

David A. Fowler
SCDC# 264645
Lieber Corr. Inst.
P.O. Box 205 EA-51
136 Wilborn Ave.
Ridgeville, SC. 29472

Attorney General
Mr. Alan Wilson
P.O. Box 11549
Columbia, SC. 29211

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

RE: Notice of Appeal, David A. Fowler v. State of South Carolina
C/A No.2007-CP-37-1009

Dear Mr. Shearouse,

Enclosed for filing in the above captioned please find my
Notice of Appeal, Order of Dismissal and Certificate of Service.

Also please note that while the order is clock stamped
October 1, 2010, I did not receive the Order until December 29,
2011. If you will look at the last page (p.8) of the Order you
will see the Clerk of Court clock stamped the order December 29,
2011.

I thank you for your time and consideration in this matter.

cc/file
cc/Attorney General

Kindest Regards,

David A. Fowler

RECEIVED

JAN 8 0 2012

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE SUPREME COURT

David A. Fowler -- Applicant,

-v-

State of South Carolina -- Respondent,

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Notice of Appeal on the Attorney General's Office this 24 day of January 2012, by placing a copy of the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail the same day stated herein.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 24th DAY OF January, 2012

Sylvia Jones
NOTARY PUBLIC

MY COMM. EXPIRES 1/24/2018

Respectfully Submitted,

David A. Fowler
David A. Fowler

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE SUPREME COURT

David A. Fowler #264645) C/A No.2007-CP-37-1009
Applicant,)
-v-)
State of South Carolina) NOTICE OF APPEAL
Respondent,)
_____)

NOTICE IS HEREBY GIVEN, above captioned Applicant, David A. Fowler, appeals the Order of Dismissal that was entered in C/A No.2007-CP-37-1009, by the Honorable R. Lawton McIntosh, September 27, 2010.

The Order was received December 29, 2011 (see last page of attached order). Order is attached hereto.

Respectfully Submitted,

/s/ _____

David A. Fowler

submitted January __, 2012.

RECEIVED

JAN 30 2012

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 David A. Fowler, # 264645,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE 10TH JUDICIAL CIRCUIT
 Case No.: 2007-CP-37-1009

ORDER OF DISMISSAL

FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2010 OCT - 1 P 3:06

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 28, 2007. The Respondent made its Return on or about March 4, 2008. An evidentiary hearing into the matter was convened on June 14, 2010, at the Oconee County Courthouse. The Applicant was present at the hearing and was represented by Rodney Richey, Esquire. A. West Lee, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Michael Ray Wilson Burr, Applicant's trial attorney. This Court also had before it a copy of the transcript of the Applicant's trial, the records of the Oconee County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application for Post-Conviction Relief, and the State's Return.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. Applicant was indicted at the January 2007 term of the Oconee County Grand Jury for burglary- 1st degree (07-GS-37-42), armed robbery (07-GS-37-43), two counts of petit larceny (07-GS-37-44, -45), and two counts of assault and battery

Copies to:
 Atty. (P) (D)
 DSS _____ other _____
 Mailed Boxed _____ handed _____
 A. Lee
 R. Richey

ENTERED
 COMPUTER

with intent to kill (07-GS-37-46, -47). W. Wilson Burr, Esquire, represented him. On March 23, 2007, Applicant underwent trial, pursuant to which he was found guilty. He was sentenced by the Honorable Alexander S. Macaulay to confinement for an aggregate period of thirty (30) years.

A Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal because it was not timely served on opposing counsel. State v. Fowler (S.C. Ct. App. filed April 13, 2007). The Remittitur was issued on May 1, 2007.

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

1. Ineffective Assistance of Counsel
 - a. "The petitioner received ineffective assistance when Counsel failed to file timely notice of appeal."
 - b. "Deficient performance/conflict of interest"
 - c. The petitioner received ineffective assistance when Counsel failed to address and argue actual innocence."
 - d. "The petitioner received ineffective assistance when counsel failed to object to the petitioner's denial of fundamental fairness and the denial of due process of law."
 - e. "The petitioner received ineffective assistance of trial counsel when counsel failed to conduct proper pre-trial investigation and to object to improper prosecutorial misconduct."
2. "I was not served with indictment;" and
3. "Newly discovered evidence"

On or about November 21, 2009, the Applicant's attorney filed an amendment to the application for post-conviction relief, which added several new general allegations of ineffective assistance of counsel, but at the evidentiary hearing, the Applicant elected only to proceed on his claims of failure to investigate, and conflict of interest.

