

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

William P. Keesley, Circuit Judge

Case No. 2010-CP-32-02119

RECEIVED

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SC Court of Appeals

Michael Dwight Day, #31893 *Appellant,*

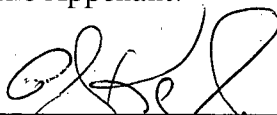
~ vs ~

State of South Carolina *Respondent.*

NOTICE OF APPEAL

Michael Dwight Day takes appeal from the attached Order of the Court of Common Pleas, served Oct. 27, 2011. Appellant has this date served this Notice upon Respondent's counsel below and upon the Court of Common Pleas by first class mail in accordance with the applicable rules of court.

For the Appellant:



Aaron J. Kozloski, Esq.
P.O. Box 1996, Lexington, SC 29071
Phone 803-748-1320, Fax 888-513-6021
e-mail: aaron@capitolcounsel.us

November 4, 2011
Lexington, South Carolina

Other Counsel of Record:

Kaelon E. May, Esquire
Assistant Attorney General
South Carolina Office of the Attorney General
Post Office Box 11549, Columbia, SC 29211
(803) 734-3970, Fax 803-253-6283
Attorney for Respondent

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

THE COURT OF COMMON PLEAS
C.A. NO. 10-CP-32-2119

Michael D. Day,
S.C.D.C. No. 318413,

318713

Applicant,

ORDER OF DISMISSAL

VS.

State of South Carolina,

Respondent.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed May 19, 2010. The State made its return on September 2, 2010. A hearing on the matter was convened at the Lexington County Courthouse on May 18, 2011. Applicant was present and represented by Aaron J. Kozloski, Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General.

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Applicant testified on his own behalf. His trial counsel, John Cheatham, Esquire, also testified. Additionally, this Court had before it the trial transcript, the Clerk of Court's ^{records} ~~Records~~ regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and the State's return.

PROCEDURAL HISTORY

Applicant is presently incarcerated with the South Carolina Department of Corrections. Applicant was indicted at the October 2006 term of the Lexington County Grand Jury for Criminal Sexual Conduct with a Minor (2006-GS-32-3249). He was represented by John Cheatham, Esquire. Applicant and his counsel elected to waive a jury trial and proceed to trial before the Honorable R.

Knox McMahon on November 6, 7, and 9, 2006. Judge McMahon found Applicant guilty as charged and sentenced Applicant to thirty years imprisonment. Applicant appealed and the conviction and sentence ^{WERE} ~~was~~ affirmed by decision dated May 18, 2009.

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 presented 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 (2003).

Ineffective Assistance of Counsel and Involuntary Plea

Case #2
Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective

assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address each allegation of ineffective assistance of trial counsel below:

Impermissible hearsay

Applicant claims counsel failed to object to impermissible hearsay. This Court finds the claim unsupported. First, Applicant has a fundamental misunderstanding as to what hearsay is. Applicant testified he believes a witness must have been present during the commission of the alleged crime and if not, all the witness's testimony will be hearsay. Applicant fails to grasp that hearsay is basically testimony by a witness as to what another person said out of court. Applicant was unable to make any specific cites to alleged impermissible hearsay. Applicant alleged Cindy Floyd's testimony was impermissible hearsay, but in reviewing the record, this Court did not find any objectionable hearsay elicited from Floyd, except one instance where counsel did object and his objection was sustained. Applicant has failed to meet his burden of showing counsel's performance was deficient and further, Applicant failed to prove prejudice. This allegation is denied.

Wade
#3

Failure to investigate, lack of evidence

Applicant alleges counsel was deficient for failing to investigate and produce evidence, such as DNA evidence. Applicant seems to also be arguing that evidence was insufficient to convict him. Applicant believes an accused cannot be convicted of a crime based solely on the testimony of the purported victim. As to that belief, he is mistaken. Specifically, S. C. Code Ann. § 16-3-657 declares that a victim's testimony need not be corroborated.

