

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Presiding Judge

2008-CP-32-2149

DONALD CARTER, 325307

Applicant,

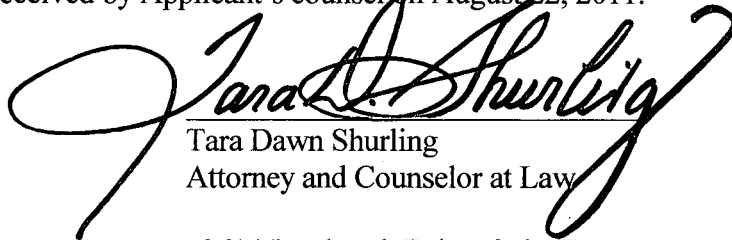
v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Order of Dismissal filed on August 12, 2011 and received by Applicant's counsel on August 22, 2011.



Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Drive, Suite D
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 8th day of September, 2011.

Other Counsel of Record:
Kaelon May, Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

RECEIVED

SEP 12 2011

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Presiding Judge

2008-CP-32-214 9

DONALD CARTER, 325307

Applicant,

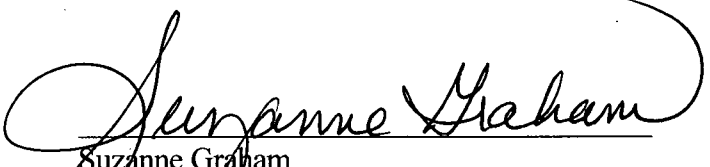
v.

THE STATE OF SOUTH CAROLINA,

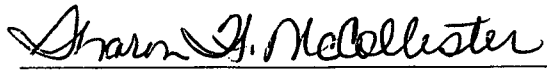
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Kaelon May, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 8th day of September, 2011.


Suzanne Graham
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE me this 8th day
of September, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan. 16, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

COPY

2008-CP-32-2149

Donald Carter. #325307.

Applicant.

v.

State of South Carolina.

Respondent.

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 22, 2008. Respondent made its Return on November 10, 2008. An evidentiary hearing into the matter was convened on February 1, 2011 at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant offered the testimony of Richard J. Breibart, Esquire, (Mr. Breibart), Jessica Carter (Ms. Carter), Otis Carter (Otis Carter), and a group testimony from Leonard Jackson, Carolyn Potter, Laura Jackson, Brian Adams, David Hancock, Pamela Gleaton, David Benton, Stuart Frazier, Billy Carter, Amy Carter, and Myra Carter, as well as Applicant's own testimony. The State did not offer any witness testimony. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the September 2005 term of the Lexington County Grand Jury for murder (2005-GS-32-3001). The Applicant was represented by Richard J. Breibart, Esquire. On November 26, 2007, Applicant pled guilty to voluntary manslaughter. The Honorable James W. Johnson, Jr., sentenced him to confinement for a period of twenty (20) years for voluntary manslaughter. The Applicant did not appeal his conviction or sentence.

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

1. Ineffective Assistance of Counsel;
 - a. Applicant received Ineffective Assistance of Counsel prior and during his plea in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.
 - b. Trial counsel failed to adequately investigate the Applicant's charge, failed to investigate and interview potential witnesses and failed to give his client adequate legal advice prior to the Applicant's guilty plea proceeding.
2. Involuntary Guilty Plea.
 - a. The judgment and sentence against the Applicant were entered in violation of his rights pursuant to due process of law, and effective assistance of counsel.
 - b. Applicant's guilty plea was coerced by counsel's failure to provide adequate representation.

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

Mr. Breibart's Testimony

Mr. Breibart testified he was obtained as counsel for the Applicant through another attorney, Adrian Falgione, around February 2005. (Tr. p.12, lines11-18). He testified Mr. Falgione was contacted by the Applicant's family but Mr. Falgione did not want to take the case by himself. (*Id.*). Mr. Breibart testified that the Applicant's father signed a fee agreement for services that he was to render for the Applicant. (Tr. p. 16, lines9-21). He testified that he met with the Applicant twenty-six times (26) and had forty-two (42) telephone conversations. (Tr. p 2, lines5-10). Mr. Breibart testified that he met with the Applicant frequently. (Tr. p. 60, lines11-25). Mr. Breibart testified that he documented each meeting with the Applicant and he also documented notes for his preparation of the Applicant's case. (Tr. p.23, lines6-10). Mr. Breibart testified that he examined maps with the Applicant of where the shooting took place and also the issue of self-defense. (Tr. p.25, lines2-6). Mr. Breibart further testified that he and the Applicant discussed potential affirmative defenses, elements of crimes, whether he was on someone else's property, the Applicant's duty to retreat, his location during the incident, and the choice of weapon used. (Tr. p.25, line23 – p.26, line6). He testified that he informed the Applicant that if he raised self-defense then the State would have to disprove it. (Tr. p.28, lines4-20). Mr. Breibart testified that even though the Applicant had a self-defense case, it was not likely that the jury would rule in his favor based on the facts he was given. (Tr. p.85, lines6-14).

Mr. Breibart testified that the discovery material he received from the State revealed the deceased victim and the Applicant had a violent previous history. (Tr. p.31, lines16-21). He testified that there were other police reports about the violent verbal threats between the

Applicant and the victim. (Tr. p.37, line5 – p.38, line1). Mr. Breibart testified that he recalled a statement written by Jessica Carter concerning a letter, allegedly was written by her father to Mr. Carter, which sparked the events that lead up to Mr. Tobias' death. (Tr. p.42, lines5-16). He testified that the letter allegedly revealed that Mr. Carter said something inappropriate to a woman at a tanning salon. (Tr. p.45, lines5-10). He testified that the victim was unhappy that the Applicant was seeing his daughter and especially the fact that they were both married to other people while they were living with each other. (Tr. p.30, lines5-13). Mr. Breibart testified that there was never a dispute that someone on the Victim's side of the family sent the card to Jessica. (Tr. p.44, lines8-24). He testified that information came out during a bond hearing. (Tr. p.45, lines11-17).

Mr. Breibart testified that he informed the Applicant that the only eye witness, Lisa Tobias, did not admit that she or the Victim that they sent the letter to Jessica. (Tr. p.48, line16 – p. 49, line3). Mr. Breibart testified that he informed the Applicant his chances would be much greater for a self-defense claim had they been on his property and not the Victim's. (Tr. p.49, lines11-15). Mr. Breibart further testified that he even paid for aerial maps in order to locate exactly where the incident took place because the Applicant and the Victim lived relatively close to each other. (Tr. p.49, line19 – p.50, line3). He testified he thought the Applicant's location when the shooting occurred was significant for two reasons: 1) there has to be an objective view of a clear and present danger; and 2) the standard for self-defense is different for the Applicant if he was on his own property. (Tr. p.49, line24 – p.50, line7). Mr. Breibart testified that he investigated other evidence that led to a conclusion that the Victim had a short temper. (Tr. p.51, line20 – p.52, line1). Mr. Breibart testified that his trial strategy was to get the Applicant out of jail on bond for the longest time period possible because he thought it would give the Applicant

the best chance to raise self-defense. (Tr. p.56, line24 – p.57, line4). He testified that if they had gone to trial he planned to have Judge Keesley testify in regards to his opinion that the Victim and or his family was deceitful in sending the card to Jessica. (Tr. p.58, lines2-7).

Mr. Breibart testified that he and the prosecution discussed different pleas and he explained to the prosecution that it was his client's decision to make. (Tr. p.72, lines4-22). He testified he spoke with the Applicant and Jessica about the plea offers and discussed different sentencing situations. (Tr. p.73, lines4-20). Mr. Breibart testified that he told the Applicant his odds of being convicted of voluntary manslaughter, murder, and not guilty. (Tr. p.74, lines14-24). He further testified that he explained to the Applicant the judge may give a greater sentence and his entire background may be presented before the court. (Tr. p.75, lines6-16). Mr. Breibart testified that he discussed with the Applicant different issues he believed the State would use against him and that is why he did not "push [his] character into evidence." (Tr. p.99, lines1-16). Mr. Breibart testified that he explained to the Applicant the sentence ranges and percentages of a voluntary manslaughter plea. (Tr. p.99, lines17-25). Mr. Breibart testified that he informed the Applicant he had a ten to twenty percent chance of being found not guilty. (Tr. p.109, lines17-23). He testified that he told the Applicant the sentence ranges because the Applicant specifically wanted an exact date and time. (*Id.*). Mr. Breibart testified that he discussed with the Applicant the benefits and drawbacks of taking a plea versus going to trial. (Tr. p.110, line12-15). He testified that the Applicant made the decision to plead guilty. (Tr. p.110, lines6-8). Mr. Breibart testified that if the Applicant decided not to plead, he could have conducted additional research to prepare for trial, if need be. (Tr. p.111, line20 – p.112, line9).

