The Supreme Court of South Carolina

Brandon Pinkard, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Alison Renee Lee
Richland County
Trial Court Case No. 2007-CP-40-07163

ORDER

The request for an extension until May 14, 2012 to serve and file the Return to the Petition for Writ of Certiorari 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 Brenda F. Shealy
Chief Deputy Clerk

Columbia, South Carolina

April 16, 2012

cc: Joshua Kendrick, Esquire
Assistant Attorney General Robert D. Corney

Alan Wilson
Attorney General

April 13, 2012

RECEIVED
APR 13 2012
S.C. Supreme Court

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

RE: Brandon Pinkard, 280309 v. State of South Carolina
2007-CP-40-7163

Dear Mr. Shearouse:

The Return to Petition for Writ of Certiorari in the above appeal is due to be served and filed on today. However, this is to respectfully request a 30-day extension until May 14, 2012 in which to serve and file this Return.

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

Sincerely,

Robert D. Corney
Assistant Attorney General

RDC:jri

cc: Joshua Kendrick, Esquire

The Supreme Court of South Carolina

Brandon Pinkard, Petitioner,

v.

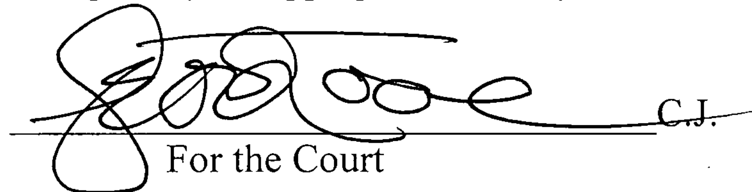
State of South Carolina, Respondent.

The Honorable Alison Renee Lee
Richland County
Trial Court Case No. 2007-CP-40-07163

ORDER

Petitioner seeks an extension until March 14, 2012 to serve and file the Petition for Writ of Certiorari and Appendix, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extensions will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.



C.J.
For the Court

Columbia, South Carolina

February 15, 2012

cc: Joshua Kendrick, Esquire
Assistant Attorney General Robert Corney

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2007-CP-40-7163

RECEIVED
FEB 14 2012
S.C. Supreme Court

Brandon Pinkard, 280309,

Petitioner,

v.

State of South Carolina,

Respondent.

MOTION FOR EXTENSION TO FILE PETITION AND APPENDIX

The Petitioner, through his undersigned counsel and with the consent of the State of South Carolina, respectfully moves this Honorable Court for a thirty-day extension in the above-captioned case.

Counsel has requested three previous extensions in this matter. In the Court's last order, the Court has informed Petitioner an additional extension will only be granted in extraordinary circumstances and counsel must articulate the steps being taken to insure no further extensions will be required.

The extraordinary circumstances in this matter are that Petitioner came into possession of potential new evidence related to his case after retaining counsel to handle this petition. Counsel has diligently worked to investigate and evaluate this evidence with the idea it may be necessary to move for a stay of this petition and file a motion for a new trial in the Court of General Sessions. Counsel has completed this work and discussed the matter with Petitioner.

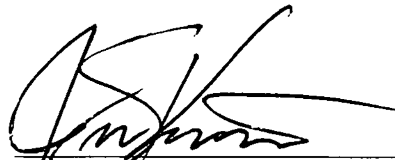
After evaluating the new information and consulting with Petitioner, Petitioner and counsel have decided the new information will not meet the standards set out in Rule 29 of the South Carolina Rules of Criminal Procedure and this Court's opinion in *State v. Spann,* 334 S.C. 618.

Petitioner respectfully requests this Court consider the delay in filing the petition reasonable in light of counsel's diligent work to insure his client is competently represented and all issues are properly addressed.

In addition, counsel does not anticipate any further delays in this matter. Counsel has made arrangements to begin printing the appendix. In addition, counsel has completed the majority of the research required to complete the petition and will begin drafting the petition for completion within the next week. This will allow for sufficient time to consult with Petitioner, complete the petition and file it at the end of a thirty-day period.

For these reasons, Petitioner respectfully requests this Court grant the thirty-day extension.

February 14, 2012

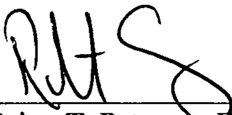


Joshua Snow Kendrick
P.O. Box 886
Columbia, SC 29202
(803) 667-3186

Tivis Colley Sutherland, IV
1811 Pickens Street
Columbia, SC 29201
(803) 787-5737

Attorneys for the Petitioner

I CONSENT:



~~Brian T. Petrano, Esquire~~ ROB CORNEY
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970

Attorney for the Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2007-CP-40-7163

RECEIVED
FEB 14 2012
S.C. Supreme Court

Brandon Pinkard, 280309,

Petitioner,

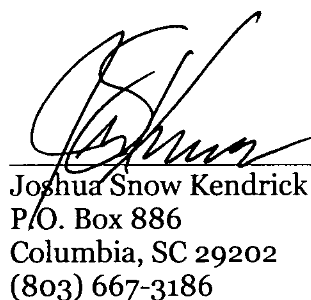
v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the *Motion for Extension to File Petition and APPENDIX* on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on February 14, 2012, addressed to the State's attorney of record, Brian T. Petrano, South Carolina Attorney General's Office, Post Office Box 11549, Columbia, South Carolina 29211 on October 12, 2011.