APPLICABLE LAW

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735

(1997).

SUMMARY OF TESTIMONY PRESENTED AT HEARING

David Fowler, Applicant

With regards to Counsel's pretrial investigation, it was Applicant's position at the PCR Hearing that Counsel did not conduct sufficient pretrial investigation and, as a result, rendered ineffective assistance of counsel. Applicant testified that his case should have been appointed investigators, adding that if adequate investigation had been done, it would have been discovered that the Applicant's role in the crime was due to duress, in that his co-defendants threatened to harm his wife if he did not help them. Applicant further testified that his wife was actually being held hostage during the time of the commission of the crime.

Applicant testified that Counsel failed to investigate or interview potential witnesses the Applicant informed him of. He also testified that Counsel represented him under a conflict of interest, due to the fact that another attorney in the public defender's office represented one of his co-defendants. Applicant testified that there were several aspects of his case that he did not have the opportunity to discuss with his attorney due to Counsel's deficient performance.

Applicant went on to testify that he received a plea offer of twenty (20) years, which he did not accept on the advice of his attorney. He added that he was told by his attorney that he should not plead because his trial would be won and he would 'be going home.' Finally, Applicant testified that Counsel met with him a total of three (3) times, despite the fact that Applicant was incarcerated for a year prior to trial.

Patricia Fowler, Ex-Wife of Applicant

Applicant's ex-wife also testified at the PCR Hearing. She testified that she was held

hostage during the commission of the crime, adding that she felt her life was in danger and spoke with Counsel about it. Ms. Fowler also testified that she and the Applicant were on drugs at the time, and that the person who was robbed sold drugs.

Ms. Fowler went on to testify that she could not say that the case was not investigated properly. She stated that she was aware that there were plea negotiations, adding that the Applicant wanted to plead but was told by his attorney that he should not plead and there was a 'big chance he'd be found not guilty.'

Wilson Burr, Esquire

Counsel testified that he met with the Applicant on several occasions to discuss the case, adding that he reviewed the discovery with the Applicant and also had meetings with the Applicant's ex-wife and mother. He also testified that he had an investigator assisting him in the preparation of the case.

Counsel went on to testify that there was originally a plea offer of fifteen (15) years in the case, adding that he met with the Applicant, the Applicant's wife, and the Applicant's mother in an attempt to get the Applicant to accept the offer but that the Applicant would not. He stated that he did not tell the Applicant he would be going home if he went to trial, and added that he felt the evidence against the Applicant was considerable.

Finally, Counsel testified that he did not have any recollection of there being a conflict of interest, stating that just because two co-defendants are represented by the public defender's office does not necessarily create a conflict of interest.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

testimony at the post conviction relief hearings. 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).

Failure to Investigate

With respect to this claim, this Court finds that the Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony that he met with the Applicant and his family on several occasions to discuss the case and employed the services of an investigator to be credible, while simultaneously finding Applicant's testimony on these issues not to be credible. Furthermore, this Court notes that the defense of duress was presented to the jury. As such, this Court finds that the Applicant has proven neither ineffective assistance of counsel nor resulting prejudice. Accordingly, this allegation is denied and dismissed.

Conflict of Interest

With respect to this claim, this Court again finds that the Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony that he was not aware of any conflict of interest arising of someone else in his office representing the co-defendant in this particular case to be credible, while simultaneously finding Applicant's testimony on the issue not to be credible. Further, this Court notes that the Applicant presented no evidence of any conflict other than his own unsupported testimony at the PCR Hearing. As such, this Court finds that the Applicant is unable to prove either ineffective assistance of counsel or resulting prejudice. Accordingly, this allegation is denied and dismissed.

All Other Allegations

Except as discussed above, this Court finds that the Applicant failed to present evidence to support the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

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.