Ms. Carter's Testimony

Ms. Carter testified that she was informed Mr. Breibart was involved with the

Applicant's case shortly after Adrian Falgione was hired. (Tr. p.130. line25 – p.131. line6). She testified she joined several meetings with Mr. Beibart and the Applicant and explained how violent her father had become towards the Applicant. (Tr. p.131, lines7-11).

Ms. Carter testified that she was not married to the Applicant or to anyone else at the time of the shooting. (Tr. p.124, lines6-11). Ms. Carter testified that she and the Applicant lived next to her father and step mother for about three years prior to the shooting. (Tr. p.126, lines4-8). She testified that the relationship between her father and the Applicant turned bad around September 2004. (Tr. p.126, lines-9-14). Ms. Carter testified that the Victim started acting violently towards the Applicant after the family returned back from vacation. On one incident around November 19th the Victim came to Ms. Carter and Applicant's house and beat and kicked the door while threatening the Applicant. (Tr. p.127, line11 – p.128, line5). Ms. Carter testified that after an incident with her father and the Applicant, she gave a statement to law enforcement saying her father had on a previous occasion said he would kill the Applicant. (Tr. p.128, lines12-18). Ms. Carter testified that she informed the Applicant of the occasions in which her father acted violently towards other members of her family. (Tr. p.129, lines1-22). Ms. Carter testified about one event in which her father was armed with a weapon and seemed very upset towards her stepdad. (Tr. p.134, line8 – p.135, line1). Ms. Carter testified that she was afraid that her father would harm the Applicant and she expressed her concern to the Applicant. (Tr. p.130, lines5-10).

Ms. Carter testified about the incident that led up to the shooting. (Tr. p.135, lines5-9). She testified that she and Applicant got into a big argument after receiving a letter, which suggested an extramarital relationship. (Tr. p.135, lines13-20). Ms. Carter testified that when the Applicant read the letter he said "I know or I have an idea who's behind it," referring to her

father. (Tr. p.135, line21 – p.136, line3). She testified that the Applicant purchased a gun and she thought it was for protection against her father because of the events that recently took place. (Tr. p.136, lines4-14). Ms. Carter further testified that she had never seen her father threaten or brandish any weapons at the Applicant nor did she see her father physically strike the Applicant. (Tr. p.137, lines1-6). She also testified that her father was approximately the same physical size as the Applicant and that it would probably have been an even matchup between the two. (Tr. p.137, lines8-21).

Applicant's Testimony

The Applicant testified that he did not know that his family hired a lawyer to represent him until Mr. Falgione visited him at the Lexington County Detention Center. (Tr. p.140, lines6-23). He testified that at a meeting a week later with Mr. Falgione, he met Mr. Breibart, who explained to Applicant that he would be handling the case. (Tr. p.141, lines1-20). The Applicant testified that he never formally gave permission to Mr. Breibart to represent him. (Tr. p.142, lines16-23). The Applicant testified he was out on bond starting in May 2005. (Tr. p.142, line24 – p.143, line2). He testified that during his time out on bond, he met with Mr. Breibart monthly for about five months and then Mr. Breibart met with him occasionally after that. (Tr. p.143, lines9-15). The Applicant testified that Mr. Breibart did not meet with him often after the roll call meetings ended. (Tr. p.144, lines9-23). The Applicant testified after a year of no contact with Mr. Breibart or anyone from his office Applicant received a “panicky” phone call from one of Mr. Breibart’s secretaries, who requested that Applicant come to the office. (Tr. p.144, line24 – p.145, line12). He testified that Mr. Breibart never sat down with Applicant to review the discovery materials in detail. (Tr. p.148, lines9-14).

The Applicant testified that he informed Mr. Breibart that he shot the victim out of self-

1

defense but Mr. Breibart focused on the "duty to retreat" concept instead. (Tr. p.148, line15 – p.149, line7). He explained that Mr. Breibart never explained to him the burden will shift to the State if he claimed self-defense. (Tr. p.149, lines17-24). The Applicant testified that every time he explained to Mr. Breibart essentials that he believed to be relevant to his case, Mr. Breibart would pass it off as if it had no significance. (Tr. p.150, lines7-10). He testified that he told Mr. Breibart about the prior violent threats from the Victim and he purchased a hand gun in response to those threats. (Tr. p.151, line2 – p.152, line1). The Applicant testified that he told Mr. Breibart that Jessica informed Applicant that the Victim threatened to kill him. (Tr. p.152, lines2-9). The Applicant testified that Mr. Breibart informed him he had a slim chance of getting a jury of his peers and if he did not get a jury of his peers then he would have a small chance of establishing self-defense. (Tr. p.152, lines10-18).

The Applicant testified that he discussed with Mr. Breibart where he was standing when Applicant fired a bullet at the Victim. (Tr. p.153, lines3-10). He testified he was standing over his vehicle at the time the Victim charged at him and he did not have time to get his keys out and unlock the door to his vehicle. (Tr. p.153, line8-20). The Applicant testified that he did not deliberately get his pistol from his house when he went to confront the Victim. He testified that he kept the pistol in the consol of the truck and he put it in his jacket when exiting the vehicle because of the prior violent incidents and threats from the Victim. (Tr. p.154, line3 – p.155, line7).

The Applicant testified that he contacted the Lexington County Sherriff's Department on several occasions and they refused to write an incident report because an officer did not witness anything. (Tr. p.155, lines8-16). He further testified that he purchased a motion detector video camera and recorded "them coming by the house, blowing the horn, yelling obscenities, doing

everything else they did in front of our house.” (Tr. p.155, lines17-21). The Applicant testified that he is not sure where the video was because he gave it to Jessica to give to Mr. Breibart or Mr. Falgione. (Tr. p.155, lines22-25). The Applicant testified that he put his house on the market during the confrontation in order to let the situation between the Victim and himself cool down. (Tr. p.156, lines1-9). He testified that he went to the Victim’s house because he was tired of all of the harassment and threats from the Victim. (Tr. p.156, lines13-22). The Applicant testified that he knew the letter sent to Jessica was from the Victim. (Tr. p.157, lines15-19).

The Applicant testified that when he arrived at the Victim’s home he knocked on the door and the Victim’s wife said “come in.” (Tr. p.158, line20 – p.159, line2). The Applicant testified that he confronted the Victim about the card. (Tr. p.159, lines3-4). The Applicant testified that as he came in the Victim’s home, the Victim came around the corner. At that point, the Victim’s wife grabbed the telephone and walked into the other room. The Victim told the Applicant to get out of his house and as the Applicant walked out of the house, the Victim shoved him. The Applicant then walked to his vehicle and then asked the Victim if they could talk about all the harassment. (Tr. p.160, lines7-8). The Applicant testified that the Victim then charged at him and then he shot the Victim. (Tr. p.160, lines8-14).

The Applicant testified that he relayed the same information to Mr. Breibart that he testified to at the PCR hearing. (Tr. p.160, lines15-17). He testified that he was never informed by Mr. Breibart about the sentence for murder, he was only informed about voluntary manslaughter. (Tr. p.161, lines2-17). The Applicant testified that Mr. Breibart explained to him the Solicitor’s Office would show photographs from the autopsy and it did not matter what his case was because he had a very little chance of winning. (Tr. p.162, lines2-8). He testified that Mr. Breibart never discussed with him he could make a motion to prohibit the State from

introducing gruesome photographs or that he could introduce the Victim's previous threats. (Tr. p.162, lines9-24). The Applicant testified that Mr. Breibart never discussed with him that they could use character witnesses to testify on his general reputation of being a peaceful or violent man. (Tr. p.163, lines4-23). He testified that he did not understand the various degrees of homicide while he was represented by Mr. Breibart. (Tr. p.166, lines12-20). The Applicant further testified that if he had a better understanding of the requirements for finding voluntary manslaughter versus murder, he would have been less hesitant to go to trial. (Tr. p.167, lines11-15). The Applicant testified that if he knew the definition of voluntary manslaughter and the evidence courts historically accepted, he would not have given up his right to a trial by jury. (Tr. p.167, lines16-24). The Applicant testified that he has an associate degree in engineering, has never been arrested, and has never had any prior problems with the law. (Tr. p.168, lines1-13). The Applicant testified that if he could have gotten his family's money back from Mr. Breibart, he would have researched and sought an attorney on his own. (Tr. p.169, lines7-17). He further testified that he believes that because Mr. Falgione received a portion of the fees, it affected the quality of representation that he received from Mr. Breibart because he was always complaining he was not getting paid enough. (Tr. p.169, line22 – p.170, line8).

