

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
Lee S. Alford, Circuit Court Judge

 ORIGINAL

RECEIVED

APR 02 2012

S.C. Supreme Court

STEVEN J. FREEMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

(3)

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

1. The petition for writ of certiorari and appendix is due to be served and filed with the Court **on April 4, 2012.**
2. Counsel for Mr. Freeman respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.


3. On March 26, 2012 counsel filed the petition for writ of certiorari in the Court of Appeals and appendix in State v. Bradley Scott Senter. On March 21, 2012 counsel filed the petition for writ of certiorari and appendix in Tina Sumter v. State. On March 19, 2012 counsel filed the petition for writ of certiorari and appendix in Cedric Perkins v. State. On March 13, 2012 counsel filed the petition for writ of certiorari and appendix in Billy S. Tucker v. State. On March 6, 2012, counsel filed the petition for writ of certiorari and appendix in Victor Brown v. State.

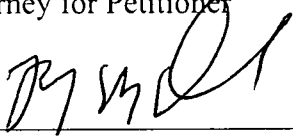
4. Counsel makes this request in good faith and not for purpose of delay.

5. As indicated by signature below, J. Rutledge Johnson, of the South Carolina Attorney General's Office, does not oppose this request.

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

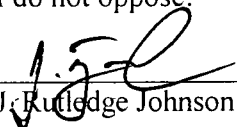
Respectfully submitted,


Dayne C. Phillips
Appellate Defender
Attorney for Petitioner


Robert M. Dudek
Chief Appellate Defender

April 2, 2012

I do not oppose:


J. Rutledge Johnson

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
Lee S. Alford, Circuit Court Judge

ORIGINAL

RECEIVED

MAR - 5 2012

S.C. Supreme Court

STEVEN J. FREEMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

(2)

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

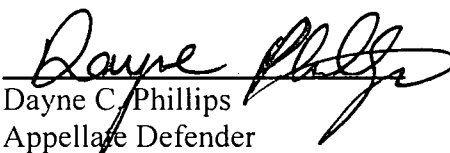
1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today, March 5, 2012.
2. Counsel for Mr. Randolph respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.
3. On February 16, 2012 counsel filed the petition for writ of certiorari and appendix in William Head v. State. On February 13, 2012 counsel had an oral argument in State v. Adrian Eaglin. On February 8, 2012 counsel filed the initial brief of appellant and designation of matter

in Robert Lee Banks v. State. On February 2, 2012 counsel filed the initial brief of appellant and designation of matter in Dan Williams v. State. On January 26, 2012 counsel filed the petition for writ of certiorari and appendix in Joshua Manning v. State. On January 18, 2012 counsel filed the petition for writ of certiorari and appendix in Jeffrey Higgins v. State. On January 17, 2012 counsel filed the petitions for writ of certiorari and appendices in Billy James Lupo v. State and Stanley O. Williams v. State. On January 9, 2012 counsel filed the petitions for writ of certiorari and appendices in Joseph Samuel Whitt v. State and Edward Thompson v. State. On January 5, 2012 counsel filed the petition for rehearing in State v. Bradley Scott Senter. On January 3, 2012 counsel filed the petition for writ of certiorari and appendix in Willie James v. State.

4. Counsel makes this request in good faith and not for purpose of delay.
5. Counsel for the Attorney General's office has been informed of this request.

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

Respectfully submitted,


Dayne C. Phillips
Appellate Defender

Attorney for Petitioner

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Lee S. Alford, Circuit Court Judge

STEVEN J. FREEMAN,

PETITIONER,

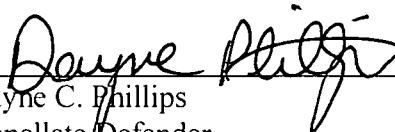
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the motion for an extension of time in which to file the petition for writ of certiorari and appendix in the above case has been served upon J. Rutledge Johnson, Esquire, this 5th day of March, 2012.


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 5th day
of March, 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014.

The Supreme Court of South Carolina

Steven J. Freeman, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Lee S. Alford
York County
Trial Court Case No. 2009-CP-46-05532

ORDER

The request for an extension until March 5, 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 6, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Harrison D. Brant



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

 ORIGINAL

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 3, 2012

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FEB - 3 2012

S.C. Supreme Court

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

Re: Steven J. Freeman v. State of South Carolina

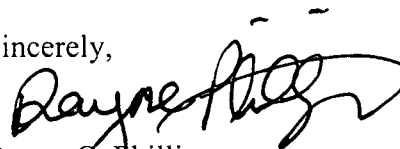
Dear Mr. Shearouse:

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 to Assistant Attorney General Harrison Brant, I am informing him of this request.

Thank you for your assistance in this matter.

Sincerely,



Dayne C. Phillips
Assistant Appellate Defender

DCP/fkb

cc: Harrison Brant, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

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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 5, 2011

RECEIVED

DEC 5 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.

Steven J. Freeman v. State of South Carolina

12/5/2011

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.

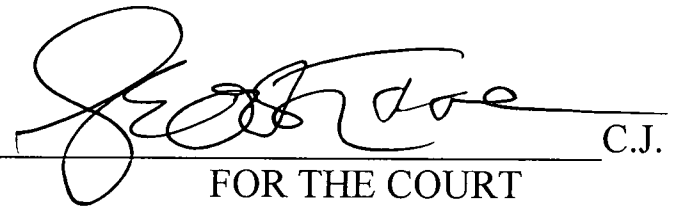
Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator

This is true even though the Division of Appellate Defense may not have assigned a specific attorney to represent petitioner. If it is appropriate to make a motion to stay this appellate matter, and remand this case to the circuit court, that motion will have to be made by an attorney with the Division of Appellate Defense.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

November 29, 2011

cc: Appellate Defense
Steven J. Freeman #320516
Assistant Attorney General Harrison D. Brant

Steven Freeman, #320516
Perry C.I. Q-1-A 116
430 Oaklawn Rd.
Pelzer, S.C. 29669

November 9 2011

Chief Justice Jean Toal
1231 Geravis St.
P.O. Box 12456
Columbia, S.C. 29211

RECEIVED

NOV 16 2011

S.C. SUPREME COURT

RE: MOTION TO STAY APPEAL

Dear Honorable Chief Justice Jean Toal:

I am writing to ask for your help. On June 2 of this year I went to PCR hearing in York County. I had an agreement with my PCR attorney that he would file a 59(e) motion as soon as he received a Order of Dismissal motion. After the hearing I made sure several times that our agreement stood. After receiving the Order of Dismissal my PCR attorney filed an Notice of Appeal without filing an 59(e) To Alter or Amend motion. On August 21, 2011 I submitted a Motion To Stay Appeal and a Pro-Se 59(e) motion to the South Carolina Supreme Court. I then received a form letter from the Honorable Clerk Daniel Shearouse dated September 21, 2011. In this letter Mr. Shearouse stated "Since you are represented by counsel in this matter, no action will be taken on your pro se letter. (letter is enclosed, marked exhibit A). I received a letter from the Division of Appellate Defense dated September 28, 2011 stating "Your case will not be assigned to an attorney until we receive the transcript," (letter is

enclosed marked exhibit B). I am not represented by an attorney which Mr. Shearouse stated.

My Motion To Stay Appeal is to have my case remanded back to the lower court so I can submit my Pro-Se 59(e) motion to Alter or Amend. A 59(e) motion needs to be filed in this case because the Court failed to argue facts and conclusions of law in its Order of Dismissal. (Citing Marlar v. State of South Carolina). The Honorable Judge John Hayes III granted expenditure funds of \$2500.00 for the expert testimony of psychologist Dr. Harold Morgan. Dr. Morgan testified at my PCR hearing that due to my emotional problems and my medication being discontinued prior to trial, it was possible my decision making ability was impaired and it was possible I was incompetent to enter a plea. My PCR attorney then cited Jeter v. State a "reasonable probability" to the court. The Order of Dismissal failed to argue Jeter and other issues pertaining to my case. A 59(e) is extremely important to preserve all issues for appellate review. I believe Mr. Shearouse made a mistake and I would like you to look over this matter and grant my Motion To Stay Appeal.

Enclosed is a copy of my Motion To Stay Appeal with exhibits and my 59(e) motion to Alter or Amend.

Thank you in advance for your most valuable time and kind attention in this matter. In Kind Regards,

Sincerely,



Steven Freeman

Pelzer, S.C. 29669

CC: Brenda F. Shealy (Chief Deputy Clerk)
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

Steven Freeman, #320516
Perry C.I. Q-1-A 116
430 Oaklawn Rd.
Pelzer, S.C. 29669

November 9 2011

Brenda F. Shealy (Chief Deputy Clerk)
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

NOV 16 2011

RE: MOTION TO STAY APPEAL

S.C. SUPREME COURT

Dear Honorable Chief Deputy Clerk Shealy:

I am writing to ask for your help. On June 2 of this year I went to PCR hearing in York County. I had an agreement with my PCR attorney that he would file a 59(e) motion as soon as he received a Order of Dismissal motion. After the hearing I made sure several times that our agreement stood. After receiving the Order of Dismissal my PCR attorney filed an Notice of Appeal without filing an 59(e) To Alter or Amend motion. On August 21, 2011 I submitted a Motion To Stay Appeal and a Pro-Se 59(e) motion to the South Carolina Supreme Court. I then received a form letter from the Honorable Clerk Daniel Shearouse dated September 21, 2011. In this letter Mr. Shearouse stated "Since you are represented by counsel in this matter, no action will be taken on your pro se letter. (letter is enclosed, marked exhibit A). I received a letter from the Division of Appellate Defense dated September 28, 2011 stating "Your case will not be assigned to an attorney until we receive the transcript," (letter is

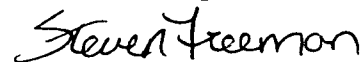
enclosed marked exhibit B). I am not represented by an attorney which Mr. Shearouse stated.

My Motion To Stay Appeal is to have my case remanded back to the lower court so I can submit my Pro-Se 59(e) motion to Alter or Amend. A 59(e) motion needs to be filed in this case because the Court failed to argue facts and conclusions of law in its Order of Dismissal. (Citing Marlar v. State of South Carolina). The Honorable Judge John Hayes III granted expenditure funds of \$2500.00 for the expert testimony of psychologist Dr. Harold Morgan. Dr. Morgan testified at my PCR hearing that due to my emotional problems and my medication being discontinued prior to trial, it was possible my decision making ability was impaired and it was possible I was incompetent to enter a plea. My PCR attorney then cited Jeter v. State a "reasonable probability" to the court. The Order of Dismissal failed to argue Jeter and other issues pertaining to my case. A 59(e) is extremely important to preserve all issues for appellate review. I believe Mr. Shearouse made a mistake and I would like you to look over this matter and grant my Motion To Stay Appeal.