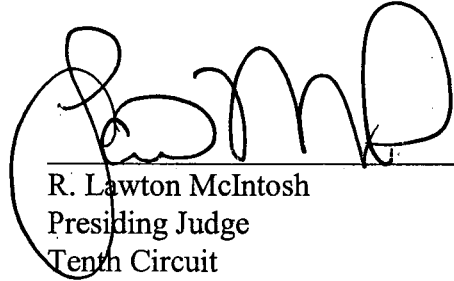
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South

Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

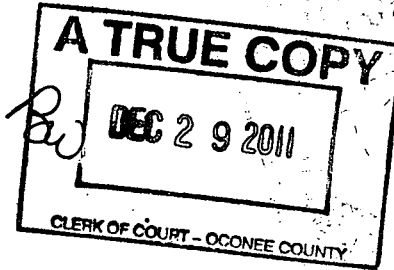
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



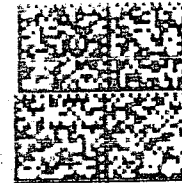
R. Lawton McIntosh
Presiding Judge
Tenth Circuit

9-27, 2010
Anderson, South Carolina



FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2010 OCT -1 P 3:06

Beverly H. Whitfield, Clerk of Court
Oconee County
Post Office Box 678
Walhalla, South Carolina 29691



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MA JIM
LIEBER C.I.

David Fowler # 264645
EA-51
P.O. Box 205
Ridgeville, S.C. 29472

David Fowler #264645

EA-51

P.O. Box 205

Ridgeville, S.C.

29472

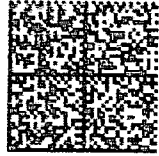
of DANIEL Shearouse, clerk

South Carolina Supreme Court

P.O. Box 11330

Columbia, S.C.

FIRST CLASS



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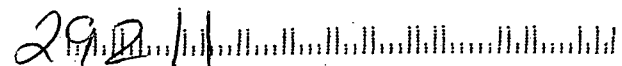
JAN 26 2012

FEB 13 2012

MAIL ROOM

M. J. M.
LIEBER C.I.

2921181330



BEVERLY H. WHITFIELD

**CIRCUIT COURT
(864)638-4280 EXT 3**

**CLERK OF COURT
P.O. BOX 678
WALHALLA, S.C. 29691
FAX (864)638-4282
E-MAIL: bwhitfield @oconeesc.com**

**FAMILY COURT
(864)638-4280 EXT 3**

December 29, 2011

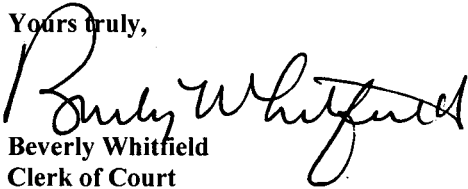
To: David Fowler

Re: PCR

I am enclosing a copy of the order of dismissal that we received from the Judge that heard your case.

If you have any questions or need a follow up, you will need to get in touch with your attorney.

Yours truly,


**Beverly Whitfield
Clerk of Court**

Enclosure

RECEIVED
JAN 8 0 2012
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

HONORABLE R. LAWTON MCINTOSH

2007-CP-37-1009

DAVID A. FOWLER, SCDC#: 264645,

APPELLANT,

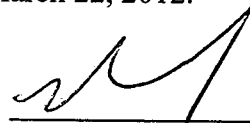
against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

David Fowler appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Lawton McIntosh, Circuit Judge on June 14, 2010 and Order issued on September 27, 2010 and filed on October 1, 2010. The Appellant received notice of the judgment on March 22, 2012.



Rodney W. Richey
Attorney for the Appellant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503

Other Counsel of Record:
Kaelon E. May, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

RICHEY AND RICHEY

ATTORNEYS AT LAW

A Professional Association

Rodney W. Richey
Lola S. Richey

24 Vardry Street, Suite 301
Greenville, South Carolina 29601

Mailing Address:
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Greenville, South Carolina 29603

(864) 467-0503
(864) 467-0646 (Fax)

Offices:
Greenville/Spartanburg

Website:
www.richeyandrichey.com

March 21, 2012

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

Re: David Fowler, SCDC# 264645 vs. State of South Carolina
Case No: 2007-DR-37-1009

Dear Sir:

This letter is in response to your letter dated March 16, 2012 regarding the above case. Pleased be advised that I have not been served the order for Mr. Fowler's case. The only notice I have of the order is your letter. I contacted the Clerk of Court in Oconee County and requested a copy of the order.