Further, no evidence was presented that DNA evidence could be obtained. As is often the case in prosecutions involving sexual abuse of a child, the incident was not reported by the victim

until several years later. Further, the victim testified Applicant's sexual abuse was interrupted when victim's father entered the dwelling. Victim testified Applicant did not ejaculate. This Court notes Applicant gave a statement to law enforcement admitting to the incident, and other corroborating evidence was provided at trial. Applicant failed to provide any evidence to suggest that counsel failed to properly investigate the case or develop favorable evidence.

Accordingly, this Court finds Applicant failed to prove counsel's performance was deficient or that Applicant was prejudiced by any such deficiency. This Allegation is denied.

Coerced statement

*WPA
#4*
Applicant alleges he was coerced into giving a statement. The trial transcript refutes that claim and contains testimony from Applicant himself to the contrary. Applicant now says he did not mean that testimony in the way it was ^{STATED} ~~read~~ ^{made} and he felt coerced because law enforcement told him he had to give the statement or he would have everything taken away from him. This Court finds that Applicant's testimony at the hearing does not support a claim that his statement was coerced by law enforcement, nor would the testimony have resulted in his statement being suppressed at trial. Further, this Court does not find Applicant's testimony to be credible regarding his claim of coercion. During the trial, he testified he gave the statement of his own will and he was not threatened and could not have been made to provide a statement. This Court finds Applicant failed to meet his burden of proving either prong of Strickland.

Sentencing hearing

Applicant testified in the PCR hearing about a comment by the Solicitor that the victim stated he wished Applicant had received the death penalty. Since the death penalty was not applicable, as ^{known} by everyone present, the only reasonable conclusion was that the statement was hyperbolic and

meant to express that the victim wanted Applicant to receive the maximum sentence. Applicant fails to show that this statement was objectionable or that Applicant was prejudiced by the Statement. He has therefore failed to meet his burden of proving counsel ineffective.

Bench trial

Applicant testified about the decision to have a bench trial instead of a jury trial. No evidence was presented that counsel's performance was deficient in this regard. First, Applicant testified in the PCR hearing that the bench trial was his suggestion. Second, the trial attorney stated a strategic decision was made by the client, after consultation, based on the fact they perceived the jury pool to be unfavorable to their claim. The client and the attorney thought that they would have a better chance with a bench trial. The trial judge properly asked Applicant about his decision to waive a jury trial. His decision to do so was free and voluntary. Basically, it appears to this Court that Applicant is stating in hindsight he would have been better off with a jury trial, but this is pure speculation and not a proper ground for granting post-conviction relief. This Court finds Applicant has failed to prove either prong of Strickland.

Any other allegations

As to any other issues that may not be specifically addressed in the PCR hearing, they are deemed abandoned by Applicant and not proven. Applicant was given numerous opportunities to fully state his claims. His testimony was extremely non-specific and generalized. Applicant failed to produce any witnesses or offer any other evidence from which the Court could conclude that the outcome of the case would likely have been different, had that evidence been developed.

CONCLUSION

Based on 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. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

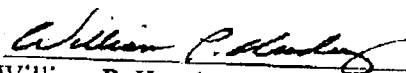
CAUTIONS
This Court ~~advises~~ the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

#6

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied with prejudice;
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 12th day of Sept., 2011.


William P. Keesley
Presiding Judge
11th Judicial Circuit

Lexington, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

MICHAEL DWIGHT DAY, #318913,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Aaron J. Kozloski, Esquire
P.O. Box 1996
Lexington, SC 29071

This 27th Day of October, 2011.

Lena Pelishenko

Lena Pelishenko
Legal Assistant for Respondent

SWORN to before me this 27th Day of October, 2011.

Jaimen Meana

Notary Public for South Carolina.

