

The Supreme Court of South Carolina

Tyrone Jacobs,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2011-CP-26-01414

ORDER

For good cause shown, the request for an extension until May 16, 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

April 17, 2012

cc: Appellate Defender Susan B. Hackett
Assistant Attorney General Christina J. Catoe

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
Steven H. John, Circuit Court Judge

RECEIVED

APR 16 2012

S.C. Supreme Court

TYRONE JACOBS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**

3

The undersigned counsel would respectfully request a **final thirty-day extension, until May 16, 2012**, in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by two prior orders of this Court.
2. Counsel filed the brief of petitioner in the case of James Robinson v. State in the Court of Appeals on April 13, 2012. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Elbert Wallace in the Court of Appeals on March 28, 2012. Counsel filed the initial brief of appellant and designation of matter in

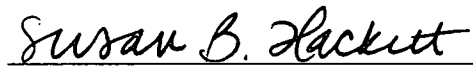
the case of State v. Sasha A. Gaskins with the Court of Appeals on March 23, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Johnson J. Mitchell v. State in the Supreme Court on March 9, 2012. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Connie Dumas in the Court of Appeals on March 8, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of John Otis Oakman, Jr. v. State in the Supreme Court on February 28, 2012. Counsel filed the return to petition for writ of certiorari in the case of Chico Bell v. State in the Supreme Court on February 22, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Donald Carter v. State in the Supreme Court on February 16, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Toney Eugene Suarez v. State in the Supreme Court on February 8, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Mikie M. Caldwell v. State in the Supreme Court on February 6, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Timothy Blassingame v. State in the Supreme Court on February 1, 2012.

3. This request is made in good faith, and not for purposes of delay.

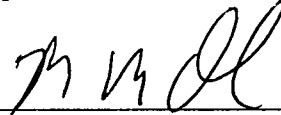
5. As indicated by her consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final thirty-day extension, until May 16, 2012**, in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



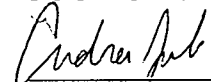
Susan B. Hackett
Appellate Defender



Robert M. Dudek
Chief Appellate Defender

April 16, 2012

I DO NOT OPPOSE:


For Christina Catoe

The Supreme Court of South Carolina

Tyrone Jacobs,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2011-CP-26-01414

ORDER

For good cause shown, the request for an extension until April 16, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Frenda J. Shealy*
Clerk

Columbia, South Carolina *Chief Deputy*

March 16, 2012

cc: Appellate Defender Susan B. Hackett
Assistant Attorney General Christina J. Catoe

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Steven H. John, Circuit Court Judge

RECEIVED

MAR 15 2012

S.C. Supreme Court

TYRONE JACOBS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**

2

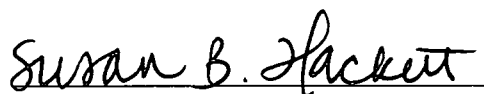
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1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.
2. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Johnson J. Mitchell v. State in the Supreme Court on March 9, 2012. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Connie Dumas in the Court of Appeals on March 8, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of John Otis Oakman, Jr. v. State in the Supreme Court on February 28, 2012. Counsel filed the return to petition for writ of certiorari in the case of Chico Bell v. State in the Supreme

Court on February 22, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Donald Carter v. State in the Supreme Court on February 16, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Toney Eugene Suarez v. State in the Supreme Court on February 8, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Mikie M. Caldwell v. State in the Supreme Court on February 6, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Timothy Blassingame v. State in the Supreme Court on February 1, 2012. In January, 2012, Counsel filed the brief of petitioner in the case of Jamul Ratub El v. State, as well as the petition for writ of habeas corpus in the original jurisdiction in the case of Kerry Garner v. State. Additionally, Counsel filed the initial briefs of appellant and designations of matter in the cases of State v. John Herndon and State v. Christopher Jerome Shippy, and the petition for writ of certiorari and accompanying appendix in the case of Jason Orlando Riley v. State in January, 2012. This request is made in good faith, and not for purposes of delay.

