephens #246685
Morris Stewart #343460
Tyquan Jared Amir Jones #320934
Harry N. Charles II #268775
Tyrone A. Ravenell #318711
Derrick F. Williams #331226
Albert Spann #324640
Pamela Marie Teal #343575
Wayne Cooley #168807

Jose M. Maldonado #340872
Alfred Redwine #291230
Little Johnnie Lee Mackey #294652
Travis Sentell Rice #304580
Joseph A. Dozier #255343
Gary Waiters #273876
Pernell Thompson #336975
Clarence Miller #267397
Larry Prophet #304134
Christopher Dale Shirley #339568
David Lee Rose #091858
Lemont Valentine Poole #265389
Christopher Shell #181291
Robert L. Dickerson #113793
Floyd Randolph Granger III #339558
Brandon Lav'ar Johnson #321109
Sylvester Boone #341082
Christopher Dean Johnson #343032
Ricky Price #285743
Kareem J. Leaphart #297361
Casio Mack Richardson #339735
Devin Gantt #337539
Randy Jennings #259845
Anthony M. Brown #341644
Michael A. Williams #273114
David Heath #128440
Antoine J. China #292911
The Honorable Jenny Kitchings



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 07, 2014

Mrs. Wanda H. Carter, Esquire
Appellate Defense
PO Box 11589
Columbia SC 29211

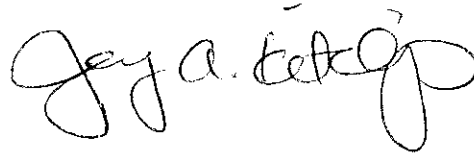
Re: James Matthews v. State
Appellate Case No. 2012-210671

Dear Counsel:

Upon reviewing your appendix, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The minor victim's name has not been redacted from page 69, line 25, pursuant to the Supreme Court's order on the redaction of personal identifiers, available online at <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02>. The Court will accept a single unbound copy of the redacted appendix, or an electronic PDF copy with the optical character recognition (OCR) process applied to it.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay A. Lettop". The signature is fluid and cursive, with a large, stylized initial "J" and a long, sweeping tail.

CLERK

cc: Megan Elizabeth Harrigan, Esquire
Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire
John W. McIntosh, Esquire

RECEIVED

AUG 08 2014

SC Court of Appeals

August 2014

Honorable Jennifer A. Mitchings
Clerk, S. C. Court of Appeals
7015 Suster Street
Columbia, South Carolina 29207

Re: 11-22-13 'Grant' of Transfer
No. 01 - 2012-210071 James Matthews v. State

Dear Ms. Mitchings:

The undersigned is in receipt of the document which is set forth above herein; he wonders whether your office is in receipt of the pro se filing which he submitted to South Carolina Supreme Court in 2013 and if so, when is it that he might anticipate the Court may reach the appeal for a final decision?

Any information in this matter will be greatly appreciated.

Very truly yours,

James Matthews

James, Matthews, 253992
POI, GA-13, POB 2039
Blagoland, S. C. 29436

①

RECEIVED

AUG 08 2014

SC Court of Appeals

3 August 2014

Honorable Jenny A. Kitchings
21st, S. C. Court of Appeals
1015 Suther Street
Columbia, South Carolina 29201

Re: 11-22-13 (order) of Transfer
No. 11 - 2012-210071 James Matthews v. State

Dear Ms. Kitchings:

The undersigned is in receipt of the document which
is set forth above herein; he wonders whether your office
is in receipt of the pro se filing which he submitted
to South Carolina Supreme Court in 2013 and if so,
when is it that he might anticipate the Court may reach
the appeal for a final decision?

Any information in this matter will be greatly appreciated.

Very truly yours,

James Matthews

James, Matthews, 258092
POI, GA-13, POB 2039
Pisgeland, S. C. 29336

LF



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 15, 2014

James Matthews, 00258992
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland SC 29936

Re: James Matthews v. State
Appellate Case No. 2012-210671

Dear Mr. Matthews:

This office has received your letter dated August 3, 2014. In response, your case is on the August 2014 roster. As to when a decision will be reached in your case, it is difficult to predict when a case will be decided by the Court because of the many variables that affect the decision making process of any given case. When a final decision has been made on your case, you and your attorney will be immediately notified.

Very truly yours,

V. Claire Allen

DEPUTY CLERK

cc: Wanda H. Carter, Esquire
Megan Elizabeth Harrigan, Esquire
Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire
John W. McIntosh, Esquire

2

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

RECEIVED

SEP 14 2012

S.C. Supreme Court

JAMES MATTHEWS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-210671

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

INDEX

INDEX.....	1
ISSUE PRESENTED.....	2
STATEMENT.....	3
ARGUMENT.....	4
CONCLUSION.....	5
PETITION TO BE RELIEVED AS COUNSEL.....	6

ISSUE PRESENTED

The PCR judge erred in dismissing petitioner's successive PCR action without a hearing because petitioner's allegation that he was exempt from the community supervision program per the terms of his plea bargain could not have been raised previously in his case.