Enclosed is a copy of my Motion To Stay Appeal with exhibits and my 59(e) motion to Alter or Amend.

Thank you in advance for your most valuable time and kind attention in this matter. In Kind Regards,

Sincerely,



Steven Freeman

Pelzer, S.C. 29669

CC: Chief Justice Jean Toal
1231 Geravis St.
P.O. Box 12456
Columbia, S.C. 29211

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Steven Joel Freeman,
Petitioner,

Case No. 2009-CP-46-5532

VS.

State of South Carolina,
Respondent.

MOTION TO STAY APPEAL

I Steven Joel Freeman, Pro-Se Petitioner, request the Honorable South Carolina Supreme Court to grant my motion To Stay Appeal and remand my case to lower court for a Pro-Se 59(e) motion to be file based on the following:

1. After the June 2, 2011 PCR hearing, Petitioner's PCR attorney (Mr. Brian R. Murphy) informed Petitioner that he would file a 59(e) motion when he received an Order of Dismissal. Petitioner's parents called Mr. Murphy on June 7, 2011 and discussed with him filing the 59(e) motion and Mr. Murphy informed them he would file the motion when he received an Order of Dismissal. Petitioner then called Mr. Murphy on June 28, 2011 from prison and left a message with his secretary to call him back to discuss the issues of filing the 59(e) motion. Petitioner received a letter from him dated July 8, 2011, confirming he would file the motion (See exhibit 1, letter). On July 15, 2011 Petitioner sent a Pro-Se 59(e) motion to Mr. Murphy for him to look over and file (See exhibit 2, letter). Petitioner then received a letter from him dated August 9, 2011, stating he

had filed an Notice of Appeal as a Rule 59(e) motion is not required to preserve trial issue on appeal (See exhibit 3, letter).

Petitioner and Mr. Murphy had an agreement that a 59(e) motion would be filed when Mr. Murphy received an Order of Dismissal. Direct appeal is to preserve trial issues, a 59(e) motion to alter or amend is to preserve issue of post-conviction relief. Therefore, a 59(e) motion must be filed to straighten out the Order of Dismissal and preserve all of Petitioner's PCR issues.

2. In Marlar v. State of South Carolina, Opinion No. 26391 (Submitted November 1, 2007 - Filed November 5, 2007), the South Carolina Supreme Court ruled if specific findings are not based on facts and conclusions of law, a 59(e) motion must be filed. Pursuant to S.C. Code Ann. §17-27-80 (2003), the PCR judge must make specific findings of fact and state expressly the conclusion of law relating to each issue presented. The Failure to specifically rule on the issues precludes appellate review of the issues. Even after the order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRPC, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by §17-27-80 and Rule 59(a), SCRPC.

In the case at bar, a 59(e) motion must be filed to straighten out the Order of Dismissal prepared by the Attorney General.

3. The Honorable Judge John Hayes III, granted expediential funds of \$2,500 for the expert testimony of Psychologist Dr. Horald Morgan. In the Order of Dismissal prepared by the Attorney General, on page 17 third paragraph

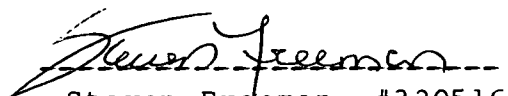
through page 18 second paragraph, the court found that Dr. Morgan's testimony did not help Petitioner and Petitioner failed to show a "reasonable probability" he was incompetent at the time of his plea, or insane at the time of the crime. However, the Order of Dismissal failed to state that, Dr. Morgan also testified it was "possible" due to Petitioner's mental problems and him medication being off his medication at the time of his plea could have impaired his decision making ability and his competence to stand trial. Therefore, meeting the requirements laid out in Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992) and both prongs of Strickland v. Washington, 466 U.S. 668, 108 S.Ct. 2052 (1984). The Order of Dismissal failed to argue against Jeter, which Petitioner's PCR counsel cited during the hearing.

4. This Honorable Court is aware of how extremely important it is to have all PCR issues preserved for Appellate review. In this case, Petitioner has met his burden under both Strickland and Jeter standards. Thus, making a 59(e) motion to be filed "necessary".

CONCLUSION

Based on the foregoing and all issues presented at PCR hearing, Petitioner request his motion To Stay Appeal be granted and remanded back to lower court for a Pro-Se 59(e) (To Alter or Amend) motion be filed.

Respectfully Submitted,



Steven Freeman, #320516

Pelzer, S.C. 29669

Pro-Se Applicant

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
CASE NO. 2009-CP-46-5532

Steven Joel Freeman,
Applicant,

VS.

State of South Carolina,
Respondent.

MOTION TO ALTER OR AMEND
JUDGEMENT

Pursuant to Rule 59(e), SCRCPC, Applicant hereby moves to alter or amend the judgement of this Court upon dismissal of Applicant's application for post-conviction relief. On March 6, 2007, Applicant plead guilty to murder (2006-GS-46-3825), burglary first degree (2006-GS-46-3826), and resisting arrest (2006-GS-46-3827) and received fifty (50) years for murder, fifty (50) years for burglary first and one (1) year for resisting arrest, all to run concurrent. Applicant was represented by Mr. Harry Dest and Mr. B.J. Borrowclough, The honorable Judge John Hayes III, presided over Applicant's plea.

On March 7, 2006, plea counsel filed a Notice of Appeal on the Applicant's behalf. The appeal was dismissed by the Court of Appeals after appellate counsel filed an Anders brief, Opinion No. 2009-UP-447 (2009).

Applicant's PCR hearing was held on June 2, 2011, where he made numerous allegations of ineffective assistance of counsel. Applicant testified on his own behalf along with his father, Randal Freeman, Mother, Yvette Freeman, Pastor Henry Terry and Psychologist, Dr. Harold C. Morgan.

ARGUMENT

At the PCR hearing, Applicant testified he was not himself at trial and he would not had plead guilty if he had time to calm down and gather his composer. Applicant spent six (6) months in the County jail awaiting trial and never requested a plea. Applicant testified that he rejected a plea offer of murder forty five (45)-to-fifty (50) years made by the State, counsel denied the offer was ever made. Applicant testified during his time in the County jail he was taking medication for depression, anxiety and to help him sleep. However, a few weeks before trial Applicant's medication was discontinued by mental health without any explanation. Applicant testified that during the night before his breakdown in open court and plea, he tried to suffocate himself with a plastic bag. Applicant testified upon entering the courtroom he started breaking down, the room was spinning and he was unable to focus.

Applicant also testified after he arrived in the Department of Corrections his medication for depression and anxiety was started back and he was currently taking Celexa for depression and an mood stabilizer medication (Deprekope) to help treat Bi-polar Disorder which he had been diagnosed with with by mental health and to avoid severe mood swings.

Applicant testified he is not guilty of the offenses charged and would have continued with the trial had the trial counsel given him enough time to calm down. He stated he asked to speak with his parents, but trial counsel would not allow him to. He stated counsel would not advise him of what to do, counsel saying "it would go against his ethics to advise him in any way." He also stated trial counsel informed him that his parents said they would stand behind his decision.

Applicant testified his counsel did not request a continuance, given the situation of a sudden breakdown, in which trial counsel testified took him by surprise. Applicant stated

trial counsel should have seen it fit to request a recess to allow him time to calm down.

Applicant testified his trial counsel failed to investigate his fitness to stand trial or enter a guilty plea, based on his previous mental history, his emotional state every time counsel met with him and his medication being discontinued prior to trial in which Applicant stated he told counsel.

Applicant testified trial counsel failed to request a Blair hearing, which is in violation of due process. Counsel failed to properly inform the court of Applicant's mental illnesses of Borderline Personality Disorder, Impulse Control Disorder, Depression with anxiety and Post-Trumatic Stress Disorder. With this information the court may have seen fit to further evaluate Applicant and have an expert opinion on Applicant's mental and emotional fitness before continuing with trial.

Applicant testified counsel did not advise him of any options other than to plea guilty. He stated at the time of his breakdown he did not know what to do. He stated the only options given to him was to continue with trial or plea guilty. During that time frame Applicant was unable to continue with trial, so he was forced to enter a plea of guilty. Applicant plead guilty under emotional duress and his plea was not voluntary.

Applicant's father testified he witnessed Applicant's breakdowns during their visits with him at the County jail. He stated, on the morning of the plea, Applicant entered the courtroom crying uncontrollably. He stated Applicant's behavior on the morning of his plea was strange and he did not think Applicant could go forward. He stated he requested to speak with Applicant, but counsel would not allow it. He stated that he would have told Applicant to continue with trial. He also stated Applicant had never discussed pleaing guilty during the times he talked with him before trial.

Applicant's mother testified on the morning of his plea, the Applicant entered the courtroom in an very emotional state, he was crying and appeared to be dazed, and the next thing she knew Mr. Dest was telling them the Applicant wanted to plea, it came out of nowhere because the Applicant had never talked to her about pleading guilty at any point, he always talked about wanting a trial. She stated that she told counsel to not allow Applicant to plea guilty during that time, and asked to speak with Applicant and help calm him down, however counsel would not allow her to. She stated she was against Applicant entering a guilty plea during that time.

Mr. Dest testified he was arguing manslaughter in this case. He stated that he was aware of Applicant's prior mental problems and was aware Applicant was on medication during his time in the County jail. However, he stated he was not aware Applicant's medication had been discontinued prior to trial. Mr. Dest admitted he did not request a Blair hearing prior to trial, a recess or continuance prior to the guilty plea. He stated he did not enter into plea negotiations with the State prior to the plea. He stated the State did not offer a plea deal to Applicant.

Mr. Dest testified, Applicant was very emotional every time he met with him prior to the trial, however not once did Applicant ever request to plea out. Mr. Dest stated he was surprised by the Applicant suddenly wanting to plea guilty. He He stated to the trial court "Mr. Freeman entered the courtroom breaking down and crying." (Tr. p.204).

Applicant states his trial counsel was ineffective for allowing him to plea to murder when the evidence supported manslaughter in which counsel was arguing.

Mr. Borrowclough testified Applicant was breaking down before entering the courtroom. He stated he was not aware Applicant had been on medication and that the medication had been discontinued prior to trial.

Mr. Borrowclough testified Applicant had been very tearful every time he met with him and was very remorseful. He stated he was arguing manslaughter in this case and only State's case had been told.

Mr. Borrowclough testified he had investigated the true billed indictments.

Dr. Morgan testified Applicant had serious emotional problems prior to incident. He stated Applicant was suffering from Borderline Personality Disorder, Impulse Control Disorder and Depression with anxiety issues. He stated Applicant was taking medication however he felt the doses were too low. He testified to Applicant's state of mind on the date of the incident, where "he (Applicant) just lost control of himself."