WHEREFORE, the undersigned counsel would respectfully request a thirty-day extension in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

March 15, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Steven H. John, Circuit Court Judge

TYRONE JACOBS,

PETITIONER,

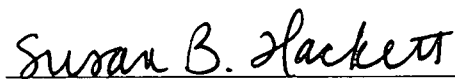
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Tyson Andrew Johnson, Sr., Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 15th day of March, 2012.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 15th day of March, 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 2, 2013

The Supreme Court of South Carolina

Tyrone Jacobs,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2011-CP-26-01414

ORDER

The request for an extension until **March 15, 2012** to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

February 15, 2012

cc: Appellate Defender Susan B. Hackett
Assistant Attorney General Christina J. Catoe

ORIGINAL



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

February 14, 2012

RECEIVED

FEB 14 2012

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

S.C. Supreme Court

Re: Tyrone Jacobs v. State of South Carolina

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in the above-referenced case are due to be served and filed today. Because of my present workload, I respectfully request a thirty-day extension of this deadline. No prior extensions have been requested in this case.

By copy of this letter, I am informing Christina Catoe, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/kam

cc: Christina Catoe



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

December 19, 2011 **RECEIVED**

DEC 19 2011

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

S.C. Supreme Court

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.

Tyrone Jacobs v. State of South Carolina

12/16/2011

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

October 18, 2011

Mr. Henry P. Young
Circuit Court Reporter
11 Roxanna Drive
Ninety Six, SC 29666

Dear Mr. Young:

RECEIVED

OCT 18 2011

S.C. Supreme Court

Please provide us with the following transcript:

Tyrone Jacobs v. State of South Carolina Case #: 11-CP-26-01414

County: Horry Date of Trial: August 22, 2011

Presiding Judge: Steven H. John

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,

Lorjane French
Legal Services Coordinator

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

The Brooks Law Offices, LLC

Charles T. Brooks, III
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
Post Office Box 291226, Columbia, SC 29229
OFFICE: (803) 418-5708
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792
Email: cbrooks@ctbrooks.com

Irma R. Brooks
Attorney

September 6, 2011

IR

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Tyrone Jacobs v State of South Carolina
Case No. 2011-CP-26-1414

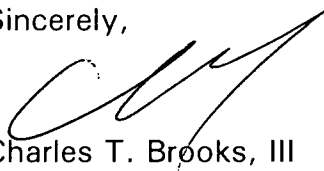
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/jlb

Enclosed as stated

Cc: Christina J. Catoe, Office of Attorney's General
South Carolina Office of Appellate Defense
Tyrone Jacobs, 328542

RECEIVED

SEP 12 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Steven H. John, Circuit Court Judge

Case No: 2011-CP-26-1414

Tyrone Jacobs, Appellant
S.C.D.C. No.: 328542

v.

The State Respondent

NOTICE OF APPEAL

Tyrone Jacobs, appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable Steven H. John, on August 22, 2011, which I, Charles T. Brooks, III, received on September 6, 2011.

September 6, 2011



Charles T. Brooks, III
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
(803) 418-5708
Attorney for Appellant

Other Counsel on Record:
Christina J. Catoe, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3970

RECEIVED

SEP 12 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Steven H. John, Circuit Court Judge

Case No: 2011-CP-15-1414

Tyrone Jacobs.....Appellant
S.C.D.C. No.: 328542

v.
The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 6th day of September, 2011, I served the foregoing Notice of Appeal, Order of Dismissal, as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on September 6, 2011, addressed to the following as indicated below:


South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Christina J. Catoe, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Tyrone Jacobs, 328542
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina, 29010

Dated: September 6, 2011



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
))
Tyrone Jacobs, # 328542,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2011-CP-26-1414

