

# The Supreme Court of South Carolina

Marcus Farr,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable James R. Barber  
Richland County  
Trial Court Case No. 2010-CP-40-02203

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## ORDER

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The request for an extension until May 9, 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



Clerk

Columbia, South Carolina

April 10, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter  
Assistant Attorney General Robert D. Corney



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

April 9, 2012

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

(1)

RECEIVED

APR 9 2012

S.C. Supreme Court

Re: Marcus Farr 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 Robert Corney, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Wanda H. Carter  
Deputy Chief Appellate Defender

WHC/kam

cc: Robert Corney



# SCCID

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

February 7, 2012

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FEB 07 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.

Marcus Farr v. State of South Carolina

2/7/2012

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,

Sharon A. Graham  
Administrative 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

December 12, 2011

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DEC 12 2011

Ms. Karen Ambroziak  
Circuit Court Reporter  
1083 Langford Road  
Blythewood, SC 29016

S.C. Supreme Court

Dear Ms. Ambroziak:

Please provide us with the following transcript:

Marcus Farr v. State of South Carolina                      Case #:                      10-CP-40-02203

County: Richland                      Date of Trial: August 29, 2011

Presiding Judge: James R. Barber, III

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,

  
Lorie French  
Legal Services Coordinator

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

THE CLAXTON LAW FIRM  
P.O. BOX 50  
BLYTHEWOOD, SC 29016  
803-400-1195 (P)  
803-675-0259 (F)

November 14, 2011

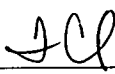
Clerk of Court  
Supreme Court  
1231 Gervais Street  
Post Office Box 11330  
Columbia, SC 29211

Re: **Marcus Farr 337673 vs. The State of South Carolina**  
*Case No: 2010-CP-400-2203*

Dear Sir/Madam:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken from. Thank you for your help and if you should have any questions please feel free to call me.

THE CLAXTON LAW FIRM, L.L.C.

  
\_\_\_\_\_  
Tynika A. Claxton

enclosure

**RECEIVED**

NOV 15 2011

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

HONORABLE JAMES R. BARBER, III, CIRCUIT COURT JUDGE

2010-CP-400-2203

MARCUS FARR, #337673,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**NOTICE OF APPEAL**

Marcus Farr appeals the denial of his application for Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable, James R. Barber, III, Circuit Court Judge on August 29, 2011. The Appellant received notice of the judgment on October 26, 2011.

**RECEIVED**

NOV 15 2011

**S.C. SUPREME COURT**



Tynika Adams Claxton  
Attorney for the Appellant  
Post Office Box 50  
Blythewood, South Carolina 29016  
(803) 400-1195  
Attorney for Glenn Quanta Pernell

Other Counsel of Record:  
Brian Petrano, Esquire  
Office of Attorney General State of SC  
Post Office Box 11549  
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

HONORABLE JAMES R. BARBER, III, CIRCUIT COURT JUDGE

2010- CP-400-22034

MARCUS FARR, #337673,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on November 14, 2011, addressed to their attorney of record, Brian Petrano, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: November 14, 2011

THE CLAXTON LAW FIRM, L.L.C.



---

Tynika A. Claxton  
Attorney for the Appellant  
Post Office Box 50  
Blythewood, South Carolina 29016  
(803) 400-1195  
Attorney for Marcus Farr

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Farr, Marcus, 00337673,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2010CP4002203

ORDER OF DISMISSAL

RICHLAND COUNTY  
FILED  
2011 OCT 19 PM 3:11  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

### PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 31, 2010. The Respondent made its Return on May 26, 2010. An evidentiary hearing into the matter was convened on August 29, 2011 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Tynika Claxton, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's plea counsel, Jack Swerling, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently incarcerated following his October 29, 2009 guilty plea before The Honorable Alison Renee Lee who sentenced him to the following:

Grand Jury Term	Indictment Number	CDR - S.C. Code §	Charged Offense: Potential Sentence	Offense Description	Sentence Received	Sentenced to Lesser Offense?
10-09	2009GS402116	0014 16-03-0620 * 20 *	Assault / Assault and battery with Intent to Kill (ABWIK)		20	No
4-09	2009GS402118	0116 16-03-0020 * 30 - LD *	Murder / Murder		25	Yes
Sentenced to: 0217 16-03-0050 * 30 * Manslaughter / Voluntary manslaughter						as a lesser offense.
NOTES					TOTAL	POSSIBLE
					25	

The Applicant did not appeal his guilty plea.