The Applicant testified that he decided to plead guilty after Mr. Breibart's office urgently contacted him to come to his office. (Tr. p.171, lines8-15). He testified that he went with the negotiated sentence of twenty-years because he knew he would save at least ten years off of the largest sentence. (Tr. p.172, line14-17). He further testified that had he gone to trial he did not feel like Mr. Falgione or Mr. Breibart would have been prepared to handle a proper self-defense argument. (Tr. p.172, line23 – p.173, line4). The Applicant testified that he requested from Mr. Breibart phone records to prove that the Victim's wife was on the telephone during the shooting

but Mr. Breibart told the Applicant he did not get the records. (Tr. p.176, lines4-16).

Otis Earl Carter's Testimony

Otis Carter testified that the Applicant called him after the shooting occurred. (Tr. p.190, lines23-25). He testified that after the Applicant was taken to jail, he and his wife sought the services of an attorney and their son, Billy Carter, recommended Mr. Falgione. (Tr. p.191, lines1-13). Otis Carter testified that it was during the second meeting with Mr. Falgione that they met Mr. Breibart, who would take over the case because he was more familiar with the situation. (Tr. p.192, lines6-25). Otis Carter testified that Mr. Breibart, during their first meeting, discussed his credentials and background and subsequently they decided to hire him to represent the Applicant. (Tr. p.193, lines1-8). Otis Carter testified that they never discussed with the Applicant who they were interviewing to represent him because they were unable to speak with the Applicant. (Tr. p.193, lines9-12). Otis Carter testified that there was neither any discussion about whether the Applicant would have a say so in who was representing him nor how the attorney's fees were split between Mr. Falgione and Mr. Breibart. (Tr. p.194, lines5-7).

Group Testimony

The group, compiled of Leonard Jackson, Carolyn Potter, Laura Jackson, Brian Adams, David Hancock, Pamela Gleaton, David Benton, Stuart Frazier, Billy Carter, Amy Carter, and Myra Carter, testified that they are willing and prepared to speak of the Applicant's good character, reputation among the community, his reputation for peacefulness as well as his reputation for truthfulness. (Tr. p.197, lines4-13).

III. APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper function of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984)

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the Applicant must prove that counsel’s performance was deficient. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. 668). 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. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Involuntary Guilty Plea

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusively, unless an [an Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) *overruled on other grounds by* U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985).

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcript and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

1. Ineffective Assistance of Counsel

This Court finds the Applicant failed to meet his burden of proof as to ineffective assistance of counsel. This Court finds the Applicant's allegations that counsel was ineffective because counsel failed to adequately investigate the Applicant's case is without merit. The Applicant alleges his counsel failed to adequately interview potential witnesses and failed to give proper legal advice prior to the plea proceeding. In assessing an attorney's investigation, "a court must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further. Strickland does not establish that a cursory investigation automatically justifies a tactical decision with respect to sentencing strategy. Rather, a reviewing court must consider the reasonableness of the investigation said to support that strategy." Wiggins v. Smith, 539 U.S. 510 (2003). "A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy."

Strickland v. Washington, 466 U.S. 668, 689 (1984).

Specifically with regards to Applicant's complaint concerning the issue of self-defense, this Court finds that Applicant and counsel had in-depth and detailed discussions about Applicant's claim of self-defense. Counsel testified that Applicant told him the Victim had never gotten physical with Applicant prior to the incident (Tr. p.105, lines9-12), and that objectively, there was not a threat made to Applicant's life by the Victim during the incident. (Tr. p.107, lines4-10). Counsel explained the elements and reasoning behind self-defense and also explained the potential downside of opening the door for the prosecution with respect to Applicant's personal conduct. (Tr. p.108-109, line14; p.54, lines2-21). Counsel testified that he told Applicant that based on his professional experience that Applicant had a chance of prevailing on a self-defense claim. (Tr. p.55, lines19-25). Counsel further testified that he and the Applicant discussed the chances of prevailing on a self-defense claim, particularly in regards to the burden of proof and where the Applicant was standing when the gun went off (Tr. p.74, lines14-19), as well as the potential difficulties with the self-defense claim based on the evidence. (Tr. p.80, lines4-18). Counsel testified that Applicant provided him with the location of where Applicant was standing when Applicant shot the gun and upon investigating the location with a GPS, counsel discovered the location was nowhere near the Victim's house, and that was the problem with the self-defense case. (Tr. p.86, lines6-14). This Court finds that counsel discussed with the Applicant the opportunity to present favorable character evidence as well as the state's opportunity in response to present unfavorable character evidence. (Tr. p.97, line20 – 98, line5). This Court finds Applicant was fully apprised of the nature of his self-defense claim and all of the evidence concerning said claim. Counsel and Applicant were able to meet numerous times and thoroughly cover the evidence, facts, and circumstances in relation to Applicant's claim of

self-defense. This Court finds that counsel's performance, specifically with respect to Applicant's self-defense claim, was not deficient.

This Court further finds that counsel investigated and handled the Applicant's case in a way that a reasonable attorney would. Applicant's counsel had full and lengthy conferences with the Applicant and his family members during which counsel discussed the nature of the charge, possible sentences, the Applicant's version of the facts, and possible defenses or lack thereof. Counsel's investigation of the Applicant's case included the purchasing of maps where the incident took place, obtaining evidence that would support self-defense, and investigating the Victim's past aggressive behavior. Furthermore, counsel testified that he and the Applicant reviewed the discovery materials, which included police report, discussed eyewitness Lisa Tobia's possible testimony, and counsel's potential witness, Judge Keesley.

This Court finds that, contrary to Applicant's claim, counsel conducted an investigation into the Applicant's case and the Applicant's assertions are mere speculation. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). To establish counsel failed to adequately prepare for trial, Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). Here, the Applicant did not present any evidence of what counsel failed to discover or other defenses that could have been pursued had counsel more fully prepared. This Court finds there has been no showing by the Applicant of what counsel could have discovered based upon additional investigation. Id. This Court finds that Applicant has failed to meet his burden of showing that counsel was deficient in his investigation; therefore this allegation is denied and

dismissed.

2. Ratification of Retainer Agreement

This Court finds that counsel's testimony that the Applicant's family contacted Mr. Falgione to represent the Applicant and subsequently Mr. Falgione asked counsel to take over the case because he was more seasoned at litigating criminal cases to be credible. (Tr. p. 12, lines 11-18). Counsel testified that the Applicant's father signed a fee agreement for counsel's services. (Tr. p. 16, lines 9-21). This Court finds that the Applicant ratified the retainer agreement to include his father to act on his behalf. This Court finds the Applicant signed counsel's letter that was submitted into evidence, acknowledging counsel's efforts on his behalf. This Court finds that exhibit three at the PCR hearing to be a letter signed by the Applicant of the services, fees, and agreement he received from Mr. Breitbart on his behalf. (Tr. p. 22, lines 5-22) The Applicant signed and accepted the services of his counsel. "The authority of an attorney, or a ratification of his unauthorized acts, may be inferred from circumstances, as for instance, from the silent acquiescence of the client for a long period, or from client's acceptance and retention of the fruits of the unauthorized act of the attorney." Foxworth v. Murchison Nat. Bank, 136 S.C. 458, 134 S.E. 428 (1926). This Court finds that the Applicant ratified the retainer agreement to include his father. "As a general rule under such circumstances the principal will be held to have ratified the unauthorized act of the agent, unless he disaffirm it within a reasonable time." Id. at 431. Applicant failed to show that he did not intend to include his father because Applicant never took any steps to repudiate the agreement within a reasonable amount of time once Mr. Breitbart's services began. This Court finds that the Applicant is now estopped and barred from challenging that he did not accept counsel's services.

3. Involuntary Guilty Plea

The Applicant alleges that his guilty plea was coerced by counsel's failure to provide adequate representation and failure to adequately advise of ranges of sentences. This Court finds that the Applicant's allegation that his guilty plea was not voluntarily and intelligently entered is without merit. Mr. Breibart testified that he informed the Applicant of the sentence ranges. (Tr. p.99, lines17-20). Mr. Breibart further testified that he discussed with the Applicant the benefits and drawbacks of taking a plea versus going to trial, the elements of the crimes Applicant was charged with, what the state would offer at trial, and the likelihood of success with a self-defense strategy. (Tr. p.25-28; p.110, line12-15). Mr. Breibart testified that it was the Applicant made the decision to plead guilty. (Tr. p.110 lines6-8). This Court finds the Applicant was properly and thoroughly advised of the range of potential sentences.