Dr. Morgan testified, Applicant was having problems dealing with stressful situations and stated a trial would cause high anxiety, and could "potentially" take over his ability to make competent decisions. He stated with Applicant's prior emotional problems and the fact his medication was discontinued prior to trial, it could be "possible" it would have impaired Applicant's decision to plea guilty, it could be "possible" it would have impaired Applicant's competence. Thus meeting the requirements of Jeter v. State, 308 S.C. 230, 2232, 417 S.E.2d 594, 596 (1992).

At PCR hearing, Applicant raised issues of ineffective assistance of counsel and Prosecutorial Misconduct stemming from defected indictments. After careful consideration the Court allowed these issues to be entered over objection by the Attorney General. The indictments state on November 9, 2006 in the Court of General Sessions, the Grand Jury of York County convened and presented upon their oath. Applicant presented the PCR Court with a Court of Administration's certified copy of the court term calendar for York County's Grand Jury. NO Court of General Sessions convened on November 9, 2006, a Grand Jury could not

have indicted Applicant on that day. The point of a Grand Jury is for the State to present evidence that a person committed a crime. This is a crucial element in our judicial system. The acting Assistant Solicitor signed the falsified indictment, thus committing the act of perjury and prosecutorial misconduct by presenting these falsified documents to the court. Trial counsel failed to investigate and object to the prosecutorial misconduct before the jury was sworn.

PCR Court gave Attorney General thirty (30) days to supplement the record on the indictment issue raised at PCR by Applicant. The Attorney General submitted an order from the Administrative Judge of York County, stating the Administrative Judge set the term for the York County Grand Jury to convene on November 9, 2006. The terms of Grand Jury are fixed.

Applicant contends Court of General Sessions are to hear criminal cases and Court of Common Pleas are to hear civil cases. Therefore, only a Grand Jury convening in a Court of General Sessions should be able to indict (upon evidence by prosecution) a defendant of criminal charges.

Had Applicant been able to continue with trial, the jury would have heard evidence of manslaughter. Both Heat of Passion and Legal Provocation was evident in this case. Applicant discovered his pregnant girlfriend with another man. Upon seeing the man pull up his pants, Applicant lost control (Heat of Passion). Applicant did enter the apartment upon which the man and Applicant got into an argument and starting fighting (Legal Provocation). Both men were unharmed and during the fight the man fell and hit his head on the concrete floor which caused blunt force trauma and led to his death. Applicant states the death of the victim was unintentional and accidental. He did not plan his actions, he just lost control. Upon his arrest Applicant weighed 230 pounds and 180 pounds at trial.

The Court used perjured testimony of Bianca Moison and Timothy Carter in the Order of Dismissal. Mrs. Moison testified she saw Applicant sitting on a car and about 10-15 minutes later witnessed Applicant break the window and enter the victim's apartment. Timothy Carter testified he witnessed the Applicant kick and stomp the victim. Had the trial continued the defense would have proved these testimonies to be false and therefore perjury was committed. Bianca Moison nor Timothy Carter testified at PCR to the facts of their testimonies. Mrs. Moison and Mr. Carter did not testify at the plea hearing to the facts, therefore the order of dismissal should not be allowed to use these testimonies.

STATEMENT OF SUPPORTING LAW

Applicant has met his burden of proving ineffective assistance of counsel under the two prong standard laid out in Strickland v. Washington, 466 U.S. 668, 108 S.Ct. 2052 (1984) 1. Plea counsel failed to render reasonably effective assistance under prevailing norms; 2. But for counsel's errors, Applicant would not had plead guilty and insisted on going to trial. In this case Applicant spent six (6) months in the county jail awaiting trial, Applicant never requested to plea, under the very stressful circumstances of trial Applicant broke down and plead guilty within fifteen -- twenty minutes of him entering the courtroom. See Pittman v. State, 524 S.E.2d 623 (1999) (The South Carolina Supreme Court held thirty minutes is not enough time to enter a guilty plea).

At PCR hearing Applicant's PCR counsel cited Jeter v. State, 417 S.E.2d 594 (1992) of reasonable probability. In Jeter under the second prong of Strickland, Applicant needs to only demonstrate a "reasonable probability" that he was either insane at the time the crime was committed or incompetent at the time of

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In Evans v. State, 611 S.E.2d 510 (2005) (Counsel was found ineffective in failing to object to deficient indictment before jury was sworn).

According to S.C. Const. Art. 5 §4 (Only the Chief Justice of South Carolina Supreme Court can set the terms of the Grand Jury). Thus, the York County Grand Jury Convened and indicted Applicant unconstitutionally.

CONCLUSION

Based on the foregoing reasons Applicant respectfully request this Honorable Court to Alter or amend it's Order of Dismissal and grant post-conviction relief.

Respectfully Submitted,



Steven Freeman, #320516

Pro-Se Applicant

Pelzer, S.C. 29669

This 25 day of August, 2011

Brian R. Murphy
brian@brmurphy.com
888.454.1338

LAW OFFICE OF
BRIAN R. MURPHY, LLC

Fort Mill | 803.548.0321
Beaufort | 843.321.9001
web | www.brmurphy.com

Mailing Address: PO Box 805, Fort Mill, SC 29716 | Fax: 803.403.9517

August 9, 2011

Mr. Steven Freeman
SCDC ID: 320516
Perry Correctional Institution Q-1-A 116
430 Oaklawn Road
Pelzer, SC 29669

LEGAL MAIL

RE: Freeman v. South Carolina
Case No.: 2009-CP-46-5532

Dear Mr. Freeman:

Please find the enclosed Order of Dismissal on the above-referenced case. Your application for post-conviction relief has been denied and dismissed with prejudice. I have served a Notice of Appeal as a Rule 59 motion is not required to preserve the trial issues on appeal. A copy is enclosed. The Appellate Division of the South Carolina Commission on Indigent Defense will prosecute the case on appeal.

It has been a pleasure representing you and I wish you the best.

With warmest regards,



Brian R. Murphy
BRM/aec

Enclosure: Notice of Appeal
Proof of Service of the Notice of Appeal
Order of Dismissal

Brian R. Murphy
brian@brmurphy.com
888.454.1338

LAW OFFICE OF
BRIAN R. MURPHY, LLC

Fort Mill | 803.548.0321
Beaufort | 843.321.9001
web | www.brmurphy.com

Mailing Address: PO Box 805, Fort Mill, SC 29716 | Fax: 803.403.9517

July 8, 2011

Mr. Steven Freeman
SCDC ID: 320516
Perry Correctional Institution Q-1-A 116
430 Oaklawn Road
Pelzer, SC 29669

LEGAL MAIL

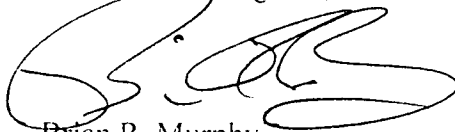
RE: Freeman v. South Carolina
Case No.: 2009-CP-46-5532

Dear Mr. Freeman:

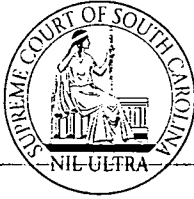
Thank you for your correspondence. I will file the motion on the above-referenced case when I receive the order.

Please let me know if you have any questions.

With warmest regards,



Brian R. Murphy
BRM/aec



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 21, 2011

Steven J. Freeman #320516
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Freeman, Steven J. v. The State

Dear Mr. Freeman:

This responds to your letter and pro se motion dated August 24, 2011. Since you are represented by counsel in this matter, no action will be taken on your pro se letter. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

Any concerns you have about this matter should be raised to the Division of Appellate Defense. The address for that Office is P.O. Box 11589, Columbia, SC 29211, and their phone number is 803-734-1343.

Very truly yours,

Daniel E. Shearouse
CLERK

DES/jj

cc: Appellate Defense
Assistant Attorney General Harrison D. Brant



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

September 28, 2011

Mr. Steven J. Freeman, #320516
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Dear Mr. Freeman:

We have determined that you are eligible for representation by this office. We are waiting for the court reporter to provide us with a copy of your transcript, which will take at least two months and **probably longer** as they are allowed **several** thirty-day extensions. This office does not control the court reporters.

Your case will not be assigned to an attorney until we receive the transcript. Upon receipt of the transcript the attorney will then write you a letter explaining the appellate process and how you may assist in handling your appeal. You will receive a copy of your transcript and all documents filed in connection with your case.

Until your case has been assigned to an attorney, you may direct all correspondence to me. We look forward to representing you and hope for a favorable result.

Sincerely,

Loriene French
Legal Services Coordinator

Steven Freeman, #320516

Perry C.I. Q-1-A 116

430 Oaklawn Rd

Pelzer, SC. 29669

RECEIVED

NOV 09 2011

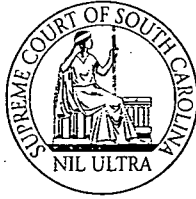
P.C.I. MAILROOM

Chief Justice Jean Toal

1231 Geravis St.

P.O. Box 12456

Columbia, SC. 29211



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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September 21, 2011

Steven J. Freeman #320516
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430 Oaklawn Road
Pelzer, SC 29669

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Any concerns you have about this matter should be raised to the Division of Appellate Defense. The address for that Office is P.O. Box 11589, Columbia, SC 29211, and their phone number is 803-734-1343.

Very truly yours,

Daniel E. Shearouse
CLERK

DES/jj

cc: Appellate Defense
Assistant Attorney General Harrison D. Brant

Steven Freeman, #320516
Perry C.I. Q-1-A 116
430 Oaklawn Road
Pelzer, S.C. 29669

August 24 , 2011

South Carolina Supreme Court
Attn. Daniel Shearouse (Clerk)
P.O. Box 11330
Columbia, S.C. 29211

Dan - ?
Gaster
Yes. [initials]

RE: Steven Freeman v. State of South Carolina
Filing of Motion To Stay Appeal and 59(e) Motion To Alter or
Amend

Case No. 2009-CP-46-5532

Dear Mr. Shearouse:

Enclosed please find a my Motion To Stay Appeal, with three
(3) exhibits, a 59(e) Motion To Alter or Amend, along with an
Order of Dismissal for your filling.

Thank you for your most valuable time and kind attention in
this matter.

RECEIVED

AUG 31 2011

S.C. SUPREME COURT

Sincerely,

s/ Steven Freeman

Steven Freeman, #320516
Pelzer, S.C. 29669

CC: Office of Attorney General

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Steven Joel Freeman,
Petitioner,

Case No. 2009-CP-46-5532

VS.

State of South Carolina,
Respondent.