My Commission Expires: 9/25/19

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP3202119

Michael Dwight Day #318913 vs. State of South Carolina

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other:
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
- Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- Other: _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Court Reporter: _____

PRESIDING JUDGE -

This judgment was entered on the 3rd day of October 2011, and a copy mailed first class this 4th day of October 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Aaron J Kozloski Capitol Counsel LLC PO Box
11902 Capitol Station Columbia, SC 29211

David A Spencer SC Office Atty Gen PO Box
11549 Columbia, SC 292111549

ATTORNEY(S) FOR THE PLAINTIFF(S)

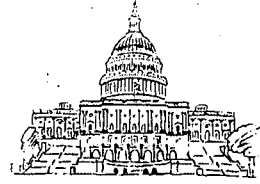
ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

Beth A. Carrigg - Clerk of Court

SCRPC APP-24/FORM 4

CAPITOL COUNSEL, LLC
AARON J. KOZLOSKI, ESQ.



November 4, 2011

South Carolina Office of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Re: Notice of Appeal
Michael Dwight Day, SCDC # 318913
No. 2010-CP-32-2119

Greetings:

Enclosed please find a copy of the Notice of Appeal I have filed in the above-referenced case along with a copy of the circuit court's order. I was appointed to represent Mr. Day in his PCR proceedings. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'AK', written over a horizontal line.

Aaron J. Kozloski

C: Clerk of the Court of Appeals
Kaelon E. May, Esq.
Michael Day

CAPITOL COUNSEL, LLC
AARON J. KOZLOSKI, ESQ.



November 4, 2011

Hon. Tanya Gee
Clerk of the Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: Notice of Appeal
Michael Dwight Day, SCDC # 318913
No. 2010-CP-32-2119

318713

Madame Clerk:

Enclosed please find a Notice of Appeal for filing in the above-referenced case along with a copy of the circuit court's order. I was appointed to represent Mr. Day in his PCR proceedings. I have provided a copy to the Office of Indigent Defense, which will assume representation of Mr. Day from this point.

Sincerely,

A handwritten signature in black ink, appearing to read 'AJK', written over the printed name of Aaron J. Kozloski.

Aaron J. Kozloski

C: Kaelon E. May, Esq.
S.C. Office of Indigent Defense
Michael Day

RECEIVED

NOV 8 2011

S.C. Supreme Court

RECEIVED

NOV 08 2011

SC Court of Appeals



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

December 1, 2011

RECEIVED

DEC - 1 2011

S.C. Supreme Court

Ms. Rema Gantt Thomas
Circuit Court Reporter
806 Yacht Club Pointe
Chapin, SC 29036-9998

Dear Ms. Thomas:

Please provide us with the following transcript:

Michael D. Day v. State of South Carolina Case #: 10-CP-32-02119

County: Lexington Date of Trial: May 18, 2011

Presiding Judge: William P. Keesley

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

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

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

Sincerely,


Lorlene French
Legal Services Coordinator

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



SCCID

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) 734-1343
Facsimile: (803) 734-1397

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

RECEIVED

FEB 15 2012

S.C. Supreme Court

February 15, 2012

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.

Michael D. Day v. State of South Carolina

2/15/2012

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

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 16, 2012

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

Re: Michael Day v. The State

RECEIVED

APR 16 2012

S.C. Supreme Court

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in this case are due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting an extension for 30 days, in which to serve and file the petition.

By copy of this letter, I am informing Kaelon E. May, of the Attorney General's Office, of my request.

Sincerely,

LaNelle C. Durant
Appellate Defender

LCD/pds

cc: Kaelon E. May, Esquire

The Supreme Court of South Carolina

Michael D. Day,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable William P. Keesley
Lexington County
Trial Court Case No. 2010-CP-32-02119

ORDER

The request for an extension until May 16, 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 17, 2012

cc: Appellate Defender LaNelle C. DuRant
Assistant Attorney General Kaelon E. May

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

William P. Keesley, Circuit Court Judge

MICHAEL DAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE PETITION FOR WRIT OF
CERTIORARI AND APPENDIX

Counsel for Michael Day respectfully requests an extension of thirty (30) days in which to file the petition for writ of certiorari and appendix in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a second request for an extension. In support of this request, counsel shows:

1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today.
2. Counsel for Mr. Day respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.