This Court finds that Applicant knowingly and voluntarily elected to enter a guilty plea in the absence of inducement, promise, threat or coercion and with a full understanding of the possible sentencing consequences, available options, and consequences. The record reflects Applicant understood the plea would waive his ability to challenge his confession and the Applicant elected to accept the State's favorable plea offer rather than take the chance with a trial. Moreover, Applicant testified that he accepted the negotiated sentence of twenty (20) years because he knew such a sentence would save at least ten (10) years from the potential maximum sentence. (Tr. p.172, lines14-17). Pleading guilty to avoid a possibly greater sentence, without more, does not render a guilty plea involuntary. Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed. 2d 747 (1970); Wicker v. State, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992).

This Court finds and the record reflects the Applicant understood the possible range of punishment. When questioned directly by the judge during the guilty plea proceeding, the

Applicant expressly stated no promises or threats had been made to coerce or induce the guilty plea. Applicant also expressed satisfaction with his attorney's representation and acknowledged his confession. These statements nullify the Applicant's testimony at the PCR hearing. The Applicant freely, voluntarily, and intelligently chose to plead guilty to voluntary manslaughter. Mr. Breibart adequately advised the Applicant and did not force the Applicant to plead guilty against his free will. Applicant has the burden of proving that he was coerced by counsel, and this Court finds that Applicant has failed to meet that burden. Mr. Breibart testified that he and the Applicant discussed the scenarios of voluntary manslaughter, murder, and not guilty. (Tr. p.74, lines 14-24). Also, counsel testified that all plea offers were presented to the Applicant. (Tr. p.72, lines 4-22).

This Court finds that the Applicant elected to enter a guilty plea knowingly and voluntarily and with a full understanding of the nature of the charges, possible sentencing, consequences, and available options. This Court finds the Applicant failed to meet his burden of proving either deficient performance on the part of plea counsel, or any prejudice arising from the alleged deficiencies. The overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this allegation is denied and dismissed.

V. CONCLUSION

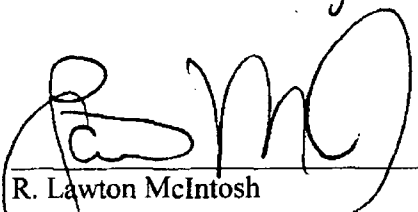
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that the Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate review. See Rule 203, SCAR. Rule 71.1 (g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice 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. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 10 day of August, 2011.



R. Lawton McIntosh
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina

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

DONALD CARTER. #325307.

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:

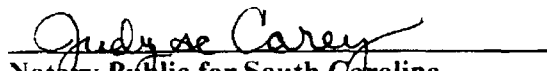
**Tara D. Shurling, Esquire
3614 Landmark Dr., Ste. A
Columbia, SC 29204**

This 19th Day of August, 2011.



Lena Pelishenko
Legal Assistant for Respondent

SWORN to before me this 19th Day of August, 2011.


Notary Public for South Carolina.
My Commission Expires: 5-11-2014

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

Christina Dixon Parnall

Associate Attorney

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

September 8, 2011

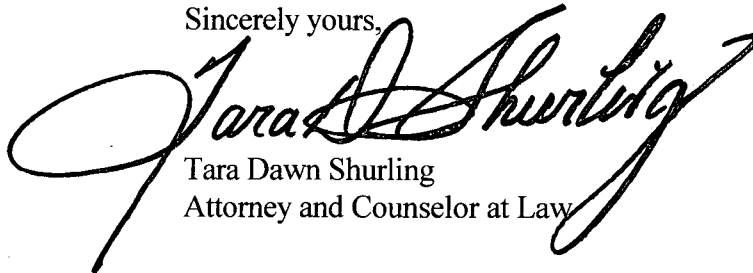
The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

Re: Donald Carter, 325307 v. State of South Carolina; 2008-CP-32-2149.

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal on behalf of the above-captioned Post-Conviction Relief client. I would appreciate your returning two (2) clocked copies to me in the self-addressed stamped envelope provided. Although I was retained in this matter, I may be turning this file over to the South Carolina Office of Appellate Defense for perfection of this appeal. I believe this client may be indigent. I was retained by his family and my fee agreement expressly excludes representation on appeal. The client has not yet advised me whether he intends to hire me to handle this appeal. I am asking that he and his family make this decision immediately. I will advise the Court within ten days whether I will be remaining on as counsel or requesting to be relieved. With my thanks for your assistance in this matter, as always, I remain,

Sincerely yours,



Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: Kaelon May, Assistant Attorney General
Sharon Graham, South Carolina Office of Appellate Defense
Donald Carter, 325307
Otis and Bobbie Carter

RECEIVED

SEP 12 2011

S.C. SUPREME COURT

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

Christina Dixon Parnall

Associate Attorney

September 8, 2011

Kaelon May
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, S. C. 29211

RE: Donald Carter, 325307 v. State of South Carolina; 2008-CP-32-2149.

Dear Ms. May:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. I was retained in this matter and I am awaiting the client's decision as to whether he and his family will be hiring me for the appeal. I have notified the South Carolina Commission on Indigent Defense, Office of Appellate Defense, that it may be a couple of weeks before the file is turned over to them should this client seek and qualify for representation by their office. I have advised my client and his family that a decision concerning representation in this Post-Conviction Relief action needs to be made quickly. I will keep you informed of the client's decision. Thank you. I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink, reading "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosure

cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina ✓
Donald Carter, # 325307
Otis and Bobbie Carter

FIRST-CLASS

FIRST-CLASS

FIRST-CLASS

FIRST-CLASS

Donald
Carter

FIRST-CLASS

UNITED STATES POSTAGE
PITNEY BOWES
02 1P
\$001.95⁰
0002929654 SEP 08 2011
MAILED FROM ZIP CODE 21230

First Class Mail
First Class Mail

Law Offices of
TARA DAWN SHURLING, PA
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204

TO:

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211-1330

FIRST-CLASS

FIRST-CLASS

FIRST-CLASS



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

October 17, 2011

RECEIVED

OCT 17 2011

S.C. Supreme Court

Tara D. Shurling, Esquire
3614 Landmark Drive, Suite A
Columbia, SC 29204

Re: Donald Carter v. State of South Carolina

Dear Ms. Shurling:

The Chief Appellate Defender has reviewed the Affidavit of Indigency for the above case and has approved for this Office to perfect the appeal for Mr. Carter.

Please contact me if you should have any questions concerning this matter.

Sincerely,

Loriene French
Legal Services Coordinator

cc: S.C. Supreme Court



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 16, 2011

RECEIVED

DEC 16 2011

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

S.C. Supreme Court

Re: Donald Carter 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 Kaelon E. May, 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

Susan B. Hackett
Appellate Defender

SBH/kam

cc: Kaelon E. May

The Supreme Court of South Carolina

Donald Carter,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable R. Lawton McIntosh
Lexington County
Trial Court Case No. 2008-CP-32-02149

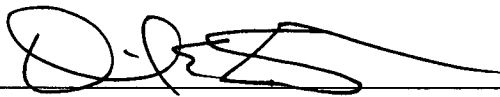
ORDER

The request for an extension until January 17, 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

December 19, 2011

cc: Appellate Defender Susan B. Hackett
Assistant Attorney General Kaelon E. May

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

JAN 17 2012

S.C. Supreme Court

DONALD CARTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

**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:

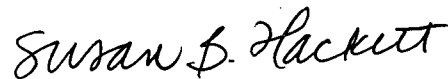
1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.
2. Counsel is filing the initial brief of appellant and designation of matter in the case of State v. John Herndon in the Court of Appeals today, January 17, 2012. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Christopher Jerome Shippy in the Court of Appeals on January 9, 2012. Counsel filed the petition for writ of habeas corpus in the original jurisdiction in the case of Kerry Garner v. State in the Supreme Court on January 4, 2011. Counsel filed the petition for

writ of certiorari and accompanying appendix in the case of Jason Orlando Riley v. State in the Supreme Court on January 3, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Leo Corderrel Gadsden v. State in the Supreme Court on December 20, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Thomas E. Gilliland in the Court of Appeals on December 15, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Quashon G. Middleton in the Court of Appeals on December 9, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. John Hunter Lambert, IV in the Court of Appeals on December 5, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Melvin J. Nelson, Jr. v. State in the Supreme Court on December 2, 2011. In November, 2011, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Mikey M. Caldwell v. State and Gordon L. Smith v. State in the Supreme Court. Additionally in November, 2011, Counsel filed the initial briefs of appellant and designations of matter in the cases of State v. Johnny William Crockett, State v. Thomas Michael Smith and State v. Wayne Wells in the Court of Appeals. Also, Counsel had an oral argument in the case of State v. Bentley Collins in the Court of Appeals in November, 2011.