I believe the time limits of this appeal have not started yet because I have not received the order. However, if Mr. Fowler has filed a Notice of Appeal, then my notice would be duplicate. This is a case that would be handled by the Office of Appellate Defense after the notice is filed. Please contact me and let me know which route you want me to proceed. If I do not hear from your office within 10 days of receiving the order, I will forward my Notice of Appeal.

If you should have any questions, please do not hesitate to contact our office.

RECEIVED

MAR 29 2012

S.C. SUPREME COURT

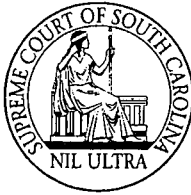
RICHEY AND RICHEY, PA

Yours very truly,


Rodney W. Richey

RWR/tlg
enclosure

cc: Kaelon E. May, Esq.
David Fowler



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

March 16, 2012

Rodney Wade Richey, Esquire
Richey & Richey, PA
P.O. Box 10916
Greenville, SC 29603-0916

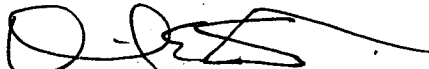
Re: Fowler, David A. v. The State, 2007-CP-37-01009

Dear Mr. Richey:

Enclosed is a copy of the *pro se* notice of appeal that your client has filed in this matter. As you will see, this notice of appeal is from an order dated September 27, 2010, and this order was filed with the clerk of the circuit court on October 1, 2010. The proof of service indicates that the notice of appeal was not served until January 24, 2012.

To determine the timeliness of this appeal, I ask that you please advise this Court of the date on which you received written notice of entry of the order dated September 27, 2010. Please provide this information within ten (10) days of the date of this order.

Very truly yours,



CLERK

Enclosure

cc: Appellate Defense
David A. Fowler #264645
Assistant Attorney General Kaelon E. May

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

HONORABLE R. LAWTON MCINTOSH

2007-CP-37-1009

DAVID A. FOWLER, SCDC#: 264645,

against

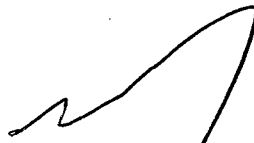
STATE OF SOUTH CAROLINA,

RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on March 23, 2012, addressed to their attorney of record, Kaelon May, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

RICHEY & RICHEY, P.A.



Rodney W. Richey
Attorney for the Appellant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503

RICHEY AND RICHEY

ATTORNEYS AT LAW

PCR

A Professional Association

Rodney W. Richey
Lola S. Richey

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(864) 467-0646 (Fax)

Offices:
Greenville/Spartanburg

Website:
www.richeyandrichey.com

March 23, 2012

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

Re: David Fowler, SCDC# 264645 vs. State of South Carolina
Case No: 2007-DR-37-1009

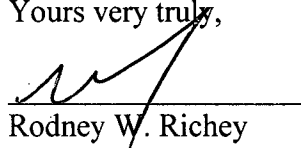
Dear Sir:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. The Order's True Copy stamp is dated March 22, 2012.

Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, PA

Yours very truly,


Rodney W. Richey

RWR/tlg
enclosure

cc: Kaelon E. May, Esq.
David Fowler

RECEIVED

MAR 20 2012

S.C. SUPREME COURT

RICHEY AND RICHEY
ATTORNEYS AT LAW

COPY

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503
(864) 467-0646 FAX

March 22, 2012

Oconee County Clerk of Court
Post Office Box 678
Walhalla, SC 29691

Re: David Fowler, SCDC# 264645 vs. State of South Carolina
Case No: 2007-DR-37-1009

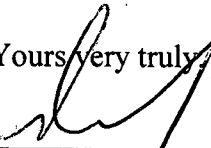
Dear Sir/Madam:

Please find enclosed the Notice of Appeal for the above referenced matter. Please file and return the clocked copy in the enclosed stamped envelope.

If you should have any questions, please do not hesitate to contact our office.