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MAY 16 2012
S.C. Supreme Court

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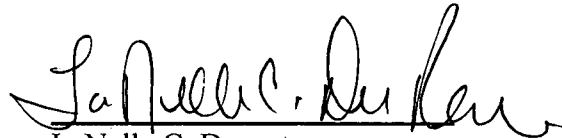
3. Counsel is preparing to file the initial brief of appellant and designation of matter in the case of State v. John Mack today, May 16, 2012. On May 14, 2012, counsel filed the petition for writ of certiorari and appendix in the case of Dewayne Littles v. State. On May 8, 2012, counsel had oral argument in the cases of State v. Christopher Manning and State v. Christopher Broadnax in the Court of Appeals. On May 4, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Demetrius Goodwin. On May 3, 2012, counsel filed the petition for writ of certiorari and appendix in the cases of Mark Brown v. State and Tarren Richburg v. State. On April 30, 2012, counsel filed the petition for writ of certiorari and appendix in the case of Charles Mixon v. State. On April 25, 2012, counsel had an oral argument in the case of State v. Bennie Mitchell in the Court of Appeals. On April 23, 2012, counsel filed the petition for writ of certiorari and appendix in the case of Phillip Byrd v. State. On April 18, 2012, counsel had an oral argument in the case of State v. K.C. Langord and Bryan Phillips in this Court. On April 13, 2012, counsel filed the brief of petitioner in the case of State v. Marques Hudson and the petition for writ of certiorari to the Court of Appeals and appendix in the case of State v. Tarus Henry. On April 12, 2012, counsel filed the Motion to Remand for Reconstruction of the Record in the case of State v. Dameon Myers, the petition for rehearing in the case of State v. Dominic Legette, and the petition for writ of certiorari and appendix in the case of Antwan Jones v. State. On April 10, 2012, counsel had an oral argument in the case of State v. Kevin Hardy in the Court of Appeals. On April 6, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Trey Williams. On April 4, 2012, counsel filed the brief of petitioner in the case of State v. Jeffery Evans, the petition for writ of certiorari and appendix in the case of Janice Clasby v. State and the petition for rehearing in the case of State v. Joel Robinson.

4. Counsel makes this request in good faith and not for purpose of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.

5. Counsel for the Attorney General's office has been informed of this request.

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 based upon the above exigent circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle C. Durant". The signature is written in a cursive style with a horizontal line drawn across the middle of the name.

LaNelle C. Durant
Appellate Defender

Attorney for Petitioner

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

William P. Keesley, Circuit Court Judge

MICHAEL DAY,

PETITIONER,

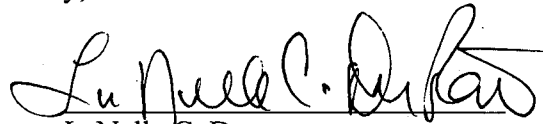
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

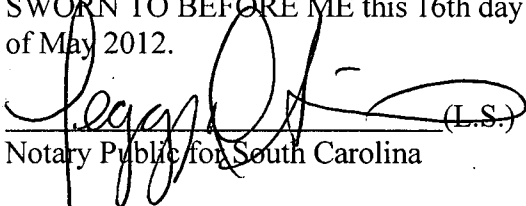
I certify that a true copy of the motion for an extension of time in which to file the petition for writ of certiorari and appendix in the above case has been served upon Kaelon E. May, Esquire, this 16th day of May, 2012.



LaNelle C. Durant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 16th day
of May 2012.