MOTION TO STAY APPEAL

I Steven Joel Freeman, Pro-Se Petitioner, request the Honorable South Carolina Supreme Court to grant my motion To Stay Appeal and remand my case to lower court for a Pro-Se 59(e) motion to be filed based on the following:

1. After the June 2, 2011 PCR hearing, Petitioner's PCR attorney (Mr. Brian R. Murphy) informed Petitioner that he would file a 59(e) motion when he received an Order of Dismissal. Petitioner's parents called Mr. Murphy on June 4, 2011 and discussed with him the filing a 59(e) motion and Mr. Murphy informed them he would file the motion when he received an Order of Dismissal. Petitioner then called Mr. Murphy on June 28, 2011 from prison and left a message with his secretary to call him back to discuss the issues of filing the 59(e) motion. Petitioner received a letter from him dated July 8, 2011, confirming he would file the motion (See exhibit 1, letter). On July 15, 2011 Petitioner sent a

Pro-Se 59(e) motion to Mr. Murphy for him to look over and file (See exhibit 2, letter). Petitioner then received a letter from him dated August 9, 2011, stating he had filed an Notice of Appeal as a Rule 59(e) motion is not required to preserve the trial issues on appeal. (See exhibit 3, letter).

Petitioner and Mr. Murphy had an agreement that a 59(e) motion would be filed when Mr. Murphy received an Order of Dismissal. Direct appeal is to preserve trial issues, a 59(e) motion to alter or amend is to preserve issue of post-conviction relief. Therefore, a 59(e) motion must be filed to straighten out the Order of Dismissal and preserve all of Petitioner's PCR issues.

2. In Marlar v. State of South Carolina, Opinion No. 26391 (Submitted November 1, 2007 - Filed November 5, 2007), the South Carolina Supreme Court ruled if specific findings are not based on facts and conclusions of law, a 59(e) motion must be filed. Pursuant to S.C. Code Ann. §17-27-80 (2003), the PCR judge must make specific findings of fact and state expressly the conclusion of law relating to each issue presented. The failure to specifically rule on the issues precludes appellate review of the issues. Even after the order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCF, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by §17-27-80 and Rule 59(a), SCRCF.

In the case at bar, a 59(e) motion must be filed to straighten out the Order of Dismissal prepared by the Attorney General.

3. The Honorable Judge John Hayes III, granted expediential funds of \$2,500 for the expert testimony of Psychologist, Dr.

Harold C. Morgan. In the Order of Dismissal prepared by the Attorney General, on page 17 third paragraph through page 18 second paragraph, the court found that Dr. Morgan's testimony did not help Petitioner and Petitioner failed to show a "reasonable probability he was incompetent at the time of his plea, or insane at the time of the crime. However, the order of dismissal failed to state that, Dr. Morgan also testified it was possible due to Petitioner's mental problems and him being off his medication at the time of his plea could have impaired his decision making ability and his competence to stand trial. Therefore, meeting the requirements laid out in Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992) and both prongs of Strickland v. Washington, 466 U.S. 668, 108. S.Ct. 2052 (1984).

4. This Honorable Court is aware of how extremely important it is to have all PCR issues preserved for Appellate review. In this case, Petitioner has met his burden under both Strickland and Jeter standards. Thus, making a 59(e) motion to be filed "necessary".

CONCLUSION

Based on the foregoing and all issues presented at PCR hearing, Petitioner request his motion To Stay Appeal be granted and remanded back to lower court for a Pro-Se 59(e) (To Alter or Amend) motion be filed.

Respectfully Submitted,

Steven Freeman

Steven J. Freeman, #320516

Pelzer, S.C. 29669

Pro-Se Petitioner

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT COMMON PLEAS
CASE NO. 2009-CP-46-5532

Steven Joel Freeman,
Applicant,

VS.

State of South Carolina
Respondent.

MOTION TO ALTER OF AMEND
JUDGEMENT

Pursuant to Rule 59(e), SCRCP, Applicant hereby moves to alter or amend the judgement of this Court upon dismissal of Applicant's application of post-conviction relief. On March 6, 2007, Applicant plead guilty to murder (2006-CS-46-3825), burglary first degree (2006-CS-46-3826), and resisting arrest (2006-CS-46-3827) and received fifty (50) years for murder, fifty (50) years for burglary first and one (1) for resisting arrest, all to run concurrent. Plea counsel filed a Notice of Appeal on the Applicant's behalf. The appeal was dismissed by the Court of Appeals after appellate counsel filed an Anders brief, Opinion No. 2009-UP-447 (2009).

Applicant's PCR hearing was held on June 2, 2011, where he made number of allegations of ineffective assistance of counsel. Applicant testified on his own behalf along with his father,

Randal Freeman, Mother, Yvette Freeman, Pastor, Henry Terry and psychologist, Dr. Harold C. Morgan.

ARGUMENT

At the PCR hearing, Applicant testified he was not himself at trial and he would not had plead guilty if he had time to calm down and gather his composer. Applicant spent six (6) months in the county jail awaiting trial and never requested a plea. Applicant testified that he rejected a plea offer of murder forty-five (45) to fifty (50) years made by the State. Applicant testified during his time in the county jail he was taking medication for depression, anxiety and to help him sleep, however, a few weeks before trial Applicant's medication was discontinued by mental health without any explanation. Applicant testified that during the night before his breakdown in open court and plea, he tried to suffocate himself with a plastic bag. Applicant testified upon entering the courtroom he started breaking down, the room was spinning and he was unable to focus.

Applicant also testified after he arrived in the Department of Corrections his medication for depression and anxiety was started back and he was currently taking Celexa for depression and an mood stabilizer medication (Deprecope) to help treat Bi-polar disorder which he had been diagnosed with by mental health and avoid severe mood swings.

Applicant testified he is not guilty of murder and would have continued with the trial had the trial attorney given him enough time to calm down. He stated he asked to speak with his parents, but trial counsel would not allow him to. He stated counsel would not advise him what to do, saying it would go against their ethics to advise him in any way. He also stated trial counsel informed him that his parents said they would stand behind his decision.

Applicant testified his attorney did not request a continuance, given the situation of a sudden breakdown, in which trial attorney testified took him by surprise. Applicant stated trial attorney should have seen it fit to request a recess to allow him time to calm down.

Applicant testified his trial attorney failed to investigate his fitness to stand trial or enter a guilty plea, based on his previous mental history, his emotional state every time trial attorney met with him and the fact his medication being discontinued prior to trial in which Applicant stated he told trial attorney.

Applicant testified trial attorney failed to request a Blair hearing, which is in violation of due process. Trial attorney failed to properly inform the court of Applicant's mental illnesses of Borderline Personality Disorder, Impulse Control Disorder, Depression with anxiety and Post-Traumatic Stress Disorder. With this information the court the court may have seen fit to further evaluate Applicant before continuing with trial.

Applicant testified his trial attorney did not advise him of any options other than to plead guilty. He stated at the time of his breakdown he did not know what to do. He stated the only options given was to continue with trial or plea. During that time frame Applicant was unable to continue with trial, so he was forced to enter a plea of guilty. Applicant plead guilty under emotional duress and his plea was not voluntary.

The Applicant's father, Randall Freeman, testified he witnessed Applicant breakdown during their visits with him at the county jail. He stated on the morning of the plea, Applicant entered the courtroom crying uncontrollably. He stated Applicant's behavior on the morning of his plea was strange and he did not think Applicant could go forward. He stated he requested to speak with Applicant but was not allowed to. He stated he would have told Applicant to continue with trial.

The Applicant's mother, Yevtte Freeman, testified on the morning of his plea, the Applicant entered the courtroom in an very emotional state, he was crying and appeared to be dazed, and the next thing she knew Mr. Dest was telling them the Applicant wanted to plea. She stated she told Mr. Dest not to let the Applicant plead guilty during that time, and asked to speak with the Applicant and help clam him down, but was not allowed to by Mr. Dest.

Mr. Dest testified he was aware of Applicant's prior mental problems and was aware Applicant was on medication during his

time in the county jail, however he stated he was not aware Applicant's medication had been discontinued prior to trial. Mr. Dest admitted he did not request a Blair hearing prior to trial, a recess or continuance prior to the guilty plea. He stated he did not enter into plea negotiations with the State prior to the plea. He stated the State did not offer a plea deal to Applicant.

Mr. Dest testified, Applicant was very emotional every time he met with him prior to the trial, however not once did the Applicant ever requested to plea out. Mr. Dest stated he was surprised by the Applicant suddenly wanting to plea guilty. He stated to the court "Mr. Freeman entered the courtroom breaking down and crying. (Tr. p. 204).

Applicant states his trial counsel was ineffective for allowing him to plea to murder when the evidence supported manslaughter in which counsel was arguing.

Mr. Barrowclough testified Applicant was breaking down before entering the courtroom. He stated he was not aware Applicant had been on medication and that the medication had been discontinued prior to the trial.

Mr. Barrowclough testified Applicant had been very tearful every time he met with him and was very remorseful. He stated he was arguing manslaughter in this case and only the State's case had been told.

Mr. Barrowclough testified he had investigated the true billed indictments.

Dr. Morgan testified Applicant had serious emotional problems prior to incident. He stated Applicant was suffering from Borderline Personality Disorder, Impulse Control Control and Depression with anxiety issues. He stated Applicant was taking medication however he felt the doses were to low. He testified to Applicant's state of mind on the date of the incident, where "he (Applicant) just lost control of himself."

Dr. Morgan testified, Applicant was having problems dealing with stressful situations and stated a trial would cause high anxiety, and could "potentially" take over his ability to make competent decisions. He stated with Applicant's prior emotional problems and the fact his medication was discontinued prior to trial, it could be "possible" it would have impaired Applicant's decision to plea guilty, it could be "possible" it would have impaired Applicant's competence. Thus meeting the requirements of Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992).

At PCR hearing, Applicant raised issues of ineffective assistance and Prosecutorial Misconduct stemming from defected indictments. After careful consideration the Judge allowed these issues to be entered over object from the Attorney General. The indictments state on November 9, 2006 in the Court of General Sessions, the Grand Jury of York County convened and upon their oath. Applicant presented the PCR Court with a Court of Administration's certified copy of the court term calendar for York County's Grand Jury. NO Court of General Sessions convened

on November 9, 2006, therefore, a Grand Jury could not have indicted Applicant on that day. The point of a Grand Jury is for the State to present evidence that person committed a crime. This is a crucial element in our justice system. The acting Assistant Solicitor signed the falsified indictment, thus committing the act of perjury and prosecutorial misconduct by presenting these falsified documents to the court. Trial counsel failed to investigate indictments and object to the prosecutorial misconduct before the jury was sworn.

PCR Court gave Attorney General thirty (30) days to supplement the record on the indictment issue raised at PCR by Applicant. The Attorney General submitted an order from the administrative judge of York County, stating the administrative judge set the term for the York County Grand Jury to convene on November 9, 2006. The terms of Grand Jury is fixed.