In the PCR application the Applicant made the following allegations:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel  
 (b) Guilty plea not freely, knowingly, intelligently and understandably entered.  
 (c) \_\_\_\_\_

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) My attorney failed to object to the hearsay / did not do as I asked.  
 (b) My attorney failed to discuss any pleas in turn I was forced into an open plea.  
 (c) \_\_\_\_\_

16. State clearly the relief you seek in filing this application.  
plea and sentence vacated and remanded for a New Trial

At the evidentiary hearing, Applicant proceeded in part on the allegations stated in the application for post-conviction relief. Specifically, the Applicant claimed that there was evidence of self-defense that he was not aware of at the time of his plea because after the plea he received a copy of his discovery that was different from what he had previously reviewed.

## 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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Applicant testified that he received a twenty-five (25) year sentence and that his guilty plea was straight-up. The Applicant explained that they were going to trial that day but that his attorney advised him to plea. The Applicant explained that the discovery he received in the penitentiary after his plea was different from what he received in the county detention center prior to the plea/trial. The Applicant testified that he would go to trial because it does not matter if someone else was actually pointing a gun at him, he saw a weapon – so it was self-defense.

Plea counsel testified that he received the discovery and consistent with his practice, he makes three copies, one for the file, one for the client, and for himself. Plea counsel testified that he sent a complete copy to the client and that they reviewed it. Plea counsel explained that he had an investigator. Plea counsel explained that as he saw the Applicant's version of events, this was not self-defense, it was not voluntary manslaughter – that if he went to trial the best outcome would be a minimum sentence for murder so it made sense to take the straight-up plea to voluntary manslaughter that the State was offering. *See also*, p. 42 – 43 of the plea transcript.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. As discussed above, the Applicant has failed to

carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. This Court takes judicial notice that plea counsel is a well respected criminal defense attorney with decades of experience who is highly regarded by both the bench and bar. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. The Applicant's claim is that he was not provided the full discovery via his attorney and if he had been, he would not have pled guilty but would have gone to trial. To be clear, the Applicant's claims are without merit and he has failed to satisfy his burden of proof because his testimony was not credible. In addition, the Applicant has not specifically explained what was allegedly missing between the two supposedly different versions of the discovery materials he received. The Applicant made some generic references to not knowing about other weapons or shell casings, but he has not explained what specifically would support his argument (apart from the fact that he is not credible). As plea counsel explained at the guilty plea, "the law was not on his side with respect to the issues of self-defense." (Plea transcript, p. 43 L. 4 – 5). The Applicant has failed to demonstrate that plea counsel's performance was deficient or that he was prejudiced.

## CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Cl. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

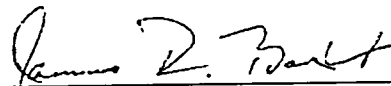
This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

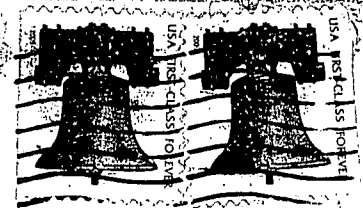
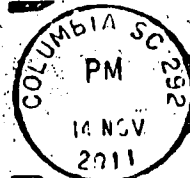
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 18 day of MARCH, 2011.

  
The Honorable James R. Barber, III  
Presiding Judge  
Fifth Judicial Circuit

Columbia, South Carolina.

The Claxton Law Firm, LLC  
PO Box 50  
Blythewood, SC 29016



Clerk of Court  
Supreme Court  
1231 Gervais Street  
Post Office Box 11330  
Columbia, SC 29211

*Marcus Jarr*

11/8/11

I am writing you to inform you, that I have written my attorney, pertaining to my appeal of my PCR decision. I am submitting my notice of my appeal. Ms. Claxton of The Claxton Law Firm, will be submitting one also.

Sincerely,  
Marcus Farr

NO appeal  
has been filed

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NOV 14 2011

S.C. SUPREME COURT

Marcus Jarr #337673  
Lieber Corr. Inst./EA-58  
P.O Box 205  
Ridgeville, S.C, 29472

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