(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

The Supreme Court of South Carolina

Michael D. Day, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-202770

The Honorable William P. Keesley
Lexington County
Trial Court Case No. 2010CP3202119

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 June 15, 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



CLERK

Columbia, South Carolina

May 22, 2012

cc: LaNelle Cantey DuRant
Kaelon Elizabeth May

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

William P. Keesley, Circuit Court Judge

RECEIVED

JUN 15 2012

S.C. Supreme Court

MICHAEL DAY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE PETITION FOR WRIT OF
CERTIORARI AND APPENDIX

Counsel for Michael Day respectfully requests a **final extension of thirty (30) days until July 16, 2012** in which to file the petition for writ of certiorari and appendix in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a third request for an extension. In support of this request, counsel shows:

1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today. The Court has granted two previous extensions.
2. Counsel for Mr. Day respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.

3. On June 13, 2012, counsel filed the brief of petitioner and appendix in the case of State v. Theodore Wills and the initial brief of appellant and designation of matter in the case of In the Matter of the Care and Treatment of Thomas Simmons. On May 31, 2012, counsel filed the initial brief of appellant and designation of matter in the cases of State v. Kenneth Bolden and State v. Anthony Martin. On May 29, 2012, counsel filed the Anders brief of appellant and Record on Appeal in the case of State v. Randall Price, the petition for writ of certiorari and appendix in the case of Marty McKinsey v. State, and the initial brief of appellant and designation of matter in the case of State v. Rashawn Murphy. On May 24, 2012, counsel filed the petition for writ of certiorari to the Court of Appeals and appendix in the case of In the Matter of the Care and Treatment of Gilbert Gonzalez and the petition for writ of certiorari and appendix in the case of Herbert Matthews v. State. On May 23, 2012, counsel had an oral argument in the case of State v. Jeffrey Wesley in the Court of Appeals. On May 16, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. John Mack. On May 14, 2012, counsel filed the petition for writ of certiorari and appendix in the case of Dewayne Littles v. State. On May 8, 2012, counsel had oral argument in the cases of State v. Christopher Manning and State v. Christopher Broadnax in the Court of Appeals. On May 4, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Demetrius Goodwin. On May 3, 2012, counsel filed the petition for writ of certiorari and appendix in the cases of Mark Brown v. State and Tarren Richburg v. State.

4. Counsel makes this request in good faith and not for purpose of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.

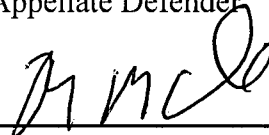
5. Counsel for the Attorney General's office consents to this request as shown by signature below.

WHEREFORE, the undersigned counsel would respectfully **request a final thirty day extension until July 16, 2012**, in which to file the petition for writ of certiorari and appendix in this case based upon the above exigent circumstances.

Respectfully submitted,



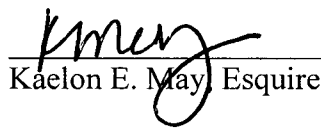
LaNelle C. Durant
Appellate Defender



Robert M. Dudek
Chief Appellate Defender

This 15th day of June, 2012

I Consent:


Kaelon E. May Esquire

The Supreme Court of South Carolina

Michael D. Day, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-202770

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 July 16, 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

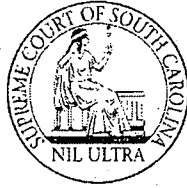


Clerk

Columbia, South Carolina

June 19, 2012

cc: LaNelle Cantey DuRant
Kaelon Elizabeth May



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

July 17, 2012

Michael D. Day, #318713
Lieber Correctional Institution
P O Box 205
Ridgeville SC 29472

Re: Michael D. Day v. The State
Appellate Case No. 2011-202770


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,

A handwritten signature in black ink, appearing to be 'D. Cantey', with a long horizontal flourish extending to the right.