RICHEY AND RICHEY, PA

Yours very truly


Rodney W. Richey

RWR/tlg
enclosures

RECEIVED

MAR 26 2012

S.B. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 David A. Fowler, # 264645,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE 10TH JUDICIAL CIRCUIT
 Case No.: 2007-CP-37-1009

ORDER OF DISMISSAL

FILED OCONEE, SC
 BEVERLY H. WHITEFIELD
 CLERK OF COURT
 2010 OCT - 1 P 3: 06

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 28, 2007. The Respondent made its Return on or about March 4, 2008. An evidentiary hearing into the matter was convened on June 14, 2010, at the Oconee County Courthouse. The Applicant was present at the hearing and was represented by Rodney Richey, Esquire. A. West Lee, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Michael Ray Wilson Burr, Applicant's trial attorney. This Court also had before it a copy of the transcript of the Applicant's trial, the records of the Oconee County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application for Post-Conviction Relief, and the State's Return.

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 Mailed Boxed handed
 A. Lee
 Richey

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

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- a. "The petitioner received ineffective assistance when Counsel failed to file timely notice of appeal."
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 3. "Newly discovered evidence"

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APPLICABLE LAW

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735

(1997).

SUMMARY OF TESTIMONY PRESENTED AT HEARING

David Fowler, Applicant

With regards to Counsel's pretrial investigation, it was Applicant's position at the PCR Hearing that Counsel did not conduct sufficient pretrial investigation and, as a result, rendered ineffective assistance of counsel. Applicant testified that his case should have been appointed investigators, adding that if adequate investigation had been done, it would have been discovered that the Applicant's role in the crime was due to duress, in that his co-defendants threatened to harm his wife if he did not help them. Applicant further testified that his wife was actually being held hostage during the time of the commission of the crime.

Applicant testified that Counsel failed to investigate or interview potential witnesses the Applicant informed him of. He also testified that Counsel represented him under a conflict of interest, due to the fact that another attorney in the public defender's office represented one of his co-defendants. Applicant testified that there were several aspects of his case that he did not have the opportunity to discuss with his attorney due to Counsel's deficient performance.

Applicant went on to testify that he received a plea offer of twenty (20) years, which he did not accept on the advice of his attorney. He added that he was told by his attorney that he should not plead because his trial would be won and he would 'be going home.' Finally, Applicant testified that Counsel met with him a total of three (3) times, despite the fact that Applicant was incarcerated for a year prior to trial.

Patricia Fowler, Ex-Wife of Applicant

Applicant's ex-wife also testified at the PCR Hearing. She testified that she was held

hostage during the commission of the crime, adding that she felt her life was in danger and spoke with Counsel about it. Ms. Fowler also testified that she and the Applicant were on drugs at the time, and that the person who was robbed sold drugs.

Ms. Fowler went on to testify that she could not say that the case was not investigated properly. She stated that she was aware that there were plea negotiations, adding that the Applicant wanted to plead but was told by his attorney that he should not plead and there was a 'big chance he'd be found not guilty.'

Wilson Burr, Esquire

Counsel testified that he met with the Applicant on several occasions to discuss the case, adding that he reviewed the discovery with the Applicant and also had meetings with the Applicant's ex-wife and mother. He also testified that he had an investigator assisting him in the preparation of the case.

Counsel went on to testify that there was originally a plea offer of fifteen (15) years in the case, adding that he met with the Applicant, the Applicant's wife, and the Applicant's mother in an attempt to get the Applicant to accept the offer but that the Applicant would not. He stated that he did not tell the Applicant he would be going home if he went to trial, and added that he felt the evidence against the Applicant was considerable.

Finally, Counsel testified that he did not have any recollection of there being a conflict of interest, stating that just because two co-defendants are represented by the public defender's office does not necessarily create a conflict of interest.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

testimony at the post conviction relief hearings. 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).

Failure to Investigate

With respect to this claim, this Court finds that the Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony that he met with the Applicant and his family on several occasions to discuss the case and employed the services of an investigator to be credible, while simultaneously finding Applicant's testimony on these issues not to be credible. Furthermore, this Court notes that the defense of duress was presented to the jury. As such, this Court finds that the Applicant has proven neither ineffective assistance of counsel nor resulting prejudice. Accordingly, this allegation is denied and dismissed.