February 14, 2012

Joshua Snow Kendrick
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(803) 667-3186

Tivis Colley Sutherland, IV
1811 Pickens Street
Columbia, SC 29201
(803) 787-5737
Attorneys for the Petitioner

The Supreme Court of South Carolina

Brandon Pinkard, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Alison Renee Lee
Richland County
Trial Court Case No. 2007-CP-40-07163

ORDER

For good cause shown, the request for an extension until February 13, 2012 to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY
Clerk

Columbia, South Carolina

January 17, 2012

cc: Joshua Kendrick, Esquire
Assistant Attorney General Brian T. Petrano

JOSHUA SNOW KENDRICK, P.C.
ATTORNEYS AT LAW

JOSHUA SNOW KENDRICK
JOSH@JKENDRICKLAW.COM

CHRISTOPHER S. LEONARD
CHRIS@JKENDRICKLAW.COM

1924 BARNWELL STREET
COLUMBIA, SC 29201

POST OFFICE BOX 886
COLUMBIA, SC 29202

January 13, 2012

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

3

Re: Brandon Pinkard v. State of South Carolina

Dear Mr. Shearouse:

I was previously granted two thirty-day extensions in this case. I have the initial brief and record in this case calendared as due on January 13, 2012. I am writing to respectfully request another thirty-day extension of this deadline. Based on the extensive record in this matter and my current caseload, I am unable to complete this brief by the deadline.

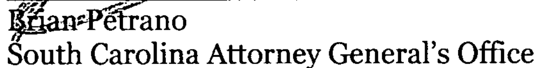
I have discussed this request with opposing counsel and he has no objection, as evidence by his signature below. This request is not made to delay the matter, but to insure my client's important appellate rights are protected.

Please contact me at your convenience if you need any additional information.

Sincerely,

Joshua Snow Kendrick

I CONSENT:



Brian Petrano
South Carolina Attorney General's Office

RECEIVED
JAN 13 2012
S.C. Supreme Court

OFFICE (803) 667-3186 • FAX (803) 667-3187

The Supreme Court of South Carolina

Brandon Pinkard, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Alison Renee Lee
Richland County
Trial Court Case No. 2007-CP-40-07163

ORDER

For good cause shown, the request for an extension until January 13, 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 Brenda F. Shealy
Chief Deputy Clerk

Columbia, South Carolina

December 16, 2011

cc: Joshua Kendrick, Esquire
Assistant Attorney General Brian T. Petrano

JOS, UA SNOW KENDRICK, , '.C.
ATTORNEYS AT LAW

JOSHUA SNOW KENDRICK
JOSH@JKENDRICKLAW.COM

CHRISTOPHER S. LEONARD
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COLUMBIA, SC 29201

POST OFFICE BOX 886
COLUMBIA, SC 29202

December 14, 2011

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DEC 14 2011
S.C. Supreme Court

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

(2

Re: Brandon Pinkard v. State of South Carolina

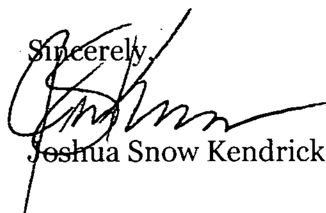
Dear Mr. Shearouse:

I was previously granted a thirty-day extension in this case. I have the initial brief and record in this case calendared as due on December 14, 2011. I am writing to respectfully request a thirty-day extension of this deadline. Based on the extensive record in this matter and my current caseload, I am unable to complete this brief by the deadline.

I have discussed this request with opposing counsel and he has no objection. This request is not made to delay the matter, but to insure my client's important appellate rights are protected.

Please contact me at your convenience if you need any additional information.

Sincerely,



Joshua Snow Kendrick

cc: Brian Petrano, Esquire

OFFICE (803) 667-3186 • FAX (803) 667-3187

The Supreme Court of South Carolina

Brandon Pinkard, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Alison Renee Lee
Richland County
Trial Court Case No. 2007-CP-40-07163

ORDER

The request for an extension until December 14, 2011 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

November 14, 2011

cc: Joshua Kendrick, Esquire
Assistant Attorney General Brian T. Petrano

JOSHUA SNOW KENDRICK, P.C.
ATTORNEYS AT LAW

JOSHUA SNOW KENDRICK
JOSH@JKENDRICKLAW.COM

CHRISTOPHER S. LEONARD
CHRIS@JKENDRICKLAW.COM

1924 BARNWELL STREET
COLUMBIA, SC 29201

POST OFFICE BOX 886
COLUMBIA, SC 29202

November 10, 2011

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

RECEIVED
NOV 10 2011
S.C. Supreme Court

Re: ***Brandon Pinkard v. State of South Carolina***

Dear Mr. Shearouse:

I have the initial brief and record in this case calendared as due on November 11, 2011. I am writing to respectfully request a thirty-day extension of this deadline. Based on the extensive record in this matter and my current caseload, I am unable to complete this brief by the deadline.

I have discussed this request with opposing counsel and he has no objection. This request is not made to delay the matter, but to insure my client's important appellate rights are protected.

Please contact me at your convenience if you need any additional information.