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,



Susan B. Hackett
Appellate Defender

January 17, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

R. Lawton McIntosh, Circuit Court Judge

DONALD CARTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

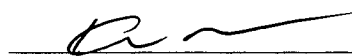
The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Kaelon May, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 17th day of January, 2012.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 17th day of January, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.

The Supreme Court of South Carolina

Donald Carter,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable R. Lawton McIntosh
Lexington County
Trial Court Case No. 2008-CP-32-02149

ORDER

For good cause shown, the request for an extension until February 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 and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

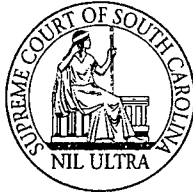
JEAN H. TOAL, CHIEF JUSTICE

BY *Shirley A. Stealy*
Clerk

Columbia, South Carolina *Chief Deputy*

January 18, 2012

cc: Appellate Defender Susan B. Hackett
Assistant Attorney General Kaelon E. 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

(803) 734-1080

FAX (803) 734-1499

February 17, 2012

Donald Carter #325307
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Carter, Donald v. The State

Dear Mr. Carter:

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 & Appendix on February 16, 2012.

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,

Daniel E. Shearouse
CLERK

DES/jj

cc: Appellate Defender Susan B. Hackett
Assistant Attorney General Kaelon E. May

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

FACSIMILE:
(803) 781-4228

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

INMATE LINE
(803) 732-6542

March 27, 2012

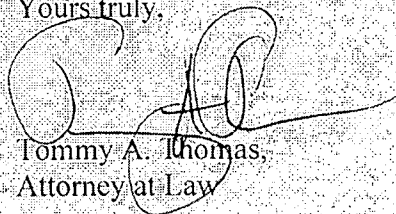
Donald E. Carter #325307
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Dear Mr. Carter:

Enclosed please find a Motion for Substitution of Counsel for your review. Kindly sign the second page and return it to me as soon as possible. As you know, your 45 day deadline is quickly approaching. Once this Motion is filed they will give us a new deadline to file your documents.

Thank you and please mail it back to me as soon as you can.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

R. Lawton McIntosh, Circuit Court Judge

DONALD CARTER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

MOTION FOR SUBSTITUTION OF COUNSEL

This matter is now before the Court pursuant to a Motion to be substituted as Counsel in the above referenced case. Counsel for the Petitioner has consented to Tommy A. Thomas being substituted in as counsel. The Petitioner has also consented to the substitution of counsel in the above referenced case.

Motion is further made that any and all time restraints be held in abeyance pending action on this Motion for Substitution of Counsel.

I so move,

I consent,

Tommy A. Thomas
Tommy A. Thomas, PC
PO Box 88
Irmo, SC 29063
(803) 732-5507

Susan B. Hackett, Esq.
Appellate Defender
Office of Indigent Defense
P.O. Box 115893
Columbia, SC 29211

I consent,

Donald Cater #325307
Petitioner

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

FACSIMILE:
(803) 781-4226

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

INMATE LINE
(803) 732-6542

March 29, 2012

The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RE: Donald Carter #325307 v. State

Dear Sir or Madam:

Please be advised that I have been retained to represent Donald Carter regarding his Petition for Writ of Certiorari. I am in the process of obtaining the appropriate signatures so that I can file a Motion for Substitution of Counsel. I would respectfully request that Mr. Carter's time for filing his *pro se* response to the Petition filed by Appellate Defense be held in abeyance until such time as I am substituted in as Counsel.

Thank you. Should you have any questions, or need any additional information, please do not hesitate to contact me.

RECEIVED

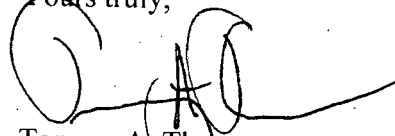
MAR 30 2012

S.C. SUPREME COURT

TAT/jem

cc: Susan B. Hackett, Esq.

Yours truly,


Tommy A. Thomas,
Attorney at Law

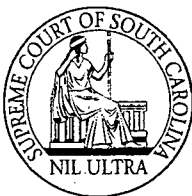
THIS MATTER WILL BE HELD
IN ABEYANCE FOR TWENTY
DAYS.

JEAN H. TOAL C.J.

B1:

CCenk

April 2, 2012



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

(803) 734-1080

FAX (803) 734-1499

April 2, 2012

Tommy Arthur Thomas, Esquire
P.O. Box 88
Irmo, SC 29063

Re: Carter, Donald v. The State

Dear Mr. Thomas:

The following Order has been endorsed on your request to hold appeal in abeyance in the above entitled case on appeal.

“This matter will be held in abeyance for twenty days.

Jean H. Toal C.J.
For the Court

By s/ Daniel E. Shearouse
Clerk

April 2, 2012.”

Very truly yours,

CLERK

DES/jj

cc: Appellate Defender Susan B. Hackett
Donald Carter #325307
Assistant Attorney General Kaelon E. May

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

R. Lawton McIntosh, Circuit Court Judge

DONALD CARTER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

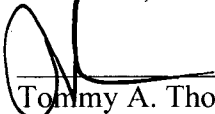
RESPONDENT.

MOTION FOR SUBSTITUTION OF COUNSEL

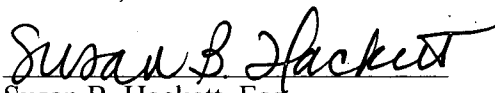
This matter is now before the Court pursuant to a Motion to be substituted as Counsel in the above referenced case. Counsel for the Petitioner has consented to Tommy A. Thomas being substituted in as counsel. The ~~State~~ has also consented to the substitution of counsel in the above referenced case.

Motion is further made that any and all time restraints be held in abeyance pending action on this Motion for Substitution of Counsel.

I so move,


Tommy A. Thomas
Tommy A. Thomas, PC
PO Box 88
Irmo, SC 29063
(803) 732-5507

I consent,


Susan B. Hackett, Esq.
Appellate Defender
Office of Indigent Defense
P.O. Box 115893
Columbia, SC 29211

RECEIVED

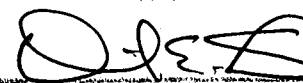
APR 18 2012

S.C. SUPREME COURT

GRANTED

Jean H. Toal
For the Court

By



Clerk

April 19, 2012

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

FACSIMILE:
(803) 781-4226

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO Box 88
IRMO, SC 29063

INMATE LINE
(803) 732-6342

April 12, 2012

The South Carolina Supreme Court
Attention: Janet Johnson
P.O. Box 11330
Columbia, SC 29211

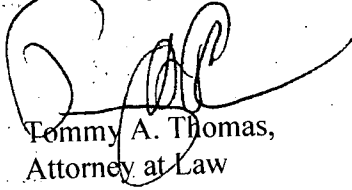
RE: Donald Carter v. State of South Carolina

Dear Janet:

Enclosed please find a Motion for Substitution of Counsel regarding the above matter.

Kindly returned a clocked copy to me in the enclosed envelope. Thank you.
Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,


Tommy A. Thomas,
Attorney at Law

RECEIVED

APR 18 2012

S.C. SUPREME COURT

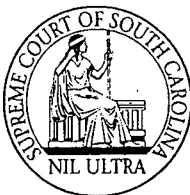
TAT/jem

I consent,

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

Donald Cater #325307

Petitioner



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

(803) 734-1080

FAX (803) 734-1499

April 19, 2012

Tommy Arthur Thomas, Esquire
P.O. Box 88
Irmo, SC 29063

Re: Carter, Donald v. The State

Dear Mr. Thomas:

The following Order has been endorsed on your Motion for Substitution of Counsel in the above entitled case on appeal.

“Granted.

Jean H. Toal C.J.
For the Court

By s/ Daniel E. Shearouse
Clerk

April 19, 2012.”

Please be advised we have marked our records to reflect that you are now counsel of record and the Division of Appellate Defense has been relieved.

Very truly yours,

Daniel E. Shearouse
85

CLERK

DES/jj

cc: Appellate Defender Susan B. Hackett
Donald Carter #325307
Assistant Attorney General Kaelon E. 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

(803) 734-1080

FAX (803) 734-1499

April 24, 2012

Tommy Arthur Thomas, Esquire
P.O. Box 88
Irmo, SC 29063

Re: Carter, Donald v. The State

Dear Mr. Thomas:

This will acknowledge receipt of your Motion to Submit Merits Petition for Writ of Certiorari in the above entitled matter.