Conflict of Interest

With respect to this claim, this Court again finds that the Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony that he was not aware of any conflict of interest arising of someone else in his office representing the co-defendant in this particular case to be credible, while simultaneously finding Applicant's testimony on the issue not to be credible. Further, this Court notes that the Applicant presented no evidence of any conflict other than his own unsupported testimony at the PCR Hearing. As such, this Court finds that the Applicant is unable to prove either ineffective assistance of counsel or resulting prejudice. Accordingly, this allegation is denied and dismissed.

All Other Allegations

Except as discussed above, this Court finds that the Applicant failed to present evidence to support the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

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.

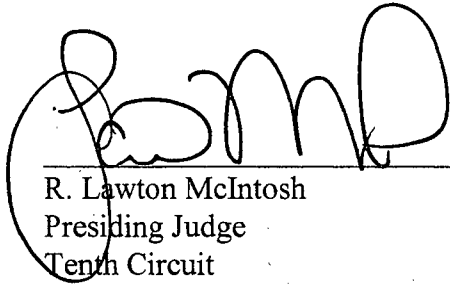
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCPP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South

Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED!



R. Lawton McIntosh
Presiding Judge
Tenth Circuit

9-27, 2010
Anderson, South Carolina

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2010 OCT - 1 P 3: 06

A TRUE COPY
MAR 22 2012
CLERK OF COURT - OCONEE COUNTY



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

RECEIVED

MAR 27 2012

S.C. Supreme Court

March 27, 2012

Ms. Jo Rice
Circuit Court Reporter
401 Wardlaw Street
Abbeville, SC 29620

Dear Ms. Rice:

Please provide us with the following transcript:

David A. Fowler v. State of South Carolina Case #: 07-CP-37-01009

County: Oconee Date of Trial: June 14, 2010

Presiding Judge: R. Lawton McIntosh

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.

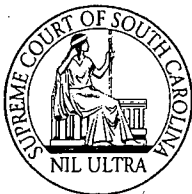
Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

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



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

March 26, 2012

Rodney Wade Richey, Esquire
Richey & Richey, PA
P.O. Box 10916
Greenville, SC 29603-0916

Re: Fowler, David A. v. The State

Dear Mr. Richey:

In light of your letter of March 21, 2012, it appears that the notice of appeal that you served on March 23, 2012, is timely. Accordingly, the notice of appeal filed *pro se* by your client has been combined with the notice of appeal that you have filed.

I do ask that you please assist your client in obtaining representation from the Division of Appellate Defense if he is indigent. Rule 71.1(g), SCRPC ("If the applicant is indigent, counsel shall assist the applicant in obtaining representation by the Division of Appellate Defense of the Office of Indigent Defense.").

Very truly yours,



CLERK

cc: Appellate Defense
David A. Fowler #264645
Assistant Attorney General Kaelon E. May



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

MAY 15 2012

May 15, 2012

S.C. Supreme Court

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

Dear Mr. Shearouse:

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

David A. Fowler v. State of South Carolina

5/14/2012

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

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
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

July 13, 2012

RECEIVED

JUL 13 2012

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

S.C. Supreme Court

Re: David A. Fowler v. State

Dear Mr. Shearouse:

The petition for writ of certiorari and accompanying appendix is due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the petition.

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

Sincerely,

David Alexander
Appellate Defender

DAA:lec

cc: Kaelon E. May, Esquire

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Oconee County

RECEIVED

R. Lawton McIntosh, Circuit Court Judge **AUG 13 2012**

S.C. Supreme Court

DAVID A. FOWLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR EXTENSION TO FILE
THE PETITION FOR WRIT OF CERTIORARI
AND ACCOMPANYING APPENDIX

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

1. The petition for writ of certiorari and accompanying appendix in this case are due to be served and filed today.

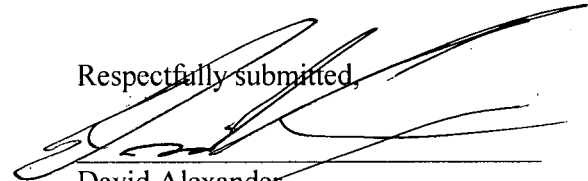
2. Counsel filed the petitions for writ of certiorari and accompanying appendices in Antonio Glover v. State and Darrell Goss v. State on July 23, 2012. On July 18, 2012, counsel filed the initial brief of appellant and designation of matter in State v. Ricky New. Counsel filed the initial brief of appellant and designation of matter in State v. Jerry Goode in the Court of Appeals on July 16, 2012. The brief of respondent in State v. Danny Cortez Brown was filed with this Court on July 11, 2012. Counsel is

currently working with Chief Appellate Defender Robert M. Dudek on the petition for writ of certiorari in Marion Lindsey v. State, a capital case.