Sincerely,

Joshua Snow Kendrick

cc: Brian Petrano, Esquire

OFFICE (803) 667-3186 • FAX (803) 667-3187

JOSHUA SNOW KENDRICK, P.C.
ATTORNEYS AT LAW

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POST OFFICE BOX 886
COLUMBIA, SC 29202

October 21, 2011

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

Re: Brandon Pinkard v. State of South Carolina

Dear Mr. Shearouse:

I am writing to you regarding the transcript of the post-conviction relief hearing in this matter. I have received the entire lower court file, including the transcript of the PCR hearing, from the petitioner's former counsel. Therefore, we will not need to order the transcript in this matter.

It appears I received the transcript on October 7, 2011. This was before the notice of appeal was filed on October 12, 2011. I will base my filing deadlines on the date the notice of appeal was filed, as we already had the transcript. If this is incorrect, please contact me at your convenience regarding the filing deadline.

Sincerely,

Joshua Snow Kendrick

cc: Brian Petrano, Esquire

RECEIVED
OCT 25 2011
S.C. SUPREME COURT

OFFICE (803) 667-3186 • FAX (803) 667-3187

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Brandon Pinkard,

Plaintiff,

vs.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2007-CP-40-7163

ORDER

RICHLAND COUNTY
FILED
2011 OCT -5 AM 10: 47
JEANETTE W. McBRIDE
C.C.P. & G.S.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby DENIES Plaintiff's Motion pursuant to Rule 59(e) SCRCP to Alter or Amend Judgment of this Court's Order entered on or about August 31, 2011. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.

ALISON RENEE LEE
Presiding Judge

October 3, 2011
Columbia, South Carolina

C:\Users\ALeeLC\Desktop\Alexander's Work\Johnson v. Ozmint (07-CP-40-3562) Rule 59(e) Motion.doc

SCANNED

Form 4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2007CP4007163

Brandon Ulyssess Pinkard *vs.* **State of South Carolina**

Plaintiff Defendant

S.C. SUPREME COURT
OCT 12 2011
RECEIVED

RICHLAND COUNTY
FILED
2011 SEP - 1 AM 10:39
JEANETTE W. McBRIDE
C.C.P. & G.S.

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: ____________________

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*:
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

Dated at Columbia, South Carolina, this _____ day of _______________, 2011.

____

PRESIDING JUDGE

This judgment was entered on the _______ day of _______________, 2011, and a copy mailed first class this 1 September 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Brandon Ulyssess Pinkard	State of South Carolina Brian T Petrano
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

Jeanette W. McBride
Clerk of Court

SCRCP APP-24/FORM 4

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Brandon Pinkard, #280309,	)	Civil Action No.: 2007-CP-40-7163
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

RICHLAND COUNTY
FILED
2011 SEP -1 AM 10: 23
JEANETTE W. McBRIDE
C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 26, 2007. The Respondent made its Return on April 8, 2008. An evidentiary hearing into the matter was convened on January 12, 2009 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Greg Harris, Esquire and Derk Van Raalte, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Harry C. DePew, Esquire also testified. Former Assistant Solicitor Matthew D. Bodman and several of the Applicant's friends and family members also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, the Applicant's records from the South Carolina Department of Corrections, and the ruling on appeal. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County.

The Applicant was originally indicted by the Richland County grand jury for the murder of Roger Keitt. On October 3, 2001, after a jury trial before the Honorable James R. Barber, III, the Applicant was convicted of voluntary manslaughter and sentenced to a twenty-four (24) year term of incarceration. A timely Notice of Appeal was filed on the Applicant's behalf, and the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Pinkard, Op. No. 4006 (S.C. Ct. App. filed June 27, 2005), *cert. denied*, (S.C. Supreme Court, January 4, 2007).

SCANNED

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

> DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL IN THE PLEA STAGE BY HIS ATTORNEY'S FAILURE TO PROPERLY PREPARE AND EVALUATE THE CASE, EVALUATE THE PLEA OFFER, AND PROVIDE DEFENDANT WITH ADVICE REGARDING SAME IN A MANNER THAT MET MINIMALLY SUFFICIENT CONSTITUTIONAL STANDARDS. AS A RESULT OF HIS FAILURE TO PROPERLY INVESTIGATE, PREPARE AND EVALUATE THE CASE, TRIAL COUNSEL FAILED TO APPROPRIATELY RECOMMEND ACCEPTANCE OF THE PLEA OFFER UNDER CIRCUMSTANCES IN WHICH IT WAS INCOMPETENT NOT TO RECOMMEND ACCEPTANCE. HAD TRIAL COUNSEL MADE AN APPROPRIATE RECOMMENDATION THE DEFENDANT WOULD HAVE ACCEPTED THE TEN (10) YEAR PLEA OFFER EXTENDED BY THE STATE ON THE EVE OF TRIAL OR EVEN THE TWELVE (12) YEAR PLEA OFFER EXTENDED EARLIER. AS A RESULT, TRIAL COUNSEL'S FAILURE HAD A CONSTITUTIONALLY SIGNIFICANT IMPACT ON THE SENTENCE IMPOSED IN THIS CASE AND CONSTITUTES GROUNDS FOR THE GRANTING OF POST CONVICTION RELIEF.
>
> DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL IN THE TRIAL STAGE BY HIS ATTORNEY'S FAILURE TO PROPERLY PREPARE, EVALUATE, AND PRESENT THE CASE IN A MANNER THAT MET THE MINIMALLY SUFFICIENT CONSTITUTIONAL STANDARDS. TRIAL COUNSEL PURSUED A DEFENSE THEORY THAT WAS PATENTLY UNREASONABLE UNDER THE CIRCUMSTANCES (MISTAKEN IDENTITY) AND FAILED TO PURSUE ANY VIABLE DEFENSE THEORIES OR PUT FORTH ANY EVIDENCE IN SUPPORT THEREOF. HAD TRIAL COUNSEL ENGAGED IN REASONABLE PREPARATION AND MADE A REASONABLY COMPETENT TRIAL PRESENTATION DEFENDANT BELIEVES IT IS REASONABLY LIKELY THAT THE TRIAL MAY HAVE BEEN ALTERED IN A MANNER FAVORABLE TO HIM. ACCORDINGLY, TRIAL COUNSEL'S DEFICIENT PERFORMANCE RISES TO THE CONSTITUTIONAL PROPORTIONS AT WHICH POST CONVICTION RELIEF IS APPROPRIATE.