STATEMENT

Petitioner James Matthews pled guilty to first degree criminal sexual conduct with a minor during the August 2007 term of the Dorchester County General Sessions Court before Judge James C. Williams. Petitioner was sentenced to imprisonment for a period of ten years. App. 1-14. Ken Cooper represented petitioner at the plea proceeding. Petitioner did not enjoy the benefit of a direct appeal of his conviction and sentence.

On November 14, 2007, petitioner filed a PCR application with the Dorchester County Office of the Clerk of Court. App. 16-24. The respondent filed a return on April 9, 2008, requesting that a hearing be held in response to petitioner's PCR action. App. 25-29. A PCR hearing was convened on January 7, 2009, at the Orangeburg County Courthouse before Judge Diane S. Goodstein. App. 31-95. Mark McKnight represented petitioner at the PCR hearing. On July 27, 2010, Judge Goodstein filed an order denying and dismissing petitioner's PCR action. App. 97-108. Petitioner appealed, but the petition for writ of certiorari filed by the undersigned counsel on appeal was denied by order of the South Carolina Supreme Court dated March 27, 2012.

On April 25, 2011, petitioner filed a second PCR application with Dorchester County Office of the Clerk of Court. App. 109-116. The respondent filed a return and motion to dismiss on August 9, 2011, contending that this PCR action should be dismissed as successive and untimely filed. App. 117-121. On September 8, 2011, Judge Edgar W. Dickson issued a Conditional Order of Dismissal due to the successive and untimely nature of the second PCR action filed by petitioner. App. 123-127. On February 20, 2012, Judge Diane S. Goodstein issued a Final Order dismissing petitioner's second PCR action as successive and untimely filed. App. 128-130. No hearing was held in response to petitioner's second PCR action.

Petitioner appealed. This petition follows.

ARGUMENT

The PCR judge erred in dismissing petitioner's successive PCR action without a hearing because petitioner's allegation that he was exempt from the community supervision program per the terms of his plea agreement could not have been raised previously in his case.

In his second PCR action, petitioner claimed that the terms of his plea bargain exempted him from participation in the community supervision program. App. 109-116. There was in effect a plea bargain in the case where the state recommended a ten-year prison term, which the trial judge imposed, in exchange for petitioner's guilty pleas. App. 6, lines 1-5; App. 14, lines 2-3. Under S.C. Code Ann §24-13-100, class A, B, & C felonies are no parole offenses that require one sentenced therein to serve 85% of their prison term. In the second PCR actions, petitioner raised in effect the issue of whether counsel misadvised him in leading him to believe that the terms of his plea bargain exempted him from the statutory requirement of S.C. Code Ann §24-13-100. Although counsel would not have been ineffective had he failed to explain community supervision as a collateral sentencing consequence;¹ nonetheless, counsel may have been ineffective in advising petitioner that the terms of his ten-year plea bargain exempted him from the community supervision program because this was a mandatory statutory requirement of his sentence. Counsel's possible error in this regard prejudiced petitioner because he was denied the option of an opportunity to withdraw his plea based on this sentencing misadvice. As a rule, the withdrawal of a guilty plea is allowed if the terms of the agreement are not satisfied. See Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000).

Successive application are disfavored and the burden is the applicant to establish that any new ground raised in a subsequent application could not have been raised in a subsequent application could not have been raise in a previous application. Foxworth v. State, 275 S.C. 615,

274 S.E. 2d 415 (1981). However, it is assumed that petitioner did not address this issue during his first PCR action because at that time he was serving the early portion of his sentence, which meant that collateral and end of term issues would not have been ripe. As petitioner's sentencing term passed, the community supervision issue entered on the horizon and became ripe for questioning. Hence, the filing of petitioner's successive application.

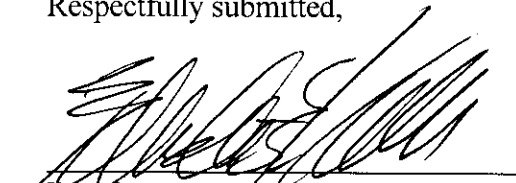
When a PCR action raises a specific instance of ineffective assistance of counsel which is not conclusively refuted by the record, then a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

The PCR judge erred in dismissing without a hearing petitioner's second PCR action.

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant the petition and order a PCR hearing in response to petitioner's second PCR action.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of September, 2012.

¹ Jackson v. State, 349 SC 62, 562 S.E. 2d 475 (2002).