**ORDER DENYING
POST-CONVICTION RELIEF**

This matter came before the Court pursuant to an Application for post-conviction relief filed February 15, 2011, by Tyrone Jacobs. Respondent made a Return on March 22, 2011. An evidentiary hearing was convened at the Horry County Courthouse on August 22, 2011. The Applicant was present in court and represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Christina J. Catoe, Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. The Applicant was indicted in March 2007 for the murder of David Bennett (2007-GS-26-911). Ralph J. Wilson, Esquire, represented the Applicant. On May 19-21, 2008, the Applicant was tried and convicted pursuant to a jury trial before the Honorable Kristi Lee Harrington. Judge Harrington sentenced the Applicant to thirty years. A notice of appeal was timely filed, and Joseph L. Savitz, III, Esquire, submitted a brief pursuant to Anders v. California on the Applicant's behalf. The South Carolina Court of Appeals affirmed the conviction on February 2, 2010 (2010-UP-081). The case was remitted to the circuit court on February 18, 2010.

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, supra. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood, supra, at 109, 525 S.E.2d at 517 (citations omitted). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. When a defendant challenges his conviction after a trial, the proper consideration is whether there is a reasonable probability that, absent the errors, the fact-finder would have had a reasonable doubt respecting guilt. Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007. (citations omitted). In order to receive relief, an

applicant must prove both ineffective assistance and resulting prejudice. See, e.g., Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

ALLEGATIONS

In his PCR Application, Mr. Jacobs alleged that his custody was unlawful for the following reason(s):

- (1) Ineffective assistance of trial counsel.

The Applicant stated that he was seeking to have the conviction and sentence vacated or set aside, or to be granted a new trial.

REVIEW OF THE PCR HEARING

At the outset of the hearing, the Applicant's PCR counsel made a motion for continuance. He stated that, although he was prepared to go forward with the PCR hearing, the Applicant did not feel prepared and did not feel that his attorney had enough time to fully prepare. The Applicant's PCR counsel advised the court that he had handled numerous PCR cases throughout the state and did not believe that a delay in the hearing would assist him in representing the Applicant. The State opposed the continuance motion since the Applicant's PCR counsel stated that he was prepared to go forward. Based upon the statements of PCR counsel, this Court denied the motion for continuance, finding that the Applicant's PCR counsel was fully prepared for the hearing and that a continuance would not assist in the preparation of the Applicant's case.

Thereafter, the Applicant was called as the first witness. He testified that Ralph Wilson represented him on his murder charge. He stated that Mr. Wilson did not hire a private investigator and that he failed to sufficiently investigate the case. He stated that he was unsure of whether Mr. Wilson visited the crime scene or not. He stated that he felt that Mr. Wilson should have questioned the State's witnesses better and should have objected more at trial.

The Applicant stated that he did not testify at trial. He stated that if he had testified, it would have helped his case. He stated that, on the night of the incident, he had a confrontation with his cousin (the victim) over his use of a cell phone. The Applicant stated that, at that time, he was age twenty-three and his cousin was age thirty-seven. He and his cousin continued to exchange heated words that night at the neighborhood pool hall. The Applicant stated that after he was asked to leave, he left and went outside. He stated that he did not leave to go get his weapon; instead, he already had his pistol on him. Outside, he talked with a female acquaintance for a while. About ten to fifteen minutes later, his cousin came outside. He stated that there were some other men that followed his cousin outside. He stated that a lot of people there that night, including his cousin, had been drinking, smoking marijuana, and/or using cocaine that night.