At the evidentiary hearing, Applicant proceeded on the allegations stated in the application for post-conviction relief. The Applicant moved to add an additional allegation related to trial counsel's inability to produce the Applicant's file.

FINDINGS OF FACT

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (Rev. 2003).

Applicant alleges that trial counsel was ineffective in his representation at trial and at the plea stage. Former Assistant Solicitor Matthew D. Bodman and Solicitor Don Sorenson prosecuted the case. Bodman testified he thought the State had a strong case but made one or more plea offers. He testified that they were always open to discuss a potential plea; however, an Alford plea[1] was never offered. Bodman identified a written plea offer dated August 16, 2001 offering a plea to voluntary manslaughter for a cap of twenty (20) years. There may have been an offer for something less than twenty (20) years but he could not recall any specific number.

The Applicant presented the testimony of several friends and family members. Collette Pinkard, the Applicant's mother, testified that she turned her son in after she learned he may have been involved in the shooting. She paid the funds to retain Mr. DePew to represent Applicant and she attended at least three meetings with trial counsel and the Applicant. At the first meeting, the three of them discussed the retainer agreement and the terms and conditions of the representation. At the second meeting which occurred the week before trial, trial counsel discussed with them the strategy for trial, including the defense of misidentification. She testified trial counsel discussed the plea offer of twelve (12) years for voluntary manslaughter and stated that the likelihood of success at trial was 75/25 percent in Applicant's favor. After the second meeting, Ms. Pinkard discussed a plea offer with Applicant and recommended that Applicant take the advice of his trial counsel. She believed trial counsel reviewed the discovery materials with Applicant prior to trial. Based on trial counsel's representations to her, she believed an independent investigator was hired and that the misidentification defense was developed after several eyewitness interviews. Ms. Pinkard testified she attended a third meeting with trial counsel and Applicant on the day of jury selection, but at the time of the meeting she did not know of the unfavorable ruling at the pre-trial hearing. At the third meeting, trial counsel

[1] North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

ЯЧ
#3

did not inform her that the likelihood of success at trial had changed for the worse and trial counsel did not discuss whether Applicant should then accept the State's previous plea offer.

The Applicant presented the testimony of William Joe Ryan, Applicant's mother's boyfriend. Mr. Ryan testified that he met with trial counsel and Applicant once and that Applicant's mother and Deborah Thomas also attended that meeting. Ryan asked trial counsel about Applicant's likelihood of success at trial and trial counsel indicated that the success rate was 75/25 in Applicant's favor.

Deborah Thomas, the mother of Applicant's child, testified that she met once with trial counsel and Applicant and that Applicant's mother and Mr. Ryan also attended that meeting. At that meeting, trial counsel informed them that the likelihood of success at trial was 75/25 in Applicant's favor. She testified that trial counsel informed them he hired an investigator who visited the scene, that trial counsel personally visited the scene to investigate, and that the Applicant would not need to call witnesses at trial. Applicant did not discuss accepting the plea offer with Ms. Thomas. Ms. Thomas testified that trial counsel approached Applicant's family prior to jury selection and the pre-trial hearing to discuss a plea deal and that Applicant indicated he wanted "to go to court."

Ms. Pinkard, Mr. Ryan, and Ms. Thomas testified that the Applicant was charged with murder and that trial counsel misadvised him as to the chances of success at trial. These witnesses testified that Applicant was acquitted of the murder charge and was convicted of voluntary manslaughter. None of these witnesses testified that the Applicant was willing to admit guilt prior to the PCR.

The Applicant testified that he met with trial counsel on several occasions and at least one time alone without friends and family. Trial counsel successfully arranged for the Applicant's release on bond prior to the beginning of trial. There was a plea offer by the State for twelve (12) years for voluntary manslaughter. According to the Applicant, trial counsel advised him not to take the plea offer because there was a 75% chance of success at trial due to identification issues. When evaluating trial counsel's advice regarding the possibility of success at trial, Applicant believed success meant he would "go home," rather than a conviction for a lesser included offense, such as voluntary manslaughter. The Applicant never wanted to serve any time. During the trial when the identification issues manifested favorably for the State, trial

counsel still maintained Applicant had a 50% chance of success. The Applicant claimed that if he had been properly advised about the reality of the strength of the State's case, he would have pled guilty and would not have gone to trial. The Applicant testified that in hindsight he should have accepted responsibility and taken the plea offer.