Applicant contends Court of General Sessions is to hear criminal cases and Court of Common Pleas is to hear civil cases. Therefore, only a Grand Jury convening in a Court of General Sessions should be able to indict (upon evidence by prosecution) a defendant of criminal charges.

Had Applicant been able to continue with trial, the jury would have heard evidence of manslaughter. Both Heat of Passion and Legal Provocation was evident in this case. Applicant discovered his pregnant girlfriend with another man. Upon seeing the man pull up his pants Applicant lost control (Heat of

Passion). Applicant did enter the apartment upon which the man and Applicant got into an argument and starting fighting (legal provocation). Both men were unarmed. During the fight the man fell and hit his head on the concrete floor which caused blunt force trauma and which led to his death. Applicant states the death of the victim was unintentional and accidental. He did not plan his actions, he just lost control. Upon his arrest Applicant weighed 220 pounds and weighed 180 at trial.

The Court used perjured testimony of Bianca Moison and Timothy Carter in the Order of Dismissal. Mrs. Moison testified she saw Applicant sitting on a car and about 10-15 minutes later witnessed Applicant break the window and enter the victim's apartment. Timothy Carter testified he witnessed the Applicant kick and stomp the victim. Had the trial continued the defense would have proved these testimonies to be false and therefore perjury was committed. Bianca Moison nor Timothy Carter testified at PCR to the facts of their testimonies. Mrs. Moison and Mr. Carter did not testify at the plea hearing to the facts therefore the order of dismissal should not be allowed to use these testimonies.

STATEMENT OF SUPPORTING LAW

Applicant has met his burden of proving ineffective assistance of counsel under the two prong standard laid out in Strickland v. Washington, 466 U.S. 668, 108 S.Ct. 2052 (1984) (1.

Plea counsel failed to render reasonably effective assistance under prevailing norms; 2. But for counsel's errors, Applicant would not had plead guilty and assisted on going to trial). In this case Applicant spent six (6) months in the county jail awaiting trial, Applicant never requested to plea, under the very stressful circumstances of trial Applicant broke down and plead guilty within fifteen -- twenty minutes of him entering the courtroom. See Pittman v. State, 524 S.E.2d 623 (1999) (The South Carolina Supreme Court held thirty minutes is not enough time to enter a guilty plea).

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In Hill v. Lockhart, 106 S.Ct. at 366 (In order to satisfy the "prejudice" requirement of standard for evaluating claims of ineffective assistance of counsel under Strickland, Applicant must show that there was a "reasonable probability" that but for counsel's errors, he would not had plead guilty and would have

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According to S.C. Const. Art 5 §4 (Only the Chief Justice of South Carolina Supreme Court can set the terms of the Grand Jury). Thus the York County Grand Jury convened and indicted Applicant unconstitutionally.

CONCLUSION

Based on the foregoing reasons Applicant respectfully request this Honorable Court to alter and amend it's Order of Dismissal and grant Post-Conviction Relief.

Respectfully Submitted,

Steven Freeman

Steven Freeman, #320516

Pro-Se Applicant

Pelzer, South Carolina

This 24 day of August, 2011

Exhibit 2

LAW OFFICE OF

BRIAN R. MURPHY, LLC

Brian R. Murphy
brian@brmurphy.com
888.454.1338

Fort Mill | 803.548.0321
Beaufort | 843.321.9001
web | www.brmurphy.com

Mailing Address: PO Box 805, Fort Mill, SC 29716 | Fax: 803.403.9517

July 8, 2011

Mr. Steven Freeman
SCDC ID: 320516
Perry Correctional Institution Q-1-A 116
430 Oaklawn Road
Pelzer, SC 29669

LEGAL MAIL

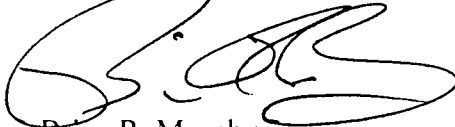
RE: Freeman v. South Carolina
Case No.: 2009-CP-46-5532

Dear Mr. Freeman:

Thank you for your correspondence. I will file the motion on the above-referenced case when I receive the order.

Please let me know if you have any questions.

With warmest regards,



Brian R. Murphy
BRM/aec

Steven Freeman, #320516
Perry C.I. Q-1-A 116
430 Oaklawn Rd.
Pelzer, S.C. 29669

Exhibit 2

July 15, 2011

Mr. Brian R. Murphy
Attorney at Law
P.O. Box 805
Fort Mill, S.C. 29716

RE: Mr. Freeman's 59(e) motion.

Dear Mr. Murphy:

Enclosed is my 59(e) motion I have prepared to the best of my ability to preserve all my issues for appellate review. I respectfully request that you look over this motion and submit it for me before filing the appeal. In your professional opinion, if you feel there is anything that needs to be changed or added to make this motion better please do so.

I'm sure you are aware of this, but I would like to remind you that the State Supreme Court ruled in Anthony Marlal v. The State of South Carolina, Opinion No. 26391 (2007). That under S.C. Code Ann. §17-27-80 (2003), if the PCR Judge fails to make specific finding of facts and state expressly the conclusion of law relating to each issue presented a rule 59(e) must be filed in order to preserve issues for appellate review.

With the letter from Judge Aford to the attorney general (dated June 6, 2011) and you forwarded to me would you agree

RECEIVED

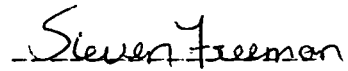
JUL 15 2011

P.C.I. MAILROOM

that a 59(e) must be filed to preserve my issues for appellate review. This letter is to request that you file one on my behalf or file the one that I prepared.

Thank you for your most valuable time and kind attention in this matter.

Sincerely,

Handwritten signature of Steven Freeman in cursive script.

Steven Freeman

Pelzer, S.C. 29669

Exhibit 3

Brian R. Murphy
brian@brmurphy.com
888.454.1338

LAW OFFICE OF
BRIAN R. MURPHY, LLC

Fort Mill | 803.548.0321
Beaufort | 843.321.9001
web | www.brmurphy.com

Mailing Address: PO Box 805, Fort Mill, SC 29716 | Fax: 803.403.9517

August 9, 2011

Mr. Steven Freeman
SCDC ID: 320516
Perry Correctional Institution Q-1-A 116
430 Oaklawn Road
Pelzer, SC 29669

LEGAL MAIL

RE: Freeman v. South Carolina
Case No.: 2009-CP-46-5532

Dear Mr. Freeman:

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It has been a pleasure representing you and I wish you the best.

With warmest regards,



Brian R. Murphy
BRM/aec

Enclosure: Notice of Appeal
Proof of Service of the Notice of Appeal
Order of Dismissal

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Steven Joel Freeman

Petitioner,

VS.

State of South Carolina

Respondent.

PROOF OF SERVICE

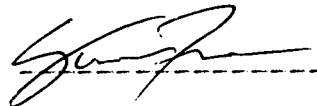
I certify that I have served a Motion To Stay Appeal, with three (3) exhibits, Order of Dismissal and a 59(e) Motion To Alter or Amend on the South Carolina Supreme Court and the South Carolina Attorney General by depositing a true copy of each along with cover letter in the United States Mail, through Perry's legal mail system.

SUBSCRIBED AND SWORN TO before me

This 25th day of August, 2011

Notary: ~~_____~~

Expire: February 24, 2012



Steven Freeman, #320156

Perry C.I Q-1-A 116

430 Oaklawn Road

Pelzer, S.C. 29669

Pro-Se Petitioner

Steven Freeman, #320516

Perry C.I. Q-1-A 116

430 Oaklawn Road

Pelzer, S.C. 29669

RECEIVED

AUG 25 2011

RCF. MAILROOM

Supreme Court of S.C.

Attn: Daniel Shearous

P.O. Box 11330

Columbia, S.C. 29211



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

September 15, 2011

RECEIVED

SEP 15 2011

S.C. Supreme Court

Ms. Wanda S. Nelson
Circuit Court Reporter
1428 Dove Landing Road
York, SC 29745

Dear Ms. Nelson:

Please provide us with the following transcript:

Steven J. Freeman v. State of South Carolina Case #: 09-CP-46-05532

County: York Date of Trial: June 2, 2011

Presiding Judge: Lee S. Alford

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,


Loriene French
Legal Services Coordinator

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

Brian R. Murphy
brian@brmurphy.com
888.454.1338

LAW OFFICE OF
BRIAN R. MURPHY, LLC

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Mailing Address: PO Box 805, Fort Mill, SC 29716 | Fax: 803.403.9517

August 9, 2011

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

RE: Post-Conviction Relief- Freeman v. South Carolina
Case No.: 2009-CP-46-5532

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above referenced case. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the respondent.
2. A copy of the order which is to be challenged on appeal.
3. No filing fee is required as this is a Post-Conviction Relief case.
4. This appeal is being filed with the Supreme Court pursuant to Rule 243.
5. This is an appointed case for an Indigent Defendant.

Thank you for your assistance in this matter.

With Warmest Regards,

Brian R. Murphy
BRM/aec

Enclosures: Notice of Appeal
Proof of Service of the Notice of Appeal
Order of Dismissal

CC: Mr. Steven Freeman

RECEIVED
AUG 10 2011
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Lee S. Alford

Case No: 2009-CP-46-5532

Steven J. Freeman, #320516,

Appellant

v.

State of South Carolina,


Respondent

NOTICE OF APPEAL

Steven J. Freeman appeals the decision of the Honorable Lee S. Alford filed on August 3, 2011. Appellant received written notice of entry of this order on August 4, 2011.

August 9, 2011

By:


Brian R. Murphy
Law Office of Brian R. Murphy, LLC
PO Box 805
Fort Mill, SC 29716
803-548-0321
brian@brmurphy.com
Attorney for Appellant

Other Counsel of Record:

Mr. Harrison D. Brant
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

RECEIVED

AUG 10 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Lee S. Alford

Case No: 2009-CP-46-5532

Steven J. Freeman, #320516,

Appellant

v.

State of South Carolina,

Respondent

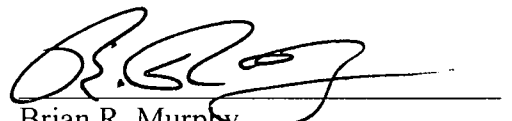
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid on August 9, 2011 addressed as follows:

Mr. Harrison D. Brant
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

August 9, 2011

By:



Brian R. Murphy
Law Office of Brian R. Murphy, LLC
PO Box 805
Fort Mill, SC 29716
803-548-0321
brian@brmurphy.com
Attorney for Appellant

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2009CP4605532

Steven J Freeman vs. South Carolina State of

CHECK ONE:

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

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

ORDER OF DISMISSAL

Dated at York, South Carolina, this 2nd day of August, 2011.