By copy of this letter, opposing counsel is requested to file an original and six (6) copies of a return to this motion no later than May 3, 2012, pursuant to Rule 240(e). Upon receipt of the return, the matter will be taken under consideration and you will be notified as soon as action has been taken.

The time limits for perfecting the appeal will be held in abeyance pending the Court's decision.

Very truly yours,

CLERK

DES/jj

cc: Assistant Attorney General Kaelon E. May

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

R. Lawton McIntosh, Circuit Court Judge

Donald Carter,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

MOTION TO SUBMIT MERITS
PETITION FOR
WRIT OF CERTIORARI

This matter is now before the Court pursuant to a Motion for substitution of the Johnson Petition for Writ of Certiorari in the above referenced case.

The Petitioner would respectfully request that this Court allow counsel to withdraw and substitute a merits Petition for Writ of Certiorari filed with this Court. This request is not made for the purposes of delay, but to ensure that all issues of merit are properly presented to this Court.

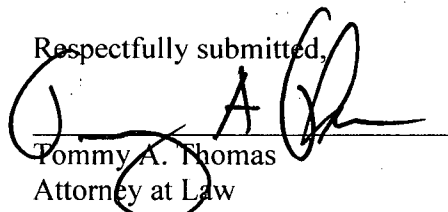
RECEIVED

APR 24 2012

S.C. SUPREME COURT

April 23, 2011

Respectfully submitted,



Tommy A. Thomas
Attorney at Law
P.O. Box 88
Irmo, SC 29063

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

R. Lawton McIntosh, Circuit Court Judge

DONALD CARTER,

PETITIONER,

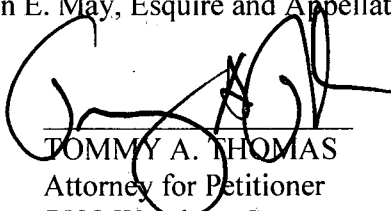
v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

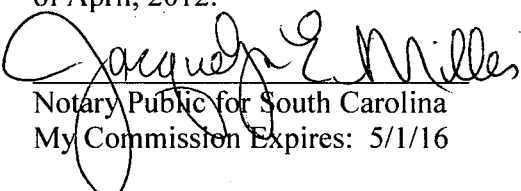
CERTIFICATE OF SERVICES

I certify that a true copy of the Motion to Submit Merits Petition for Writ of Certiorari in this case have been served on Kaelon E. May, Esquire and Appellate Defense, this 23rd day of April, 2012.



TOMMY A. THOMAS
Attorney for Petitioner
7588 Woodrow Street
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Sworn to before me this 23rd day
of April, 2012.



Notary Public for South Carolina
My Commission Expires: 5/1/16

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

FACSIMILE:
(803) 781-4226

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO Box 88
IRMO, SC 29063
INMATE LINE
(803) 732-6542

April 23, 2012

The South Carolina Supreme Court
Attention: Janet Johnson
P.O. Box 11330
Columbia, SC 29211

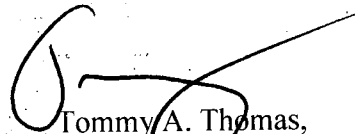
RE: Donald Carter v. State of South Carolina

Dear Janet:

Enclosed please find an original and a copy of a Motion To Submit Merits Petition for Writ of Certiorari and a Certificate of Service for filing in the above matter.

Kindly returned a clocked copy to me in the enclosed envelope. Thank you.
Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem

cc: Kaelon E. May, Esq.
Donald Carter #325307

RECEIVED

APR 24 2012

SC SUPREME COURT

The Supreme Court of South Carolina

Donald Carter, Petitioner,

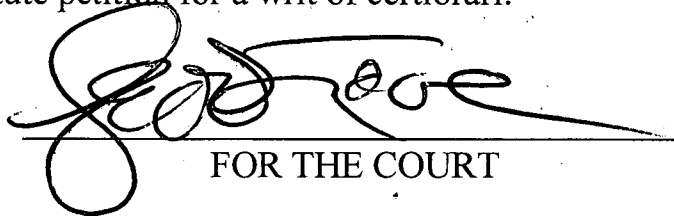
v.

State of South Carolina, Respondent.

Appellate Case No. 2011-199420

ORDER

By order dated April 19, 2012, Tommy Thomas was substituted as counsel for petitioner in this matter. Mr. Thomas now moves to withdraw the Johnson petition filed by petitioner's former counsel and file a merits petition for a writ of certiorari. The State has not filed a return to the motion. The motion is granted. The Johnson petition is hereby deemed withdrawn. Mr. Thomas shall have thirty days from the date of this order to file a substitute petition for a writ of certiorari.

 C.J.
FOR THE COURT

Columbia, South Carolina

May 23, 2012

cc: Donald Carter #325307
Tommy Arthur Thomas, Esquire
Assistant Attorney General Kaelon E. May

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

FACSIMILE:
(803) 781-4226

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO Box 88
IRMO, SC 29063

INMATE LINE
(803) 732-6542

RECEIVED

JUN 25 2012

S.C. SUPREME COURT

June 21, 2012

The South Carolina Supreme Court
Clerk, Daniel Shearouse
P.O. Box 11330
Columbia, SC 29211

RE: Donald Carter #325307 v. State of South Carolina

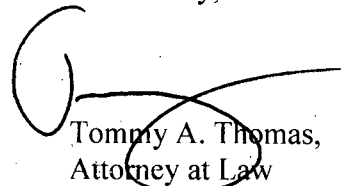
Dear Sir or Madam:

I would respectfully request a thirty (30) day extension of time to file the Substitute Petition for Writ of Certiorari in the above matter.

This request is not intended for the purpose of delay. Rather, this request is necessitated by my work load and court schedule.

Thank you for your understanding in this matter. Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Kaelon May, Esq.
Donald Carter #325307

The Supreme Court of South Carolina

Donald Carter, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-199420

The Honorable R. Lawton McIntosh
Lexington County
Trial Court Case No. 2008CP3202149

ORDER

The request for an extension to serve and file the Substitute Petition for Writ of Certiorari is granted and extended until July 23, 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



CLERK

Columbia, South Carolina

June 26, 2012

cc: Tommy Arthur Thomas
Kaelon Elizabeth May

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

FACSIMILE:
(803) 781-4226

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO Box 88
IRMO, SC 29063
INMATE LINE
(803) 732-6342

July 23, 2012

RECEIVED
JUL 24 2012
S.C. SUPREME COURT

The South Carolina Supreme Court
Clerk, Daniel Shearouse
P.O. Box 11330
Columbia, SC 29211

RE: Donald Carter #325307 v. State of South Carolina

Dear Sir or Madam:

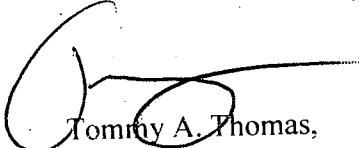
I would respectfully request a thirty (30) day extension of time to file the Substitute Petition for Writ of Certiorari in the above matter.

This request is not intended for the purpose of delay. Rather, this request is necessitated by my work load and court schedule.

I apologize for having to ask for an extension, but I have had an unusual number of cases requiring my attention and have had to appear in Court on several occasions over the last few weeks.

Thank you for your understanding in this matter. Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Kaelon May, Esq.
Donald Carter #325307

The Supreme Court of South Carolina

Donald Carter, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-199420

The Honorable R. Lawton McIntosh
Lexington County
Trial Court Case No. 2008CP3202149

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 23, 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 Brenda J. Speck
Chief Deputy CLERK

Columbia, South Carolina

July 24, 2012

cc:

Tommy Arthur Thomas

Kaelon Elizabeth May

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

FACSIMILE:
(803) 781-4226

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO Box 88
IRMO, SC 29063

INMATE LINE
(803) 732-6542

RECEIVED

AUG 23 2012

S.C. SUPREME COURT

August 21, 2012

The South Carolina Supreme Court
Attention: Janet Johnson
P.O. Box 11330
Columbia, SC 29211

RE: Donald Carter v. State of South Carolina

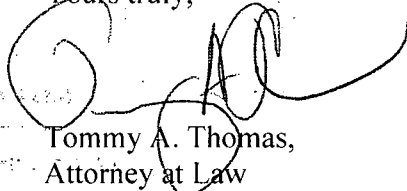
Dear Janet:

I would respectfully request a thirty (30) day extension of time to file the Substitute Petition for Writ of Certiorari in the above matter.

This request is not intended for the purpose of delay. Rather, this request is necessitated by my work load and court schedule. My office has spoken with Kaelon May with the Office of the Attorney General and she has no objection to this extension.