Applicant testified he always brought his family to meetings with trial counsel. Applicant did not pay trial counsel; his family arranged the retainer. The Applicant never told trial counsel what happened on the night of the shooting. Trial counsel never reviewed any of the evidence or discovery with him. Applicant conceded that trial counsel was successful in that Applicant was acquitted of the murder charge and can only face, at most, voluntary manslaughter charges if the conviction is reversed.

Trial counsel testified that he gave the Applicant's file, or a copy of the file, to the Office of Appellate Defense because the direct appeal was pending. Additionally, trial counsel's office was destroyed in a fire and that is why he could not locate the case file. Trial counsel always dealt with Solicitor Sorenson regarding any plea offer(s) which he communicated to his client. Applicant always insisted on having his "entourage" with him at attorney meetings and that Applicant waived attorney-client privilege in that respect. Trial counsel approached Applicant "several times" with the plea offer, but Applicant's mother was present at each visit and insisted that Applicant would not plea to any charge. Applicant understood the discussions with counsel, but always deferred to his mother. Trial counsel did everything he could to convince the Applicant to take the plea offer, but the Applicant always rejected any offer. Trial counsel tried "several times" to meet with Applicant alone. He met with Applicant alone between one and three times, including once after the pre-trial hearing and once when the Applicant's mother was sequestered. The Applicant always refused to plea and indicated his intent to proceed to trial. Trial counsel attempted to have the Applicant sign a form acknowledging that he refused to plea and instead wanted to go to trial but Applicant's mother "snatched that up" and the form was never signed. Trial counsel conceded he does not have that form, albeit unsigned.

Trial counsel testified that while he usually hires an investigator for cases, one was not hired in this case because there were no funds available. Trial counsel personally visited the crime scene and provided Applicant with a copy of the discovery materials.

Based on his investigation and his meetings with the Applicant, there was no legitimate alibi or self-defense claim. Applicant informed trial counsel the victim did not have a weapon and the victim was not threatening anyone at the time of the shooting. Applicant admitted to being at the scene and shooting the victim. Applicant's statements that he was present at the scene and shot the victim limited trial counsel's role in representing Applicant at trial. Because Applicant refused to plea, the best strategy was to pursue a mistaken identity defense and to force the State to prove its case. There is always a possibility that one juror does not agree with the State's case.

At the time of the PCR hearing, trial counsel was suspended from the practice of law. Trial counsel conceded that he had received bar complaints from other clients in 2001 regarding his failure to return calls. In 2002, trial counsel was issued a public reprimand. In 2007, trial counsel entered a plea of nolo contendere in magistrate's court for the unlawful use of a driver's license and in 2008 was placed on definite suspension stemming from that conviction. The Applicant provided this Court with several documents regarding trial counsel's criminal record, the public reprimand from 2002, and the definite suspension from 2008. The materials presented do not relate to the relief sought by Applicant. Applicant did not file any disciplinary complaint against trial counsel. The documents may be relevant for the purpose of assessing the credibility of trial counsel and this Court has evaluated the credibility of trial counsel accordingly.

DISCUSSION AND CONCLUSIONS OF LAW

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, supra, at 442, 334 S.E.2d at 814.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by "reasonableness under professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland v. Washington, supra).

Second, counsel's deficient performance must have prejudiced the Applicant to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, supra, at 117-18, 386 S.E.2d at 625.

Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler v. State, supra (citing Strickland v. Washington, supra, at 441, 334 S.E.2d at 814). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. The Applicant must overcome the presumption of effective counsel to receive relief. Cherry v. State, supra, at 118, 386 S.E.2d at 625.

For the reasons explained below, Applicant has failed to demonstrate by a preponderance of the evidence that trial counsel's performance was deficient and that he was prejudiced as a result of counsel's performance.

A. Ineffective assistance of trial counsel regarding the plea offer(s)

The Applicant alleges that trial counsel was ineffective in failing to properly prepare and evaluate the case and in failing to recommend or advise Applicant to accept the plea under the circumstances. The South Carolina Supreme Court has held that a criminal defendant is entitled to the right of effective assistance of counsel when rejecting a plea offer. Judge v. State, 321 S.C. 554, 560, 471 S.E.2d 146, 149 (1996) (holding that the Sixth Amendment protects criminal defendants against ineffective assistance of counsel during the plea bargaining process, even if the plea offered ultimately is rejected). However, the Applicant must prove trial counsel failed to render reasonably effective assistance and that he was prejudiced to be afforded relief. Id. In Judge v. State, the Supreme Court noted that "certain omissions by counsel constitute incompetence almost *per se*," including trial counsel's failure to advise his client of a plea bargain. Judge v. State, supra, at 560, 471 S.E.2d at 149. "[C]ounsel's advice to reject a plea agreement does not fall below the reasonably effective assistance standard simply because, in hindsight, the advice was wrong or the attorney's trial tactics backfired." Id. (citing In re Alvernaz, 2 Cal.4th 924, 8 Cal.Rptr. 2d 713, 721, 830 P.2d 747, 755 (1992) (holding that a defense attorney's simple misjudgment as to the strength of the prosecution's case or the chances of acquittal will not, without more, give rise to a claim for ineffective assistance of counsel)). As the Supreme Court noted, an evaluation of an attorneys' trial tactics is "highly deferential":

> [J]udicial scrutiny of defense counsel's performance should . . . avoid second-guessing, and begin with a "strong presumption" that counsel's conduct fell within "the wide range of reasonable professional assistance." Deference is particularly due attorney decisions concerning strategy and tactics. Some circuit courts have concluded, thus, that this type of choice by counsel will be held ineffective only if it was "so patently unreasonable that no competent attorney would have chosen it" or it was so "ill-chosen" as to render counsel's overall representation constitutionally defective.