Court Reporter:

s/ LEE S. ALFORD

PRESIDING JUDGE - LEE S. ALFORD

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

Steven J Freeman Perry Correctional Inst. Q4B-
108 430 Oaklawn Rd Pelzer, SC 29669
Brian R Murphy Law Office Of Brian R.
Murphy P. O. Box 805 Fort Mill, SC 29716

Harrison D Brant Office Of Attorney General
P. O. Box 11549 Columbia, SC 292111549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

SCRPC APP-24/FORM 4

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
)
)
 Steven J. Freeman, #320516,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2009-CP-46-5532

FILED-RECEIVED
 2011 AUG -3 AM 8:58
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY SC

ORDER OF DISMISSAL

This matter comes before the Court by way of Application for Post-Conviction Relief filed December 18, 2009. The Respondent filed its Return on April 7, 2010. An evidentiary hearing into the matter was convened at the Moss Justice Center in York County on June 2, 2011. The Applicant was present at the hearing and was represented by Brian R. Murphy, Esquire. The Respondent was represented by Harrison D. Brant, Esquire, of the South Carolina Attorney General's Office.

The Applicant testified on his own behalf at the hearing, and also presented the testimony of his parents, Randall and Evette Freeman, Pastor Henry Terry, and Dr. Harold Morgan. The Applicant's trial counsel, Harry A. Dest, Esquire, and B. J. Barrowclough, Esquire, also testified at the hearing. This Court had before it the records of the York County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Applicant's appellate records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was

indicted at the November 2006 term of the York County Grand Jury for Murder (2006-GS-46-3825), Burglary in the First Degree (2006-Gs-46-3826), and Resisting Arrest (2006-GS-46-3827). Harry A. Dest, Esquire, and B. J. Barrowclough, Esquire, represented him on these charges. The Applicant proceeded to a jury trial on March 5, 2007; however, on March 6, 2007, he decided to forego the remainder of trial and pled guilty as indicted to all charges. The Honorable John C. Hayes, III, sentenced him to confinement for a period of fifty (50) years for Murder, fifty (50) years for Burglary in the First Degree, and one (1) year for Resisting Arrest, sentences running concurrently.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected pursuant to Anders v. California, 386 U.S. 738 (1967). The Applicant also filed a pro se brief. The S. C. Court of Appeals dismissed the Applicant's appeal. State v. Freeman, Op. No. 2009-UP-477 (S.C. Ct. App. filed October 1, 2009). The Remittitur was issued on October 29, 2009.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Failure to fully investigate Applicant's fitness to stand trial or enter a guilty plea
 - b. Failure to motion for a Blair hearing
 - c. Failure to motion for a continuance
 - d. Failure to properly inform the court of Applicant's mental illnesses
 - e. Failure to motion for a recess at request of Applicant's family
 - f. Failure to allow Applicant time to calm down before entering guilty plea
 - g. Failure to advise Applicant of any options other than to plead guilty
 - h. Failure to request bond hearing¹

¹ No testimony or evidence was presented on this issue. Therefore, the Applicant failed to meet his burden of proof,

At the evidentiary hearing, the Applicant amended his Application, over objection, to include a claim of prosecutorial misconduct. The Respondent was granted the opportunity to supplement the record after the hearing in order to respond to this new claim.

STATEMENT OF FACTS

On the evening of August 28, 2006, the Applicant followed his girlfriend, Petra Sherman, as she drove down the highway. The Applicant suspected Sherman had been cheating on him. He followed Sherman to an apartment complex, and found her car parked outside the apartment of the victim, Michael Burgess. He then saw Sherman and the victim through the window of the apartment sitting on the couch. He broke the glass on the window, entered the apartment and beat the victim to death with his bare fists. He violently resisted the police, and was arrested after being tazed twice and subdued by three officers.

The next morning, the Applicant was transported to the hospital from the jail after sustaining self-inflicted injuries to his head. (Tr. p. 55). At the hospital, the Applicant gave a voluntary statement to law enforcement officers indicating he followed Sherman to the apartment after she said she was going to Charlotte, but he saw her car travelling in the opposite direction. (Tr. pp. 58-60). He stated he found her vehicle and sat on it while he called her phone. He asked her to come outside, but she would not. He stated he saw her grin at him through the window, at which point he "lost it." He stated he broke through the window, entered, and started punching the guy. On the way back from the hospital, he told another officer he made a mistake, and he knew she was cheating. (Tr. p. 65).

At trial, one of the victim's neighbors, Bianca Moison, testified she saw the Applicant sitting on a car in front of the victim's apartment. (Tr. pp. 144-16). About ten to fifteen minutes

and the allegation is denied and dismissed.

later, she heard people arguing. (Tr. pp. 148-149). She went outside and saw the Applicant breaking the window and trying to get into the apartment, and saw someone else trying to call 911. (Tr. pp. 149-150).

Timothy Carter, a friend and neighbor of the victim, testified the victim called him the night of the incident. (Tr. p. 159). He testified the victim was very upset, his voice was trembling. (Tr. p. 160). He testified the victim was hollering for him to come over because someone was trying to kick his door in, and then the victim hung up the phone. (Tr. p. 160). He ran to the victim's apartment and jumped a porch rail to enter because the front door was locked. He saw a girl in the room screaming for help, saw the Applicant standing against the wall, and the victim was lying face down on the ground. (Tr. p. 161). He testified the room was covered in blood, and the victim was moving a little but was unresponsive. (Tr. pp. 161-162). He asked the Applicant what was going on, and the Applicant responded by threatening to rip him in half. (Tr. p. 162). He ran out to call 911, then saw the Applicant kick the victim twice in the face, and stomped on him twice as well. He testified the Applicant's face was not recognizable and looked black from all the blood. (Tr. p. 164). He further testified the Applicant was choking on his own blood. (Tr. p. 165).

On the second day of trial, Mr. Dest indicated they were not ready to proceed, and the trial court granted the parties a short break. (Tr. p. 173). After the break, the Solicitor indicated the Applicant wished to plead guilty to the charges without any negotiations with the State. (Tr. p. 173). The Applicant then answered a series of questions from the court regarding his desire to plead guilty. The Applicant affirmed that he was satisfied with his attorneys, he understood the charges and the potential penalties they carried, he understood his jury trial rights and the fact he was waiving those rights, and he wanted to plead guilty to each of the charges. (Tr. pp. 174-180). Mr. Dest then advised the trial court that the Applicant had attempted suicide several

times, and as a result he had the Applicant evaluated by Dr. Morgan to determine whether he was insane or guilty but mentally ill. (Tr. pp. 181-182). He explained that Dr. Morgan concluded the Applicant was under a lot of stress from his relationship with his girlfriend, and his steroid use may have had detrimental effects on his ability to control himself; however, Dr. Morgan concluded these issues did not rise to the level of a mental health defense. (Tr. p. 182-183).

The Solicitor then recited the facts of the case that had yet to be presented. He stated Petra Sherman indicated in her interviews that this was the first time she ever met the victim, and she had been in the apartment for just a few minutes, long enough for them to pour glasses of tea and for her to smoke a cigarette, before the Applicant arrived. (Tr. pp. 186-187). Picture evidence showed two glasses of tea and one smoked cigarette were found on the scene. (Tr. p. 187). He stated the Applicant also gave another statement in which he indicated Sherman actually came out of the apartment before he entered and attacked the victim. (Tr. p. 189). The Applicant agreed with the facts as stated by the Solicitor. (Tr. pp. 191-192). The trial court then found the Applicant's plea freely, voluntarily, and knowingly entered into. (Tr. p. 192).

In mitigation of sentencing, Mr. Dest advised the trial court that he was surprised the Applicant decided to plead guilty in the middle of trial, but he was not surprised as to the reasons the Applicant gave for his decision. (Tr. p. 204). He stated the Applicant said he did not want the victim's family or his family to suffer anymore. He stated the defense was ready to go forward and present a voluntary manslaughter defense, and the Applicant is aware he is waiving the right to pursue that defense. (Tr. p. 205). He stated the Applicant cried and was remorseful every time he visited him. He further advised the court that the Applicant was sexually abused as a child, and never really had any relationships with women. (Tr. pp. 207-208). He stated the Applicant's girlfriend was manipulative, controlling, and led the Applicant down the path to

losing control. The Applicant subsequently addressed the court, and gave the following statement:

I just want to say how sorry I am for what I did. I know that I took a father from his children and a son from his parents. No matter what I can't give that back to them. I wish, not a day goes by that I wished [sic] I could turn back time and go back to that day. I would drag myself out of there if I could. I know me [sic] spend my life in prison is probably, probably everybody is right, there ain't nothing like the prison I've been spending since the night this happened. I've been a prisoner here for the rest of my life just because. If there was anyway, I know they probably don't want to hear it, but when I get to prison and if I get a job at pay, please let me help his children, somehow just let me help them. They didn't deserve this. None of them deserved this. I'm sorry.

(Tr. pp. 222-223). The trial court responded that this was one of the top four or five most heinous and senseless acts he had seen in fifteen years on the bench, and stated he would have given the Applicant a life sentence if he had been convicted of murder by a jury. (Tr. p. 223).

SUMMARY OF TESTIMONY

The Applicant testified he had a history of mental and emotional issues. He testified he has suffered from depression and anxiety problems since he was young, although he was not diagnosed with such issues until much later. He stated he first attempted suicide when he was in his early teens by playing Russian roulette by himself, but the hammer never found a bullet. He testified that in 2003 he attempted a second time to shoot himself, but the gun jammed. His third attempt was on August 1, 2006, when he overdosed on pain pills because issues with his girlfriend caused him to be down and depressed. He stated he was hospitalized and his stomach was pumped. He was then admitted to a psychiatric ward, and was diagnosed with borderline personality disorder, bipolar disorder, impulse control disorder, anxiety disorder, and depression. He testified he was prescribed Zoloft for depression, and was also prescribed medicine for bipolar disorder and anxiety. He stated his fourth suicide attempt was on August 22, 2006, after

an argument with his girlfriend. He testified that in November of 2006 he was taken off his other medications and given only Vistaril for his anxiety issues.

The Applicant testified to his mental state at the time of his trial. He stated that two or three weeks before trial he was taken off Vistaril, and he told his attorneys this. He testified that the week before trial he felt panicked, and it felt like the room was spinning. He stated the first day of trial was difficult and he "lost it" when he heard the testimony presented by the State, and he was unable to focus. He testified he began crying at trial because he thought about what happened and how much pain he caused. He stated he had been having trouble sleeping, and the night after the first day of trial he again tried to commit suicide in his cell by putting a plastic bag over his head; however, it did not work.