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO DORCHESTER COUNTY
DIANE SCHAFFER GOODSTEIN, CIRCUIT COURT JUDGE

JAMES MATTHEWS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

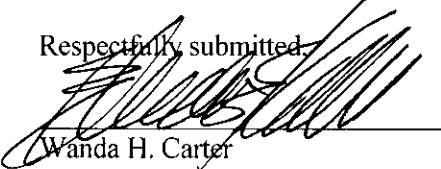
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Matthews states:

1. She is an Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on n/a. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for James Matthews.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 14th day of September, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

JAMES MATTHEWS,

PETITIONER,

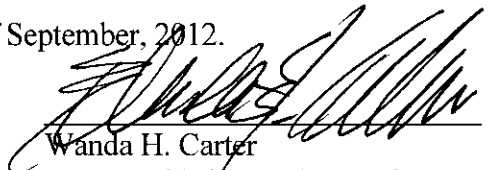
V.

STATE OF SOUTH CAROLINA,


RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and James Matthews, #258992, at Ridgeland Correctional Institution this 14th day of September, 2012.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day
of September, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Petitioner to Darchester County
Diane Schafer Goodstein, Circuit Court Judge

JAMES MATTHEWS,

Petitioner,

v.

STATE OF SOUTH CAROLINA.

Respondent.

Appellate Case No. 2012-210671

To: Megan Harrigan
100 Assembly St., Room 519
Columbia, S.C.

PRO SE RESPONSE

1. Matthew received the 10-18-12 letter from the clerk's office on or about 10-21-12 which granted him 105 days to submit the point of view herein;

2. He pointed that the Application for Post-Conviction Relief (APCR) is not a direct appeal nor is it a substitute for criminal direct appeal. Rule 71.1(b) of South Carolina Rules of Civil

Procedure (PCRCP);

3. If a criminal direct appeal is not voluntarily, knowingly and intelligently waived, the one (1) year statute of limitation for filing is inapplicable. *Wilson v. State*, 559 SE2d 581 (2002);

4. Petitioner did not intelligently, knowingly and voluntarily waive the state created right to a criminal direct appeal in 2009; *Wall v. Kholz*, 131 S.Ct. 1278 (2011)

i. Petitioner was not informed on any/all the collateral consequence(s) of his guilty plea by criminal defense counsel contrary to *Padilla v. Kentucky*, 130 S.Ct. 1575 (2010) which is contrary to the 6th and 14th Amendments of the United States Constitution;

ii. The community supervision program (CSP) which is a collateral consequence of the guilty plea conviction is administered by the administrative agency South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) and this is contrary to federal case, statutory and/or constitutional law (due process clause).

WHEREFORE, Matthews respectfully requests that this court grants the petition on the grounds set forth above herein. This 30 day of October 2012.

S. *James Matthews*

James Matthews, 258992
RCF GA-23, P O B 2039
Ridgeland, S C 29936

FILED

10/30/12

CLERK OF COURT

The South Carolina Court of Appeals

James Matthews, Petitioner,

v.

State of South Carolina, Respondent.


Appellate Case No. 2012-210671

ORDER

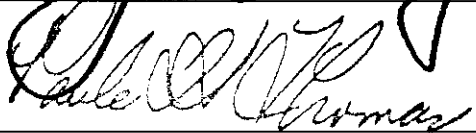
This matter is before the Court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief.

Petitioner's counsel asserts that the petition is without merit and requests permission to withdraw from further representation. Petitioner has filed a pro se petition.

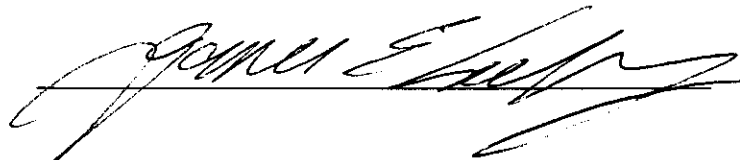
After careful consideration of the entire appendix as required by *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.



C.J.



J.



J.

Columbia, South Carolina

FILED

11-6-14 27

cc: Wanda H. Carter, Esquire
Megan Elizabeth Harrigan, Esquire
Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire
John W. McIntosh, Esquire
James Matthews, #258992



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 06, 2014

James Matthews, 00258992
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland SC 29936

Re: James Matthews v. State
Appellate Case No. 2012-210671

Dear Mr. Matthews:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,


CLERK

cc: Wanda H. Carter, Esquire
Megan Elizabeth Harrigan, Esquire
Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire
John W. McIntosh, Esquire
The Honorable Diane Schafer Goodstein



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 24, 2014

The Honorable Cheryl L. Graham
5200 E Jim Bilton Blvd
St George SC 29477-8020

REMITTITUR

Re: James Matthews v. State
Lower Court Case No. 2011CP1800875
Appellate Case No. 2012-210671

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Wanda H. Carter, Esquire
Megan Elizabeth Harrigan, Esquire
Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire
John W. McIntosh, Esquire
James Matthews, 00258992
The Honorable Diane Schafer Goodstein