Id. at 561, 471 S.E.2d at 150 (citing Turner v. Tennessee, 664 F.Supp. 1113, 1121 (M.D. Tenn. 1987)).

In seeking post-conviction relief, the Applicant relies substantially on Judge, which relies on Turner v. Tennessee.[2] The Turner case provides some authority for the Applicant's position that ineffective assistance of counsel in deciding whether to reject a plea offer may result in the need to reinstate the offer or reverse the conviction. In Turner, the defendant was indicted for two counts of aggravated kidnapping and one count of felony murder. Relying on the advice of counsel, the defendant rejected the state's offer of a sentence of two (2) years imprisonment if he would plead guilty to one of the three counts charged against him. The defendant was subsequently convicted of all counts and sentenced to life imprisonment. After losing his state court appeals, Turner sought federal habeas corpus relief, primarily asserting that he suffered a violation of his right to effective assistance of counsel when he relied to his detriment on his counsel's advice to reject the state's plea offer. In support of his claim of ineffective assistance of counsel, Turner introduced evidence that his attorney "had an inflated estimate of his own abilities, an unrealistic estimate of the probabilities of outcome at trial, and a casual attitude toward trial preparation." Turner, 664 F.Supp. at 1115, n. 6. There was also evidence that Turner's attorney "used cocaine and consorted with prostitutes during the weekend that preceded trial." Id. Turner's counsel's advice to reject the state's offer was particularly unreasonable considering that co-counsel to the defendant, who had advised Turner all along to accept the state's offer, testified that he thought the decision to go to trial was "ludicrous." Turner v. Tennessee, 664 F.Supp. at 1121. Moreover, an attorney for one of Turner's co-defendants, who

[2] While respectful of our State Supreme Court's ruling in Judge, this Court notes that Turner was vacated in light of Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989) (holding no presumption of vindictiveness in sentencing arose when sentence imposed after trial was greater than that previously imposed after guilty plea which defendant succeeded in having vacated).

had advised his client to accept the same offer that had been made to Turner, informed Turner's attorneys that Turner would "be crazy not to take" the two year offer. Id. Giving deference to these facts found by the state court, the district court concluded that the actions of Turner's trial counsel were outside the bounds of reasonableness established by professional norms.

In the present case, Applicant has failed to establish that trial counsel failed to render reasonably effective assistance under prevailing professional norms at the plea stage. Based on the credible testimony, trial counsel communicated the plea offer(s) to the Applicant. Trial counsel advised the Applicant several times throughout the course of the representation to take the plea, including once after the trial judge ruled against defendant at the pre-trial hearing to suppress the testimony of the State's witnesses. Each time Applicant rejected the plea offer and indicated that he wished to proceed to trial. The Applicant's own testimony was that he did not want to serve any prison time and thought he could go home. Applicant's trial counsel was not ineffective, even in hindsight, if he advised the Applicant that there was a good chance the charge could be beat. Even if trial counsel misadvised the Applicant to reject the State's offer(s), both Turner and Judge reveal a factual basis which is absent from the case at bar, and there is otherwise no basis in the record for this Court to conclude that Applicant's trial counsel rendered ineffective assistance or that the Applicant was prejudiced. The Judge case found trial counsel's advice to reject the plea was deficient because the attorney had not properly reviewed the Brady materials prior to advising defendant on whether to accept the plea. Such a situation does not exist in the case at hand.

Applicant testified that in hindsight he would have pled guilty to voluntary manslaughter had trial counsel provided an accurate assessment of his likelihood of success at trial and had he known trial counsel did not hire an investigator to work the case. Trial counsel testified he advised Applicant to take the plea on several occasions, but each time Applicant deferred to his mother who insisted Applicant reject the plea. The decision to reject any plea offer is one for the defendant. In this case, Applicant rejected the plea offer after trial counsel advised him on several occasions to take the plea. Even taking the Applicant's claims of misadvice regarding the likelihood of success at trial into consideration, the Applicant has failed to overcome the presumption that counsel was effective in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Any "misadvice" trial counsel may have provided regarding the

likelihood of success at trial did not result in the deprivation of any constitutional or other right to which the Applicant was entitled.

Where alleged ineffective assistance of counsel causes a defendant to plead guilty and waive his right to trial, the remedy is clear: permit the defendant to rescind his plea and allow him to go to trial. However, where the alleged deficient performance of counsel causes a defendant to reject an opportunity to plead and to receive his constitutionally guaranteed fair trial, it is impossible to resuscitate the original opportunity. The balance of risks and incentives on both sides that existed prior to trial cannot be recreated, and any attempt to do so raises substantial separation of powers issues under the Constitution of this State and the United States. Davie v. State, 381 S.C. 601, 675 S.E.2d 419 (2009) (noting that specific performance of plea agreements is not warranted where it might unnecessarily infringe on the state's competing interests). Some PCR applicants are granted new trials when plea counsel fails to advise the accused of a plea bargain offer, however, there is no evidence Applicant was not advised of the existence of the plea offer(s). Davie v. State, supra (holding that trial counsel was deficient in failing to communicate the State's plea offer to the Applicant). If a defendant has been convicted at a fair trial after rejecting, with the assistance of counsel, the plea opportunity, there is nothing "unreliable" or "fundamentally unfair" about imposing a sentence based on the conviction. Lockhart v. Fretwell, 506 U.S. 364, 372, 113 S.Ct. 838, 844.