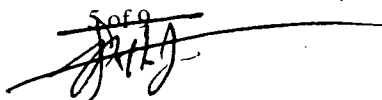
The Applicant stated that he and his cousin "squared off" and were arguing face to face. He stated that his cousin had a pool stick, so he drew his pistol. At one point, his cousin became more aggressive and started calling the Applicant names. His cousin made a gesture to come towards him, so the Applicant tried to fire his weapon. The gun misfired, and his cousin backed off. The Applicant then re-loaded the gun. His cousin then resumed the heated words and name calling, and when he took another step towards the Applicant, the Applicant shot him in the leg. The Applicant continued to shoot as his cousin "ran into" his bullets. The Applicant testified that he had no intent to take his cousin's life that night, but that he was just trying to defend himself. The Applicant acknowledged that he had a prior conviction for unlawful possession of a firearm.

The Applicant stated that he and his attorney discussed a 20-year plea offer, but he rejected it because he was not guilty. They also discussed potential witnesses for trial. The

Applicant told his cousin about a potential witness named Lorenzo Bennett, a cousin of the Applicant who was present on the night of the incident. However, his attorney told him that this witness might "sink him" and he recommended not calling him as a defense witness.

Ralph J. Wilson, Esquire, was called as the Applicant's second witness. He testified that he represented the Applicant on a previous charge and had a good working knowledge of him. At the time of trial, Mr. Wilson had been on the Applicant's case for about a year. The incident occurred in November 2006, and the Applicant left the county and went to Charleston where he was later arrested. He later bonded out of jail and then retained Mr. Wilson. Mr. Wilson stated that he went to the crime scene two times and also met with potential witnesses. Two witnesses that the Applicant requested that counsel interview were Chris Bennett and Lorenzo Bennett. Mr. Wilson stated that Chris Bennett was uncooperative and told him "you don't want me." Lorenzo Bennett was more cooperative but he claimed that he heard the shots but did not see anything. The pool hall owner, Mr. McCullough, was also fairly uncooperative toward the defense. Therefore, Mr. Wilson advised the Applicant that it would probably not help his case to call these people as defense witnesses.

Mr. Wilson explained to the Applicant that he had met with the forensic pathologist in the case, Dr. Proctor, and had a long discussion with him. It was Dr. Proctor's belief that the victim was first shot in the ankle, which caused him to fall to the ground, and then he was shot two more times including a shot in the back. In addition, there was what appeared to be a defensive graze wound on the victim's hand. Mr. Wilson asked Dr. Proctor about various possibilities regarding angles of the shots, and Dr. Proctor explained that it was clear that the victim's back had to be exposed to the Applicant in order for that shot to have struck him there. Based upon the nature of the gunshot wounds in the victim, and the fact that one of the shots was in the

5069


victim's back, it appeared that the Applicant's story regarding being face to face with the victim at the time he was shot could not have been true. At trial, Mr. Wilson did get Dr. Proctor to admit that it was possible that the victim's back was exposed as he turned to swing the pool stick at the Applicant. Mr. Wilson argued this version of events in his closing argument and argued that the Applicant had acted in self-defense that night.

After conducting what he believed was a reasonable and thorough investigation into the case, Mr. Wilson discussed his opinions with the Applicant. He told the Applicant that, based upon his assessment of the evidence, it would be difficult to establish self defense. He also told the Applicant that there was a strong possibility that the jury would find the Applicant guilty of murder. Mr. Wilson stated that he and the Applicant thoroughly discussed the 20-year plea offer made to the Applicant. Mr. Wilson believed this to be a fair offer, and he advised the Applicant to consider it in light of the potential problems with his self-defense claim. Mr. Wilson also thoroughly discussed with the Applicant his right to testify or not testify at trial. He advised him about cross-examination and about the potential of his prior record coming in to impeach him. He also warned him that it was likely that the solicitor would ask him to demonstrate how the shooting occurred, and advised him that this could be a big problem since he would have to somehow explain the shot to the victim's back. The Applicant was fully advised regarding all of these matters, and made his own decision to decline the plea offer, proceed to trial, and to not testify at trial.

Mr. Wilson acknowledged that he did not hire a private investigator in the case and did not hire a ballistics expert to determine whether all of the shots came from the same weapon. Mr. Wilson explained that he did not feel that a private investigator would have helped in this

particular case, and that he did not believe a ballistics expert was necessary because there was no dispute that all of the shots came from the Applicant's gun.

Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In considering the Applicant's case, this Court had before it the Applicant's PCR file, including all pleadings filed, the records of the Horry County Clerk of Court regarding the conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the direct appeal records. This Court carefully listened to all of the testimony presented at the hearing and weighed the same according to credibility. This Court found the Applicant's testimony to be lacking in credibility with respect to his allegations of ineffective assistance of counsel. This Court found the testimony of Ralph J. Wilson, Esquire, to be highly credible in all respects.

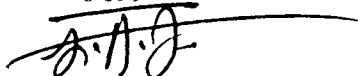
After careful consideration of the entire record in this matter, this Court must find that the Applicant has failed to meet his burden of proof as to his claim of ineffective assistance of counsel. This Court finds that Attorney Wilson conducted a reasonable investigation of the Applicant's case. The Applicant failed to prove there was anything relevant that counsel failed to discover in preparation for trial. See Jackson v. State, 329 S.C. 345, 349, 495 S.E.2d 768, 770 (1998) (a PCR applicant bears the burden to prove that further investigation would have resulted in a different outcome at trial). In that vein, the Applicant failed to prove that there were any helpful defense witnesses that counsel should have called as a part of the defense case, and failed to prove that hiring a private investigator or ballistics expert would have aided in his defense. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (prejudice is merely

speculative where a PCR applicant fails to present allegedly favorable witness testimony at the PCR hearing). Further, this Court finds that Mr. Wilson fully and properly advised Applicant regarding all pertinent matters in his case, including the plea offer, the problems with self-defense, and the right to testify or not testify at trial. Counsel's advice to the Applicant regarding testifying versus not testifying was reasonable. In fact, since the Applicant's PCR testimony about what occurred on the day in question was inconsistent with the findings of the forensic pathologist, it is likely that that Applicant's testimony would have only damaged his case. This Court finds that the Applicant made his own decisions about how to proceed in his case after being fully and properly advised by his counsel. Therefore, this Court finds that the Applicant failed to prove any errors on the part of trial counsel that could have affected the outcome of the proceeding.

CONCLUSION

In conclusion, based upon the entire record, this Court finds and concludes that the Applicant failed to meet his burden of proof as to his claims of ineffective assistance of counsel. Therefore, the Application for post-conviction relief must be denied and dismissed with prejudice for failure to meet the burden of proof under Strickland v. Washington, 466 U.S. 668 (1984), and Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Counsel's attention is directed to Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), and Rule 59(e), SCRPC, regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S.C. Code Ann. § 17-27-80 (2003). This Court further advises that if Applicant desires to secure appellate review of this Order, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South

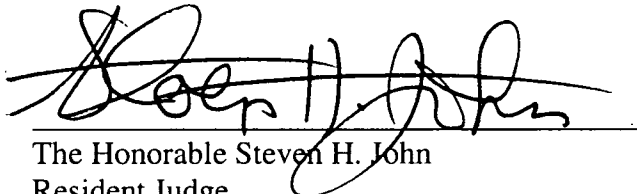
A handwritten signature in black ink, appearing to be 'A.A.J.', is written over a horizontal line.

Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

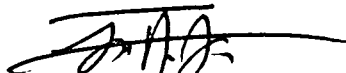
IT IS THEREFORE ORDERED THAT:

1. The Application for post-conviction relief is **DENIED and DISMISSED with PREJUDICE.**
2. The Applicant must remain in the custody of the State for completion of his sentence.

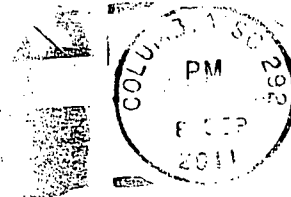
AND, IT IS SO ORDERED this 30th day of August, 2011.


The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

Conway, South Carolina



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