Thank you. Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Kaelon E. May, Esq.

The Supreme Court of South Carolina

Donald Carter, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-199420

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 24, 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 Shirley A. Shealy
Chief Deputy Clerk

Columbia, South Carolina

August 23, 2012

cc: Tommy Arthur Thomas
Kaelon Elizabeth May

Johnson, Janet

From: Jackie Miller <jackie@paroleme.com>
Sent: Monday, September 24, 2012 1:55 PM
To: Johnson, Janet; kratigan@scag.gov
Subject: Donald Carter v. State

Dear Janet,

I would respectfully request a thirty (30) day extension of time to file my Substitute Petition for Writ of Certiorari. I have spoken with David Spencer at the Office of the Attorney General and he has indicated that they do not oppose this extension request.

Thank you for your consideration in this matter.

Tommy A. Thomas
Attorney for Appellant Donald Carter
(803) 732-5507

The Supreme Court of South Carolina

Donald Carter, Petitioner,

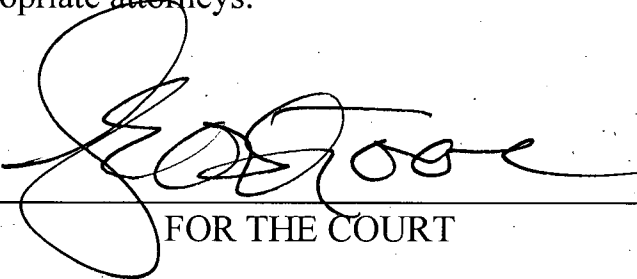
v.

State of South Carolina, Respondent.

Appellate Case No. 2011-199420

ORDER

Petitioner requests an extension to serve and file the Substitute Petition for Writ of Certiorari and alleges there are extraordinary circumstances justifying this extension. The extension is granted until October 24, 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.


C.J.
FOR THE COURT

Columbia, South Carolina

September 27, 2012

cc: Tommy Arthur Thomas
Kaelon Elizabeth May



ALAN WILSON
ATTORNEY GENERAL

November 26, 2012

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

RECEIVED

NOV 26 2012

S.C. Supreme Court

Re: Donald Carter v. State of South Carolina
Appellate Case No: 2011-199420

Dear Mr. Shearouse:

The Return to Petition for a Writ of Certiorari in the above appeal is due to be served and filed today. I would respectfully request a 30-day extension in which to serve and file this Return.

This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

John Walt Whitmire
Staff Attorney
S.C. Bar No: 100793

JWW/tb

cc: Tommy A. Thomas, Esquire

The Supreme Court of South Carolina

Donald Carter, Petitioner,

v.

State of South Carolina, Respondent.

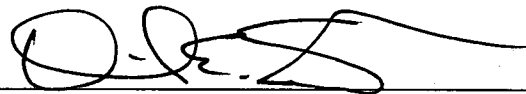
Appellate Case No. 2011-199420

ORDER

The request for an extension to serve and file the Return to the Petition for Writ of Certiorari is granted and extended until December 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.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

November 27, 2012

cc:

Tommy Arthur Thomas

Salley W. Elliott for John Walt Whitmire



ALAN WILSON
ATTORNEY GENERAL

December 27, 2012

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

RECEIVED

DEC 27 2012

S.C. Supreme Court

Re: Donald Carter v. State of South Carolina
Appellate Case No: 2011-199420

Dear Mr. Shearouse:

The Return to Petition for a Writ of Certiorari in the above appeal is due to be served and filed today. I would respectfully request a 30-day extension in which to serve and file this Return.

This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

John Walter Whitmire
Assistant Attorney General
S.C. Bar No: 100793

JWW/tb

cc: Tommy A. Thomas, Esquire

The Supreme Court of South Carolina

Donald Carter, Petitioner,

v.

State of South Carolina, Respondent.

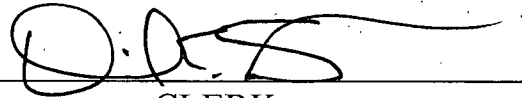
Appellate Case No. 2011-199420

ORDER

For good cause shown, the request for an extension to serve and file the Return to the Petition for Writ of Certiorari is granted and extended until January 28, 2013. 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

December 28, 2012

cc:

Tommy Arthur Thomas

John Walter Whitmire



ALAN WILSON
ATTORNEY GENERAL

January 28, 2013

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

Re: Donald Carter v. State of South Carolina
Appellate Case No: 2011-199420

RECEIVED

JAN 28 2013

Dear Mr. Shearouse:

S.C. Supreme Court

The Return to Petition for Writ of Certiorari in the above appeal is due to be served and filed today. However, this is to respectfully request a 30-day extension to serve and file this Return to Petition of Writ of Certiorari.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload and is for good cause.

Sincerely,

for John W. Whitmire
Assistant Attorney General
S.C. Bar No: 100793

In compliance with:

In Re: Extensions in Criminal and Post-Conviction Relief Cases, (S.C. Sup. Ct. order dated March 18, 2009) (Davis Adv. Sh. No. 13 at 1).

SALLEY W. ELLIOTT
Assistant Deputy Attorney General
TOMMY A. THOMAS
Attorney for Petitioner

The Supreme Court of South Carolina

Donald Carter, Petitioner,

v.

State of South Carolina, Respondent.

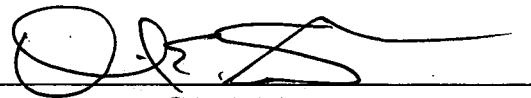
Appellate Case No. 2011-199420

ORDER

For good cause shown, the request for an extension to serve and file the Return to the Petition for Writ of Certiorari is granted and extended until February 28, 2013. 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

January 29, 2013

cc:

Tommy Arthur Thomas, Esquire

John Walter Whitmire, Esquire



ALAN WILSON
ATTORNEY GENERAL

February 5, 2013

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063

RECEIVED

FEB 5 2013

S.C. Supreme Court

RE: Donald Carter v. State
Appellate Case No. 2011-199420
Trial Court Case No. 2008-CP-32-2149

Tommy
Dear Mr. Thomas:

Please accept this letter as notification that I will be representing the Respondent in this matter. As such, please forward all future correspondence regarding this case directly to my attention. If there are any questions or comments, please do not hesitate to contact me at any time.

Sincerely,

Karen C. Ratigan
Karen C. Ratigan
Assistant Deputy Attorney General

cc: The Honorable Daniel E. Shearouse
Trisha Allen

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:

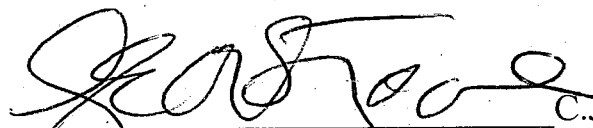
<u>Appellate Case Number</u>	<u>Case Name</u>
1. 2012-212734	Ricky Lee Hatcher v. State
2. 2012-209540	Jerome Curtis Buckson v. State
3. 2012-207809	Nathaniel Suber v. State
4. 2012-207247	Charles McCormick v. State
5. 2012-206670	Luther Brian Marcus v. State
6. 2011-204374	Herman Belton v. State
7. 2011-202768	LaVelle Weaver v. State
8. 2011-195210	Tonnie Baldwin v. State
9. 2012-213472	Ricky Dean Duncan v. State
10. 2012-213423	Jose Antonio Anzaldo v. State
11. 2012-213326	Jeremy T. Durant v. State
12. 2012-213323	Adrian Franklin v. State
13. 2012-213322	Carlos Gonzales v. State
14. 2012-213312	Eric LaGeorge Mouzon v. State
15. 2012-213235	Robert Edgar Upchurch v. State
16. 2012-213200	William Outlaw v. State
17. 2012-213167	Jeremy J. Jeter v. State
18. 2012-213133	Sherman Boyd v. State
19. 2012-213131	Waddell McGhee v. State
20. 2012-213130	Ken Lucero v. State
21. 2012-213072	Giles Belcher v. State
22. 2012-212964	Marques A. Durant v. State
23. 2012-212912	Robert L. Foster v. State