A plea bargain is essentially a "contract between the defendant and the prosecutor to which the court consents to be bound" and by which a defendant waives his right to trial. Brady v. United States, 397 U.S. 742, 748, 90 S.Ct. 1463, 1468, 25 L.Ed.2d 747 (1970). The State may present such an opportunity to plea to some defendants but not to others. Such opportunities can be contingent, time limited, or withdrawn as the State re-evaluates its case. They are mere offers and there is no evidence before this Court of any detrimental reliance on the part of the Applicant.

Accordingly, Applicant's allegations that trial counsel's performance at the plea stage was deficient and that he was prejudiced as a result are **DISMISSED** with prejudice.

B. Ineffective assistance of counsel at the trial stage

Applicant alleges that he was denied effective assistance of counsel at the trial stage based on trial counsel's failure to properly prepare, evaluate, and present the case, and based

upon trial counsel's failure to pursue any viable defense theories or put forth evidence in support of these theories. Specifically, Applicant alleges that trial counsel failed to conduct an independent investigation or interview witnesses in preparation for trial; trial counsel relied on a misidentification theory that was patently inappropriate under the circumstances; and trial counsel failed to defend the case on any reasonable ground.

Applicant alleges trial counsel was ineffective in his failure to adequately investigate Applicant's case. "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). Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), *cert. denied*, 499 U.S. 982 (1991). Applicant and his family members testified that, based on trial counsel's representations, they believed Applicant hired an independent investigator. Applicant presented no evidence to indicate that conducting an independent investigation or interviewing the State's witnesses or any other potential witnesses would have led to any different result. Applicant is not entitled to relief on the grounds of trial counsel's failure to investigate.

The Applicant also alleges that trial counsel failed to interview witnesses and as a result was ineffective regarding the cross-examination of witnesses. The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not proffer any questions counsel allegedly failed to ask witnesses and did not present any testimony showing the witnesses' answers at trial would have been different had trial counsel directed an independent investigation to be conducted. Accordingly, the Applicant has not shown that trial counsel's failure to interview witnesses or failure to use a different approach to cross-examination would have been beneficial to the defense.

In addition, defense counsel's failure to call witnesses at a criminal trial does not constitute ineffective assistance of counsel. Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding that trial counsel's failure to call witnesses whose testimony could have supported the defense does not constitute ineffective assistance of counsel where the witnesses, in counsel's judgment, would not have been of value to defendant's case). Trial counsel may choose not to present the testimony of witnesses for various reasons. In the case at hand, the South Carolina Court of Appeals specifically acknowledged that when a defendant offers no evidence he is entitled to the final closing argument to the jury and "the right to open and close the argument to the jury is a substantial right." State v. Pinkard, Op. No. 4006 (S.C. Ct. App. filed June 27, 2005), *cert. denied*, (S.C. Supreme Court, January 4, 2007) (citing State v. Rodgers, 269 S.C. 22, 235 S.E.2d 808 (1977); State v. Gellis, 158 S.C. 471, 155 S.E. 849 (1930)). To the extent trial counsel's strategy was to not call witnesses and force the State to prove its case beyond a reasonable doubt, this may not form the basis for a claim of ineffective assistance of counsel. Cherry v. State, supra.

To be afforded relief for the failure to present evidence or witnesses, Applicant must provide this Court with evidence, such as witnesses, expert reports, etc. in order to demonstrate that he was prejudiced by the absence of such. An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). Applicant did not meet his burden to prove that trial counsel was deficient and that the result of his trial would have been different but for this alleged deficiency. Harris v. State, 377 S.C. 66, 659 S.E. 2d 140, 146 (2008) (citing Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding that where contents of challenged documents were not presented at the PCR hearing, defendant failed to present any evidence of probative value demonstrating how counsel's failure to obtain the unproduced documents in a more timely fashion prejudiced his defense)); cf. Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) ("mere speculation

of what a witness' testimony may be is insufficient to satisfy burden of showing prejudice in a petition for PCR").

There is no evidence of probative value that trial counsel was ineffective at the trial stage and that the Applicant was prejudiced. Applicant was charged with murder stemming from a shooting at an apartment complex. State v. Pinkard, Op. No. 4006 (S.C. Ct. App. filed June 27, 2005). On June 7, 2000, during a fight between Applicant and a third party, Roger Keitt intervened in an effort to ease tensions between the combatants. Id. According to witnesses, Pinkard responded by shooting and killing Keitt. Id. Prior to trial, trial counsel met with Applicant and discussed the applicability of several possible defenses with Applicant, including self-defense, defense of others, and an alibi defense. Trial counsel testified he pursued a "mistaken identity" defense after Applicant rejected the plea offer(s) and admitted that he was at the scene and was the shooter. Trial counsel chose not to pursue either self-defense or defense of others theories because Applicant informed him that the victim did not have a weapon and did not threaten anyone at the time of the shooting. Trial counsel sought to rely on conflicts in the eyewitnesses' accounts to impeach the witnesses and to raise a reasonable doubt as to Applicant's guilt. If counsel articulates valid reasons for employing certain trial strategies, such conduct will not constitute ineffective assistance of counsel. Id. Courts must be wary of second-guessing counsel's trial tactics. Id. Trial counsel's trial strategy does not constitute ineffective assistance of counsel.