The Applicant testified that on the day of his plea he could not gather his thoughts and felt like he could not go on. He stated he met with his attorneys in a back room and asked Mr. Dest if he could speak with his family, but Mr. Dest would not let him. He testified he then told Mr. Dest he could not go back out in the courtroom. He stated his thoughts were racing and he could not catch his breath. He testified his attorneys told him they could not tell him whether or not to plead guilty, and they did not try to talk him out of it. He stated his attorneys did not ask him about his mental status and should have asked for a continuance to have him evaluated, or should have asked for a recess to allow him to calm down. He testified he pled guilty within ten to fifteen minutes of "breaking down," and he would not have pled guilty if he had more time to calm down.

On cross-examination, the Applicant testified the trial was difficult to sit through because his anxiety and emotional state made it hard to relive the incident and hear the testimony. He testified he knew he did something wrong, he was remorseful, and he felt bad for the victim and his family. He stated he was able to communicate with his attorneys for the most part during

trial and before the plea, but he had difficulty concentrating. He testified he previously cycled steroids in heavy doses for three to four years, and stopped about one month and a half before the crimes were committed. He stated he thinks the reason he had about fifteen minutes to speak with his attorney prior to his plea was because his attorney requested that time. He again stated he would not have pled guilty if he had been given more time; however, he stated he did not know how much time he actually needed to calm down. He then read aloud the same statement he made to the trial court at sentencing. He testified he did not have trouble thinking when he gave this statement to the trial court, these were his own words, and no one told him what to say. He stated he knew he faced life in prison when he pled guilty, and he knew he had the right to a jury trial because he was in the middle of one and could have continued with it if he wanted to.

The Applicant then answered questions from the Court. He testified appellate counsel filed an Anders brief on his behalf, and he then sought permission to file his own pro se brief. He then filed a brief that raised these same issues on appeal, i.e., his plea was not knowingly, voluntarily, and intelligently entered. He testified he made the decision to plead guilty.

The Applicant's father, Randall Freeman, testified he was not aware of the Applicant's mental health problems until recently. He said the Applicant's behavior on the day of his plea was strange, and he did not think the Applicant could go forward. He testified the Applicant was crying and appeared to be nervous and emotional. He stated it was not normal for the Applicant to be emotional. He testified he asked Mr. Dest to speak with the Applicant, but he was not given the opportunity. He stated he would have told the Applicant to continue with trial. On cross-examination, he testified he visited the Applicant at the jail before trial, and the Applicant was emotional at that time. He then stated the Applicant was emotional from the time of his arrest until trial, and was always very remorseful.

The Applicant's mother, Evette Freeman, testified the Applicant first saw a psychiatrist

when he was young after their house burned down and his sister passed away. She stated the Applicant was not prone to crying or being emotional. She stated the Applicant was remorseful, and often talked about the victim's children having to grow up without a father. She testified that on the second day of trial the Applicant appeared to be dazed, and the next thing she knew Mr. Dest was telling them the Applicant wanted to plead guilty. She stated she told Mr. Dest not to let the Applicant plead guilty, and asked to speak with the Applicant. She said she would have told the Applicant not to plead guilty. On cross-examination, she testified the Applicant was emotional during visits she made to jail prior to trial. She also testified she witnessed the Applicant give his statement to the trial court at sentencing, and the Applicant seemed very remorseful, sad, hurt, and clear-headed.

Henry Terry testified he was the pastor of the Applicant's parents, but the Applicant did not attend his church. He stated he met the Applicant ten years ago in the parents' home. He testified the Applicant appeared to be a normal, calm, everyday guy who never got in trouble with the law. He testified that when he visited the Applicant in jail he "saw a man that was beaten," and appeared depressed. He stated the Applicant told him he wanted to give money to the victim's children. He testified the Applicant was emotional and his face looked different than it does today.

Mr. Dest testified he met with the Applicant fifteen to twenty times before trial. He testified he knew the Applicant attempted suicide several times, suffered from bouts of depression, and had previously taken steroids.² He stated he knew the Applicant was on medication for depression; however, the Applicant never told him that he stopped taking his medication, and he was not aware of any doctor's orders to such effect. He hired Dr. Harold

² Dest also testified the Applicant weighed 265 pounds on the day he was arrested, and weighed about 195 pounds at the time of trial.

Morgan, a forensic psychiatrist, to examine the Applicant and explore these issues. Dr. Morgan met with the Applicant twice and conducted a personality traits test. He testified Dr. Morgan's assessment found the Applicant was insecure and had low self-esteem. He stated Dr. Morgan indicated these issues were the product of the Applicant's emotional dependence on a woman who played mind games and who he thought he saw engaging in sexual activity with another man, and also the product of his impulsivity problems. He testified the Applicant's prior steroid use, or his withdrawals therefrom, made him more irritable and impulsive. He testified that as a result of these examinations, Dr. Morgan concluded the Applicant had no issues with competency, and found no indication the Applicant was insane.

Mr. Dest testified he has been practicing criminal law for about twenty years. He stated he has experience representing clients who have competency issues, and more specifically, clients who go in and out of competency. He testified that based on his interactions with the Applicant, he made no observations suggesting the Applicant was incompetent to stand trial, and Dr. Morgan's examination proved that. He stated the Applicant did not have a mental health disability; he was just emotionally weak. He testified he observed no change in the Applicant's demeanor before or after he was examined by Dr. Morgan. He stated the Applicant never appeared confused in their discussions, and always seemed to understand the charges, the consequences of those charges, and the evidence against him.

Mr. Dest testified that on the second day of trial, the Applicant was crying and said he wanted to plead guilty. He stated he asked the judge for some time, and they were given twenty to thirty minutes to talk. He testified the Applicant said he did not want to put his family or the victim's family through anymore. He testified he was surprised by the Applicant's decision and did not want him to plead guilty. He stated their trial strategy all along had been to put up a voluntary manslaughter defense, and they had not had a chance to present any evidence yet. He

testified he tried to convince the Applicant not to plead guilty, and told him to at least wait until they had a chance to cross-examine the girlfriend. He testified the Applicant asked how much time he could get if he pled straight up, and he advised the Applicant he could receive a life sentence and would waive his voluntary manslaughter defense. He stated he spoke with the Applicant's family, and they did not want him to plead guilty; however, the Applicant never asked to meet with his family, and this was not their decision to make.

Contrary to the Applicant's assertion he was emotional only at the time of the plea, Mr. Dest testified the Applicant was emotional and cried every time they met. He testified the Applicant was not "breaking down," but was emotional and said he was sorry for what he did; however, in his experience it is not unusual for a client who killed someone to express remorse. He stated he has tried numerous murder cases in the past, and it is normal for a defendant to experience anxiety. He testified the Applicant seemed focused and did not appear confused during their plea discussions, and the Applicant never indicated he had racing thoughts or did not understand anything. He testified that prior to trial the Applicant always did what was asked of him; however, he testified clients often do not follow advice, and it did not strike him as unusual that the Applicant did not follow his advise on this occasion. He stated he did not request a continuance because the judge would not have granted one under the circumstances of this case just so they could explore plea options. He further stated that if there was any reason to believe the Applicant had become incompetent to continue trial, they would have requested an evaluation.

Mr. Barrowclough testified he has been practicing criminal law exclusively for about sixteen years. He stated his role in this case involved more direct interaction with the Applicant. He stated he has represented clients with competency issues in the past, and he never observed anything from the Applicant to indicate he lacked competency. He further stated he met with the

Applicant numerous times before trial, and the Applicant always seemed to understand their discussions, did not appear confused, and followed their suggestions. He testified the Applicant always responded to questions and interacted appropriately with him. He further testified the Applicant had a big heart and felt bad about what he did.

Mr. Barrowclough also testified the Applicant was emotional during the trial and on the day he pled guilty; however, this was nothing new or different as the Applicant was emotional throughout his representation. He stated he did not recommend that the Applicant plead guilty, and his decision to plead guilty came at the worst possible time of trial when the State had just presented damaging testimony. He stated they needed to put up their own evidence to put the Applicant in a better light. He testified they requested and were granted a break to speak with the Applicant, but they did not request a continuance or a competency hearing. He stated the Applicant did not seem confused in their discussions immediately prior to the plea. He testified he does not recall the Applicant asking to speak with his family.

Dr. Harold Morgan was stipulated as an expert in forensic psychiatry. He stated that in preparation for his current testimony he reviewed incident reports, witness statements, letters, medical records, investigative reports, and talked to the Applicant's parents. He testified he was asked by Mr. Dest to examine the Applicant in early September of 2006. He examined the Applicant twice, once on September 22, 2006, and once on January 31, 2007. He testified the Applicant's medical records reveal he was admitted into a hospital on August 2, 2006, after overdosing on pills because his girlfriend threatened to leave him. He stated illicit drugs were also found in the Applicant's urine. On August 23, 2006, the Applicant was again hospitalized, was diagnosed with depression and impulse control issues, and was prescribed Zoloft. On the day after the Applicant's arrest, he was admitted to the hospital after sustaining self-inflicted injuries to his head. In November of 2006, he testified the Applicant was evaluated by Catawba

Mental Health Center staff in jail. They determined that he no longer needed Zoloft and discontinued the prescription; however, they did prescribe an antihistamine, Vistaril, to help him sleep.

Dr. Morgan testified the Applicant was then diagnosed with the following: adjustment disorder, which includes symptoms of anxiety and depression; impulse control disorder; borderline personality disorder, which means he does not handle stress very well; and alcohol dependence. He stated the Applicant has a dependent personality accompanied by insecurity, lacks confidence, and has feelings of inadequacy which he tried to cover with large muscles. He testified the Applicant's ability to cope with stress is low and meager. He testified the severity of the Applicant's anxiety is situationally dependent, and could to some extent erode the Applicant's ability to make competent decisions. He testified medications can help calm this fear and anxiety; however, Zoloft is for depression, and would not have been very helpful. He stated a trial would cause high anxiety, and could potentially take over his ability to make competent decisions.

On cross-examination, Dr. Morgan testified that both times he evaluated the Applicant he concluded he was clearly competent, and there is no doubt the Applicant was criminally responsible at the time he committed the crimes. He stated the Applicant expressed remorse in their meetings, and he saw nothing abnormal about this. He stated the Applicant appeared anxious at the time of these evaluations. He testified he was not given a copy of the transcript from the Applicant's plea to review before his current testimony; however, he was present in the courtroom for all of the testimony given thus far, and was present when the Applicant read out loud the statement he previously gave to the trial court at sentencing. He testified the reasons the Applicant gave for pleading guilty were emotional, but rational. Based on this testimony, he believes the Applicant was competent to stand trial and make decisions at the time he pled guilty.