4. This request is made in good faith, and not for purposes 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.

WHEREFORE, the undersigned counsel would respectfully request a thirty day extension. Counsel respectfully requests that the time limits for filing the initial brief of appellant and designation of matter be held in abeyance pending a ruling on this motion.

Respectfully submitted,

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

David Alexander
Appellate Defender

Attorney for Petitioner

August 13, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Oconee County

R. Lawton McIntosh, Circuit Court Judge

DAVID A. FOWLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

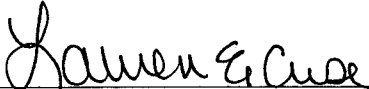
The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the petition for writ of certiorari and accompanying appendix in the above referenced case has been served upon Kaelon E. May, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 13th day of August, 2012.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me
this 13th day of August, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

The Supreme Court of South Carolina

David A. Fowler, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-207131

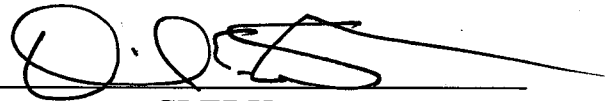
The Honorable R. Lawton McIntosh
Oconee County
Trial Court Case No. 2007CP3701009

ORDER

The request for an extension to serve and file the Petition for Writ of Certiorari and Appendix is granted and extended until August 13, 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

July 16, 2012

cc:

Kaelon Elizabeth May
David Alexander

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

SEP 13 2012

Appeal from Oconee County

S.C. Supreme Court

R. Lawton McIntosh, Circuit Court Judge

DAVID A. FOWLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-207131

PETITION FOR EXTENSION TO FILE
THE PETITION FOR WRIT OF CERTIORARI
AND ACCOMPANYING APPENDIX

The undersigned counsel respectfully requests a **final thirty-day extension, until October 15, 2012**, in which to file the petition for writ of certiorari and accompanying appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

1. The petition for writ of certiorari and accompanying appendix in this case are due to be served and filed today.

2. On September 12, 2012, counsel filed the petition for writ of certiorari and accompanying appendix in Gary White v. State with this Court. Counsel filed the petition for writ of certiorari and accompanying appendix in Marion Alexander Lindsey, a capital appeal in the Supreme Court, on September 7, 2012. Counsel filed the petitions for writ of certiorari and accompanying appendices in Antonio Glover v. State and

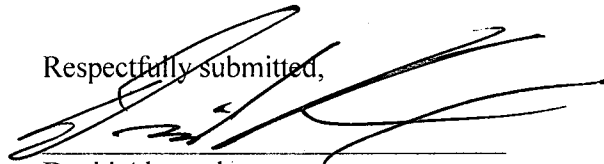
Darrell Goss v. State on July 23, 2012. On July 18, 2012, counsel filed the initial brief of appellant and designation of matter in State v. Ricky New in this Court. Counsel filed the initial brief of appellant and designation of matter in State v. Jerry Goode in this Court on July 16, 2012. The brief of respondent in State v. Danny Cortez Brown was filed with this Court on July 11, 2012. Additionally, counsel suffered from an illness which prevented him from working during the early part of August.

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

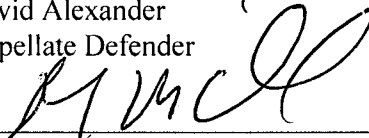
4. This request is made in good faith, and not for purposes of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.

WHEREFORE, the undersigned counsel would respectfully request **a final thirty day extension, until October 15, 2012**. Counsel respectfully requests that the time limits for filing the initial brief of appellant and designation of matter be held in abeyance pending a ruling on this motion.