Further, this Court finds that Applicant's allegation that trial counsel was ineffective based on his inadequate meetings with Applicant is without merit. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronic, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Applicant's allegation that trial counsel was ineffective for conducting only one meeting alone with Applicant is without merit.

Finally, this Court acknowledges the fact that due to trial counsel's representation, the Applicant was acquitted of murder. The Applicant himself attempted to define the case as

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overwhelming against him—consisting of approximately seven (7) eyewitnesses to the shooting, some of whom knew the Applicant. Despite the supposed overwhelming evidence of the case and trial counsel's purported ineffectiveness, trial counsel's representation was effective to the extent that the Applicant was acquitted of murder. Trial counsel's representation, coupled with the protection against double jeopardy, allows Applicant to avoid the possibility of facing any potential retrial for the murder of Roger Keitt. The Applicant was convicted of the lesser-included offense of voluntary manslaughter. Applicant has not argued that trial counsel was ineffective regarding the consideration of the lesser-included offense of voluntary manslaughter by the jury. Accordingly, this Court finds the Applicant's claim of ineffective assistance of counsel during the trial stage to be wholly without merit.

Regarding the Applicant's case file, this Court accepts trial counsel's explanation that the file is not available because it was destroyed in a fire and/or that the Office of Appellate Defense took possession. The Applicant presented no testimony or other evidence as to the status of the Applicant's file within the Office of Appellate Defense. Also, the Applicant presented testimony from the Assistant Solicitor who prosecuted the case. Any purported missing items not available from trial counsel's file could have been introduced by other means. Trial counsel's failure to produce the file at the hearing does not constitute ineffective assistance of counsel.

CONCLUSION

For the foregoing reasons, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his PCR application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation.

This Court finds that the Applicant failed to present evidence of the following allegations set forth in his application at the hearing and has, thereby, waived them: Applicant was deprived of the ability to call witnesses based on trial counsel's mistakes, and trial counsel never explained to Applicant that the State had no obligation to call every witnesses listed. This Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway

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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 issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

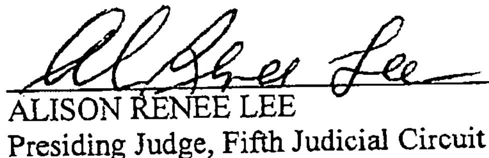
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be **DENIED** and **DISMISSED** with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge, Fifth Judicial Circuit

August 31, 2011
Columbia, South Carolina

5th 8P/4

Form 4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2007CP4007163

Brandon Ulyssess Pinkard vs. State of South Carolina

Plaintiff Defendant

RICHLAND COUNTY FILED 2011 OCT 5 AM 10:49 JEANETTE W. McBRIDE C.C.P. & G.S.

CHECK ONE:

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: ______

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

Dated at Columbia, South Carolina, this _____ day of _______________, 2011.

____
PRESIDING JUDGE

This judgment was entered on the _______ day of _______________, 2011, and a copy mailed first class this 5 October 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Brandon Ulyssess Pinkard Derk B. K. Van Raalte IV Brandon Ulyssess Pinkard	State of South Carolina Brian T Petrano State of South Carolina
ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride
Clerk of Court

SCRCP APP-24/FORM 4

SCANNED

#028039

ATTORNEY GENERAL'S OFFICE

RECEIVED 10/11/11

ADMINISTRATIVE INSTRUCTIONS

____FILE ____OPEN ____END

____HAVE ____COPIES MADE

____ROUTE TO ____

____ORDER: ____TRANSCRIPT

__PEN RECORDS __CLERK RECORDS

____OTHER: ____

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
OCT 12 2011
S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2007-CP-40-7163

Brandon Pinkard, 280309,

Petitioner,

v.

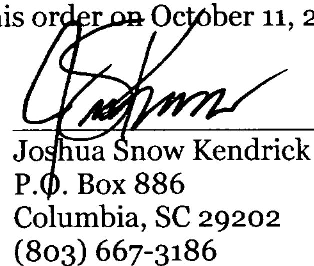
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Brandon Pinkard appeals the order of the Honorable Alison Renee Lee dated October 5, 2011. Pinkard received written notice of entry of this order on October 11, 2011.

October 12, 2011



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Attorney for the Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
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S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
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Alison Renee Lee, Circuit Court Judge

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Brandon Pinkard, 280309,

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v.

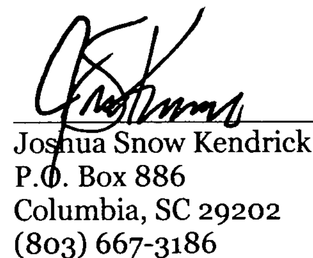
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on October 12, 2011, addressed to the State's attorney of record, Brian T. Petrano, South Carolina Attorney General's Office, Post Office Box 11549, Columbia, South Carolina 29211 on October 12, 2011.

October 12, 2011



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