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On re-direct, Dr. Morgan testified he knows a person can go in and out of competency depending on the nature of a mental illness. However, he testified anxiety is not likely to cause a person to lose competence, and a more serious mental illness is necessary to cause such an effect. He testified bipolar disorder is also not likely to overtake someone's competency overnight, and suicide attempts are not necessarily indicative of incompetency. On recross-examination, Dr. Morgan reiterated his belief the Applicant was competent on the day of the plea. He also testified suicide attempts can be used for manipulative purposes. He stated he believes the Applicant ultimately made the decision to plead guilty.

Dr. Morgan then answered questions directly from the Court, and testified that Zoloft is an anti-depressant with subtle effects. He testified the Applicant was prescribed a low dosage that was not likely to help the Applicant much. He stated the Applicant was monitored by the department of mental health in jail, and the doctor took him off Zoloft based on the social worker's notes. He testified borderline personalities can be manipulative.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

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 "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

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cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). 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.

The Applicant alleges counsel was ineffective with regards to his alleged incompetency by failing to adequately investigate the matter, move for a Blair hearing, or otherwise properly inform the court of his mental illnesses. For the Applicant's claims to be successful, he must prove he was incompetent at the time of his plea, or was insane at the time the crimes were committed. "In a PCR action, the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea." Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992). Even if counsel was deficient with regards to his or her failure to further investigate or address the Applicant's defendant's mental capacity, the Applicant still must show prejudice from this deficiency. Jeter, 308 S.C. at 233, 417 S.E.2d at

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596. Under the second prong of Strickland, this requires the Applicant to demonstrate a “reasonable probability” that he was either insane at the time the crime was committed, or that he was incompetent at the time of the plea. Id.

This Court finds the Applicant failed to prove he was incompetent at the time of his plea. “The test for competency to stand trial or continue trial is whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as factual, understanding of the proceedings against him.” McLaughlin v. State, 352 S.C. 476, 481, 575 S.E.2d 841, 843 (2003); see also Jeter, 308 S.C. at 232, 417 S.E.2d at 596 (“The test for competency to enter a plea is the same as required to stand trial”). The Applicant’s own testimony established he was able to communicate with his lawyers in preparation for trial, during trial, and immediately before he pled guilty. The Applicant also testified he did not have trouble thinking when he voluntarily, and without assistance, addressed the court at the plea hearing and gave a statement exceeding nine sentences in length in which he expressed extreme remorse for his actions. Further, his testimony established he understood the consequences of his plea, i.e., he knew he potentially faced life in prison and was waiving his right to continue with a jury trial.

This Court finds the testimonies of the Applicant’s mother and father, and their pastor, not persuasive on the issue. Each of these witnesses attempted to establish that the Applicant’s emotional behavior on the day of the plea was abnormal and irrational. However, his mother and father both testified the Applicant was emotional and very remorseful from the time of his arrest until the time of trial, a time period which exceeded seven months in length.³ Further, the Applicant’s mother testified the Applicant seemed clear-headed when he addressed the court at the plea hearing. These witnesses failed to otherwise present any credible testimony indicating

³ The Applicant was arrested on August 28, 2006, the night of the murder, and pled guilty on March 6, 2007.

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the Applicant did not understand what he was doing when he pled guilty, or did not understand the consequences of doing so.

The testimony of each of the Applicant's attorneys further indicates the Applicant was competent at the time of the plea. This Court first finds the Applicant was represented by two experienced criminal trial practitioners, both of whom have years of experience in the most serious and high profile cases. These attorneys also have substantial experience in representing persons that are mentally ill or have emotional issues, including persons who go in and out of competency. Their testimony in this case established that they both had extensive direct interaction with the Applicant, and neither one of them ever observed any behavior from the Applicant indicative of incompetency. Their testimony established the Applicant's tearful and emotional behavior at the plea was not unusual; to the contrary, they observed this behavior every time they met with the Applicant. Mr. Dest testified the Applicant was emotionally weak, but not mentally ill. They testified the Applicant at all times seemed to understand their discussions, the charges and their consequences, and the evidence against him. They testified the Applicant always responded to questions and interacted appropriately with them. Further, they testified that in their discussions about the plea the Applicant seemed focused and appeared to understand he faced the possibility of life in prison and would waive his voluntary manslaughter defense.

The testimony of the Applicant's expert, Dr. Morgan, did not help his case. He testified he examined the Applicant and found him to be clearly competent on two occasions, the second of which occurred about a month before trial. He testified the Applicant's anxiety and emotional issues were not likely serious enough in nature to have caused the Applicant to suddenly decompensate to the point where he became incompetent to proceed with trial. Further, he did not believe the fact the Applicant was taken off his Zoloft prescription affected his competency

because Zoloft has subtle effects, and he was only prescribed a very low dose. He also testified the reasons the Applicant stated for pleading guilty before the trial court were emotional and remorseful, but rational, and indicate the Applicant was competent to stand trial or make decisions at the time he pled guilty. Ultimately, he concluded the Applicant was competent when he made the decision to plead guilty.

Furthermore, this Court finds the Applicant failed to show a "reasonable probability" he was insane at the time he committed the crimes. See Jeter, 308 S.C. at 233, 417 S.E.2d at 596. "For an insanity defense, the accused must be unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong." Id. (citing S.C. Code Ann. § 17-24-10 (Supp. 1991)). "To show prejudice for failing to pursue this defense, the petitioner must produce some evidence of insanity or a showing that with the exercise of due diligence, an insanity defense could have been developed." Id. at 233-34, 417 S.E.2d at 596.

There is ample evidence before this court to establish the Applicant knew it was morally and legally wrong to kill the victim. In the Applicant's statement to the trial court, he expressed regret and remorse for his actions, apologized to the victim's family, and offered to help the victim's children financially. The Applicant testified before this Court that he knew what he did was wrong, and reaffirmed that he was remorseful for his actions. In fact, every other witness presented at the hearing testified the Applicant expressed remorse for his actions and guilt for the effect those actions had on the family of the victim. Further, Dr. Morgan testified he had no doubt the Applicant was criminally responsible at the time he committed the crimes.

Therefore, this Court finds the Applicant failed to meet his burden of proving he was incompetent at the time of his plea, or insane at the time he committed the crimes. This Court finds counsel was not ineffective for failing to further investigate the Applicant's alleged incompetency, request a Blair hearing, or request a continuance to have the Applicant further

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evaluated because the evidence before this Court clearly refutes the Applicant's claim of mental incompetency. Accordingly, these claims are denied and dismissed.

Involuntary Guilty Plea

The Applicant alleges he would not have pled guilty if his attorneys had moved for a continuance, moved for a recess to allow him to speak with his family, or advised him of alternative options. An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the post-conviction relief hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges against an individual." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct.App.2007). "Therefore, statements made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874.

The guilty plea transcript reflects straightforward responses by the Applicant to questions from the trial court. The Applicant affirmed he was satisfied with his attorneys, he understood the charges against him and their potential penalties, he was entering his plea freely and

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voluntarily, he understood his jury trial rights and the fact he was waiving those rights, and he wanted to plead guilty. (Tr. pp. 174-180). Mr. Dest then informed the court of the Applicant's history of suicide attempts and depression. (Tr. p. 181). Mr. Dest also informed the court that he had the Applicant examined by Dr. Morgan who concluded these issues did not amount to a mental health defense. (Tr. pp. 181-183). The Applicant agreed with the facts of the case as recited by the Solicitor (Tr. pp. 184-192). After the court found the Applicant's plea was freely, voluntarily, knowingly, and intelligently entered into, the Applicant addressed the court with a statement that was clear, coherent, and expressed extreme remorse for his actions. (Tr. pp. 192; 222-223). This Court finds the Applicant has failed to present sufficient reason why he should be allowed to depart from the truth of his statements made at the guilty plea hearing.

This Court further finds no evidence to indicate the Applicant would have continued with trial rather than pleading guilty if his attorneys had requested a continuance, requested a recess to allow him to speak with his family, or advised him of other options. The Applicant's attorneys had already requested and obtained a brief recess during which they advised the Applicant not to plead guilty yet. They also testified a continuance would not have been granted at that time, and the Applicant never asked to speak with his family. Further, the Applicant testified he did not know how much more time he would have needed to calm down before he would have decided to continue with trial. Therefore, the conclusion the Applicant would not have pled guilty if he had been given more time is based purely on speculation. See Simpson v. Moore, 367 S.C. 587, 598, 627 S.E.2d 701, 707 n.2 (2006) (PCR applicants "may not simply posit suppositions and speculations in an attempt to establish that counsel was ineffective"). This Court finds no evidence to indicate additional time, investigation, evaluation, or discussion would have resulted in the Applicant deciding to continue with trial rather than plead guilty. These claims are therefore denied and dismissed as being without merit.

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Therefore, this Court finds that Applicant's plea was entered into voluntarily, knowingly, and intelligently. This Court finds Applicant was made aware of the right to a jury trial and rights pertinent thereto as well as the fact these rights would be waived by entering a plea of guilty. This Court further finds counsel did not improperly pressure or threaten the Applicant in counsel's discussions regarding the Applicant's plea. Further, this Court finds counsel was prepared for a trial and provided the Applicant with counsel's assessment of the strength of the State's case and possible outcome at trial. The testimony offered at the evidentiary hearing and the guilty plea colloquy clearly establishes the Applicant knowingly and intelligently pled guilty based upon the effective assistance of trial counsel. This Court further finds counsel adequately conferred with the Applicant, adequately sought and discussed plea options, was thoroughly competent in their representation, and counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence trial counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, the allegation of ineffective assistance of counsel is denied.

Prosecutorial Misconduct

The Applicant also alleges the Solicitor committed prosecutorial misconduct. By way of a legal memorandum entered into the record as an exhibit, the Applicant alleges the Solicitor obtained indictments against the Applicant through acts of perjury. In support of this allegation,

the Applicant asserts the York County Grand Jury was not scheduled to convene on November 9, 2006, the date on which his indictments were true billed. In response, the Respondent supplemented the record with a certified copy of an Administrative Order, dated April 3, 2006, setting forth the dates for the convening of the York County Grand Jury. The Administrative Order conclusively shows the York County Grand Jury was scheduled to convene on November 9, 2006, the same date on which the Applicant's indictments were true-billed. Accordingly, this allegation is denied and dismissed as being entirely without merit.

CONCLUSION

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

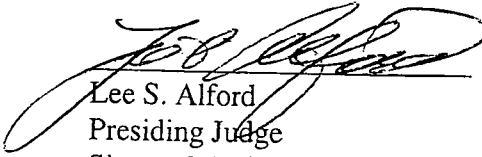
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that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

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IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 2nd day of August, 2011.


Lee S. Alford
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina.

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