24. 2012-212911 Jimmy Belton v. State
25. 2012-212909 James E. Kennedy v. State
26. 2012-212880 Marvin Mims v. State
27. 2012-212848 Roddregus Wells v. State
28. 2012-212793 Jeffery Augustine v. State
29. 2012-212751 Robert Bostic v. State
30. 2012-212702 Samuel Emanuel Stokes v. State
31. 2012-212701 Farid A. Mangal v. State
32. 2012-212698 Marquita Smith v. State
33. 2012-212676 Whelthy McKune v. State
34. 2012-212671 John W. Floyd v. State
35. 2012-212608 Adrian Allen v. State
36. 2012-212602 Oscar Fortune v. State
37. 2012-212589 Clarence Collins v. State
38. 2012-212576 Edward Whitner v. State
39. 2012-212557 Luis Ozorio v. State
40. 2012-212553 Stephens Smalls v. State
41. 2012-212552 Lawrence K. Smith, Jr. v. State
42. 2012-212550 Marcus J. Parker v. State
43. 2012-212521 Eugene Santiago v. State
44. 2012-212506 Lakendrick K. Leverette v. State
45. 2012-212504 Nicolas Brown v. State
46. 2012-212418 James Edward Roseboro v. State
47. 2012-212417 Alex Brice Graham v. State
48. 2012-212416 Jovon Brown v. State
49. 2012-212414 Islam Dunn v. State
50. 2012-212412 Donna Marie Redding v. State
51. 2012-212410 Gary Michael Piper v. State
52. 2012-212409 Raymond Kelley v. State
53. 2012-212402 Octavious C. Neeley v. State
54. 2012-212399 Walter Durham v. State
55. 2012-212398 Jomer Hill v. State
56. 2012-212397 Steven D. Denton v. State
57. 2012-212396 Martina R. Putnam v. State
58. 2012-212316 Theodore Kyinoo v. State
59. 2012-212314 Antwon Garrett v. State
60. 2012-212310 Charles Gory v. State
61. 2012-212308 George N. Moses v. State
62. 2012-212306 Michael Shane Johnson v. State
63. 2012-212305 Herman D. McKnight v. State
64. 2012-212301 Elkin Perez v. State
65. 2012-212179 Alton Docherty v. State
66. 2012-212177 Craig M. Brannon v. State
67. 2012-212175 Favian Alfonzo Hayes v. State

68.	2012-212173	Dwayne Housey v. State
69.	2012-212164	William D. Hoyles v. State
70.	2012-212163	Sherman Graham v. State
71.	2012-212161	Roger Nickeya Johnson v. State
72.	2012-212153	Sintari A. Summers v. State
73.	2012-212149	James J. Abercrombie v. State
74.	2012-212147	Lawrence Reyes Waller v. State
75.	2012-212117	Vincent A. Pitts v. State
76.	2012-212097	Damion Curry v. State
77.	2012-212094	Desmond Briggs v. State
78.	2012-212093	Jose Eloy Tello v. State
79.	2012-212092	Charles Ray Dean v. State
80.	2012-212091	David L. Bacchus v. State
81.	2012-212086	Chas Lamous Smith v. State
82.	2012-212084	Kevin King v. State
83.	2012-212083	Heyward Robinson v. State
84.	2012-212080	Antonio M. Williams v. State
85.	2012-212075	Donques Hood v. State
86.	2012-212074	Donald Wetherall v. State
87.	2012-212073	Antonio Barton v. State
88.	2012-212072	Wayne Morris Hibbert v. State
89.	2012-211647	Sherman Dewalt v. State
90.	2012-211629	Myra Christenbury v. State
91.	2012-211390	John Douglas Alexander v. State
92.	2012-211388	Benjamin Garrick v. State
93.	2012-211386	Jason Moulton v. State
94.	2012-211291	James A. McClellan v. State
95.	2012-211288	James Marion Branham v. State
96.	2012-211093	Sterling Green v. State
97.	2012-211091	Darryl Frierson v. State
98.	2012-211087	Christopher Ray Nolan v. State
99.	2012-210227	James Clayton Helms v. State
100.	2012-210226	Timothy T. Kinard v. State
101.	2012-210213	Walter C. Kelly v. State
102.	2012-210209	Vincent L. Neumon v. State
103.	2012-210168	Lisa Ann Blakeney v. State
104.	2012-209535	Trico D. Thompson v. State
105.	2012-209533	George R. Lindsey, Jr. v. State
106.	2012-209530	John Lewis Mills v. State
107.	2012-209507	David Bryant Richards v. State
108.	2012-209506	Norman J. Hayes v. State
109.	2012-208888	Cedric T. Smith v. State
110.	2012-208639	Darian G. Reddish v. State
111.	2012-208631	Thomas Osborne v. State
112.	2012-208630	Timothy Earl Green v. State

113.	2012-208629	Dorothy Harden v. State
114.	2012-208626	Ruben Ramirez v. State
115.	2012-208013	Virgil Lee Culbreath v. State
116.	2012-208009	Jose N. Alvarenga v. State
117.	2012-207807	Harold Lee Greer Jr. v. State
118.	2012-207561	Dwayne R. Clark v. State
119.	2012-207560	Nathan Luckett v. State
120.	2012-207554	James C. Cobbett, III v. State
121.	2012-206673	Angela M. Vaughn v. State
122.	2012-206649	James L. Farrow v. State
123.	2012-206047	Fernando F. Young v. State
124.	2012-205987	Lazarus M. Brannon v. State
125.	2011-203247	Michael Lathan v. State
126.	2011-203229	Tebias Chano Lee v. State
127.	2011-202771	Harrison Sanders v. State
128.	2011-202766	Helen Marie Douglas v. State
129.	2011-201592	Joseph Morrison, III v. State
130.	2012-213492	Kenneth Epps v. State
131.	2011-199421	Dominique D. Moore v. State
132.	2011-199420	Donald Carter v. State
133.	2011-199419	Quandelle J. Wilson v. State
134.	2011-199412	Carmen Latrice Rice v. State
135.	2011-196598	Dayvonn A. Valentine v. State
136.	2011-190110	Luzenski Allen Cottrell v. State
137.	2013-000410	Lindy L. Jones v. State
138.	2013-000365	Samuel Abiodun v. State
139.	2012-213324	Terrance A. Baker v. State
140.	2012-213158	James Corbett v. State
141.	2012-213515	Odis D. State
142.	2012-212825	Johnny L. Friazer v. State
143.	2012-212750	Jeremy McPhail v. State
144.	2012-212699	Jovian McRant v. State
145.	2012-212503	John Barbare v. State
146.	2012-212170	Mark Lowery v. State
147.	2012-212088	Andre Martin v. State
148.	2012-211088	Kevin L. Grant v. State
149.	2011-202772	Antonio Glover v. State
150.	2011-203631	Michael Bohannan v. State

IT IS SO ORDERED.


 C.J.
 FOR THE COURT

Columbia, South Carolina

July 29, 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
John R. Ferguson, Esquire
Tara D. Shurling, Esquire
Joel F. Stroud, Esquire
Thomas W. Dunaway, III, Esquire
Beattie B. Ashmore, Esquire
John D. Dalgado, Esquire
Franklin G. Shuler, Esquire
Paul Archer, Esquire
Dwight C. Moore, Esquire
Tommy Thomas, Esquire
James R. Snell, Esquire
Ricky Dean Duncan
Jose Antonio Anzaldo
Jeremy T. Durant
Adrian Franklin
Robert E. Upchurch
Jeremy J. Jeter
Sherman Boyd

Waddell McGhee
Giles Belcher
Marques A. Durant
Robert L. Foster
James E. Kennedy
John W. Floyd
Adrian A. Allen
Lakendrick K. Leverette
Nicolas Brown
Alex B. Graham
Islam Dunn
Raymond Kelley
Walter Durham
Charles Gory
Herman D. McKnight
Alton Docherty
William D. Hoyles
Sherman Graham
Sintati A. Summers
James J. Abercrombie
Desmond Briggs
Heyward Robinson
Donques Hood
Sherman Dewalt
John D. Alexander
Benjamin Garrick
Timothy E. Green
Jose N. Alvarenga
Michael Lathan
Dayvonn A. Valentine
Lindy L. Jones
Terrance A. Baker
James Corbett
Brain Less
Johnny L. Frazier
Jeremy McPhail
Mark Lowery
Michael Bohannon
Jeffery Augustine
Kenneth Epps
The Honorable Jenny Kitchings

The South Carolina Court of Appeals

Donald Carter, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-199420

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. The petition for a writ of certiorari is denied.

H. B. We

J.

U. Ke

J.

James E. ...

J.

Columbia, South Carolina

cc: Tommy Arthur Thomas
Karen Christine Ratigan

FILED

April 9, 2014



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

April 25, 2014

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

REMITTITUR

Re: Donald Carter v. The State
Lower Court Case No. 2008CP3202149
Appellate Case No. 2011-199420

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: Tommy Arthur Thomas, Esquire
Karen Christine Ratigan, Esquire
Donald Carter, 00325307
The Honorable R. Lawton McIntosh