Respectfully submitted,



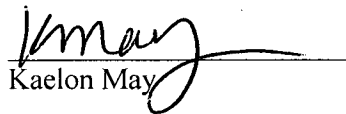
David Alexander
Appellate Defender



Robert M. Dudek
Chief Appellate Defender

September 13, 2012

I do not oppose:



Kaelon May

The Supreme Court of South Carolina

David A. Fowler, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-207131

The Honorable R. Lawton McIntosh
Oconee County
Trial Court Case No. 2007CP3701009

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 13, 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

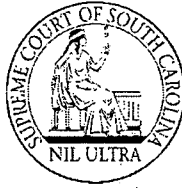


CLERK

Columbia, South Carolina
August 14, 2012

cc:

Kaelon Elizabeth May
David Alexander



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

October 12, 2012

David A. Fowler, 264645
Lieber Correctional Institution
P O Box 205
Ridgeville SC 29472

Re: David A. Fowler v. The State
Appellate Case No. 2012-207131

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,

David E. Shearouse
DS

CLERK

cc: David Alexander
Salley W. Elliott

The Supreme Court of South Carolina

David A. Fowler, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-207131

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 October 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 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

Drenda J. Shealy
CLERK
Chief Deputy

Columbia, South Carolina

September 14, 2012

cc:

Kaelon Elizabeth May
David Alexander

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 Diāls 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 Pērnell 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



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Columbia, South Carolina 29211-1589
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Facsimile: (803) 734-1397

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

May 13, 2014

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: David A. Fowler v. The State, Appellate Case No. 2012-207131

Dear Ms. Kitchings:

Pursuant to your letter dated April 30, 2014 in regard to the above-referenced case, enclosed please find one (1) bound and one (1) unbound copy of the Supplemental Appendix.

Thank you for your kind assistance with this matter. If you have any questions or need anything further, please do let us know.

Sincerely,

David Alexander
Appellate Defender

DAA/rd
cc: Walt Whitmire, Esquire
David A. Fowler
Enclosures

RECEIVED

MAY 13 2014

SC Court of Appeals



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
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April 30, 2014

Mr. David Alexander, Esquire
Comm. On Indigent Def. Appellate Div.
PO Box 11589
Columbia SC 29211

Re: David A. Fowler v. The State
Appellate Case No. 2012-207131

Dear Counsel:

While reviewing the above mentioned case it has come to our attention that a page from the post-conviction relief hearing transcript is missing. In the appendix, at pages 474-475, there should be an additional page. In the hearing transcript, the pages would be numbered 10-11.

The Court is requesting that you provide this missing page to the Court in a supplemental appendix, pursuant to Rule 212(c) to the South Carolina Appellate Court Rules, within ten days of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jenny Abbott Kitchings".

CLERK

cc: Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire

The South Carolina Court of Appeals

David A. Fowler, Petitioner,

v.

State of South Carolina, Respondent.

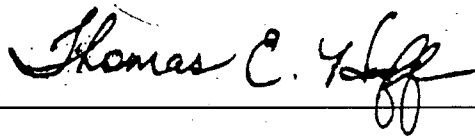
Appellate Case No. 2012-207131

ORDER

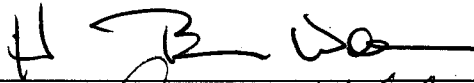
This matter is before the Court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief.

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.

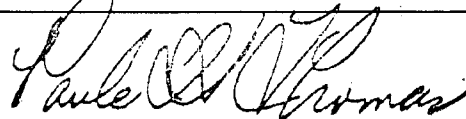
After careful consideration of the entire appendix as required by *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.



J.



J.



J.

Columbia, South Carolina

FILED

July 17, 2014 27

cc: David Alexander, Esquire
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
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July 17, 2014

David A. Fowler, 00264645
Lieber Correctional Institution
P. O. Box 205
Ridgeville SC 29472

Re: David A. Fowler v. The State
Appellate Case No. 2012-207131

Dear Mr. Fowler:

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: David Alexander, Esquire
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire
The Honorable R. Lawton McIntosh



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
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August 05, 2014

The Honorable Beverly H. Whitfield
PO Box 678
Walhalla SC 29691-0678

REMITTITUR

Re: David A. Fowler v. The State
Lower Court Case No. 2007CP3701009
Appellate Case No. 2012-207131

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: David Alexander, Esquire
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire
David A. Fowler, 00264645
The Honorable R. Lawton McIntosh