CLERK

cc: LaNelle Cantey DuRant
Kaelon Elizabeth May

Daniel E. Shearouse, Clerk of Court
So. Car. Supreme Court
Post Office Box 11330
Columbia, S. C. 29211

August 26, 2012

Re: Request for Extension, Case No.: 2011-202770

Dear Mr. Shearouse,

I was advised by this Court that I had 45 days to submit a Pro Se response to my pending appeal before ~~submit~~ this Court dated July 17, 2012.

I am asking your office to accept and submit this letter in lieu of a motion for an extension of time to file the Pro Se response in this pending action. I am very much in need of at least 30 additional days.

Thank you in advance for your devoted consideration in this matter, I am,

Louis Truby,

Michael D. Darr
Michael D. Darr #318713
Lieber Coll. Inst.
Post Office Box 205
Ridgeville, S. C. 29472

cc:

La Nelle C. Durant

RECEIVED

AUG 29 2012

S.C. SUPREME COURT

The Supreme Court of South Carolina

Michael D. Day, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-202770

The Honorable William P. Keesley
Lexington County
Trial Court Case No. 2010CP3202119

ORDER

The request for an extension to serve and file the pro se response to the Johnson Petition for Writ of Certiorari is granted and extended until October 12, 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 *Suzanne J. Shealy*
Chief Deputy CLERK

Columbia, South Carolina

August 31, 2012

cc: LaNelle Cantey DuRant
Kaelon Elizabeth May
Michael D. Day, 318713

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

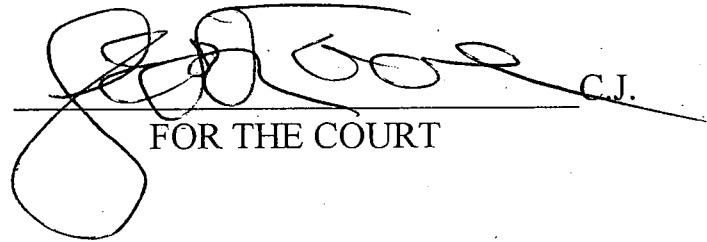
25. 2011-202770 Michael D. Day v. State
26. 2011-202773 Richard F. Whelchel v. State
27. 2011-204347 Lance Lyles v. State
28. 2011-204375 Russell Fred Spitzer v. State
29. 2011-204386 Darrell L. Goss v. State
30. 2011-204847 Kenaz Collier v. State
31. 2011-204966 Clarence Bamberg v. State
32. 2012-205988 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:


C.J.
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

Michael Dwight Day, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-202770

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.

H. B. Wan

J.

A. Ke

J.

Jammy E. Echols

J.

Columbia, South Carolina

FILED

July 23, 2014
27

cc: LaNelle Cantey DuRant, Esquire
John Walter Whitmire, Esquire
Alan McCrory Wilson, Esquire
John W. McIntosh, Esquire
Salley W. Elliott, Esquire



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
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FAX: (803) 734-1839
www.sccourts.org

July 23, 2014

Michael D. Day, #318713
Lieber Correctional Institution
P O Box 205
Ridgeville SC 29472

Re: Michael D. Day v. The State
Appellate Case No. 2011-202770

Dear Mr. Day:

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,

V. Claire Allen, Deputy

CLERK

cc: LaNelle Cantey DuRant, Esquire
John Walter Whitmire, Esquire
Alan McCrory Wilson, Esquire
John W. McIntosh, Esquire
Salley W. Elliott, Esquire
The Honorable William P. Keesley



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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August 08, 2014

The Honorable Beth Carrigg
205 E Main St Ste 146
Lexington SC 29072-3557

REMITTITUR

Re: Michael D. Day v. The State
Lower Court Case No. 2010CP3202119
Appellate Case No. 2011-202770

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: LaNelle Cantey DuRant, Esquire
John Walter Whitmire, Esquire
Alan McCrory Wilson, Esquire
John W. McIntosh, Esquire
Salley W. Elliott, Esquire
Michael D. Day, #318713
The Honorable William P. Keesley