

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAR 30 2012

Appeal from Richland County
James R. Barber, III, Circuit Court Judge

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

QUANDELLE J. WILSON,

Petitioner
APPELLANT

3

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

Counsel for Quandelle Wilson respectfully requests a **final extension of thirty (30) days until April 30, 2012** 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 final 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. The Court has granted two previous extensions.
2. Counsel for Mr. Wilson 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.

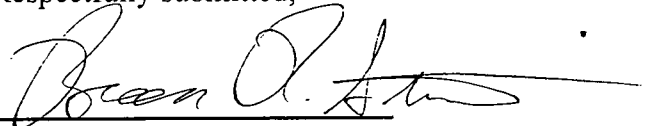
3. On March 26, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Samuel Dingle in the Court of Appeal. On March 23, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Brandon Rogers in the Court of Appeals. On March 19, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Bernaldino Ocasio in the Court of Appeals. On March 16, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Christopher Watson in the Court of Appeals. On March 12, 2012, counsel filed the petition for writ of certiorari and appendix in the case of Claude Jones v. State in this Court. On March 5, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Allen Capers and the brief of petitioner in the case of State v. Jason Black in this Court. On February 29, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Randy Blythe in the Court of Appeals. On February 22, 2012, counsel filed the Motion to Supplement the Appendix in the case of Damon Jackson v. State in this Court. On February 21, 2012, counsel filed the petition for writ of certiorari and appendix in the case of Christopher Strope v. State and the petition for writ of certiorari and Brief of Appellant Pursuant to White v. State in the case of Labrontae Agnew v. State in this Court. On February 16, 2012, counsel had an oral argument in the case of State v. Shawn Miller in the Court of Appeals. On February 13, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Stanqwanner Wiggins in the Court of Appeals. On February 9, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Rico Brown in the Court of Appeals. On February 7, 2012, counsel had an oral argument in the case of State v. Joey Ellis in this Court. On February 6, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Ronald McCauley in the Court of Appeals.

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

5. Counsel for the Attorney General's office consents to this request as shown by signature below.

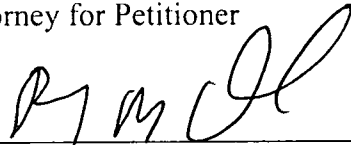
WHEREFORE, the undersigned counsel would respectfully request a **final thirty (30) day extension until April 30, 2012**, in which to file the petition for writ of certiorari and appendix in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the petition be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Breen R. Stevens
Appellate Defender

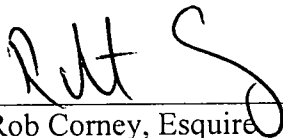
Attorney for Petitioner



Robert M. Dudek
Chief Appellate Defender

This 30th day of March, 2012

I Consent:



Rob Corney, Esquire

The Supreme Court of South Carolina

Quandelle J. Wilson, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable James R. Barber
Richland County
Trial Court Case No. 2010-CP-40-00045

ORDER

For good cause shown, the request for an extension until March 30, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Arenda J. Shealy*
Clerk

Columbia, South Carolina *Chief Deputy*

March 2, 2012

cc: Appellate Defender Breen R. Stevens
Assistant Attorney General Robert L. Corney

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

RECEIVED
FEB 29 2012
S.C. Supreme Court

THE STATE,

RESPONDENT,

v.

QUANDELLE J. WILSON,

APPELLANT

(2)

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

Counsel for Quandelle Wilson 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. The Court has granted one previous extension.
2. Counsel for Mr. Wilson 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. Counsel is preparing to file the initial brief of appellant and designation of matter in the case of State v. Randy Blythe in the Court of Appeals today, February 29, 2012. On February 22, 2012, counsel filed the Motion to Supplement the Appendix in the case of Damon Jackson v. State in this Court. On February 21, 2012, counsel filed the petition for writ of certiorari and appendix in the case of Christopher Strope v. State and the petition for writ of certiorari and Brief of Appellant Pursuant to White v. State in the case of Labrontae Agnew v. State in this Court. On February 16, 2012, counsel had an oral argument in the case of State v. Shawn Miller in the Court of Appeals. On February 13, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Stanqwanner Wiggins in the Court of Appeals. On February 9, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Rico Brown in the Court of Appeals. On February 7, 2012, counsel had an oral argument in the case of State v. Joey Ellis in this Court. On February 6, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Ronald McCauley in the Court of Appeals. On January 30, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Raymond Flores in the Court of Appeals. On January 27, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Robert Johnson in the Court of Appeals. On January 25, 2012, counsel had an oral argument in the case of State v. Phillip Coker in the Court of Appeals. On January 23, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Cordelle Washington in the Court of Appeals. On January 19, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Azikiwe Archie in the Court of Appeals. On January 17, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Phillip Parsons in the Court of Appeals. On January 12, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Henry Ross in the Court of

Appeals. On January 9, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Mark Elliott in the Court of Appeals.

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

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,

A handwritten signature in black ink, appearing to read "Breen R. Stevens", written over a horizontal line.

Breen R. Stevens
Appellate Defender

Attorney for Petitioner

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

RECEIVED
FEB 29 2012
S.C. Supreme Court

THE STATE,

RESPONDENT,

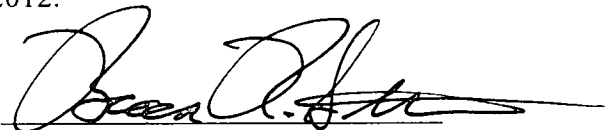
v.

QUANDELLE J. WILSON,

APPELLANT

CERTIFICATE OF SERVICE

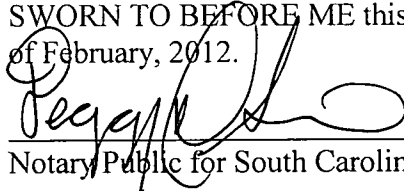
I certify that a true copy of the motion for an extension of time in which to file the petition for writ of certiorari and appendix in the above case has been served upon Robert Corney, Esquire, this 29th day of February, 2012.



Breen R. Stevens
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day
of February, 2012.



(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.



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

January 30, 2012

RECEIVED

JAN 30 2012

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

S.C. Supreme Court

Re: Quandelle Wilson v. The State

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in this case are due to be served and filed with the Court today, January 30, 2012. However, because of my heavy workload at this time, I am requesting an extension for 30 days, in which to serve and file the petition.

By copy of this letter, I am informing Brian Petrano, of the Attorney General's Office, of my request.

Sincerely,

Breen R. Stevens
Appellate Defender

BRS/pds

cc: Brian Petrano, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
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Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

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

November 29, 2011

RECEIVED

NOV 29 2011

S.C. Supreme Court

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

Dear Mr. Shearouse:

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

Quandelle J. Wilson v. State of South Carolina

11/29/2011

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,

Sharon A. Graham
Administrative Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

September 28, 2011

RECEIVED

SEP 28 2011

S.C. Supreme Court

Ms. Daphne D. Helms
Circuit Court Reporter
556 Heron Glen Drive
Columbia, SC 29229

Dear Ms. Helms:

Please provide us with the following transcript:

Quandelle J. Wilson v. State of South Carolina Case #: 10-CP-40-00045

County: Richland Date of Trial: June 7, 2011

Presiding Judge: James R. Barber, III

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,

Sharon A. Graham
Administrative Coordinator

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

Law Office of Jeremy A. Thompson, LLC

September 7, 2011

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211-1330

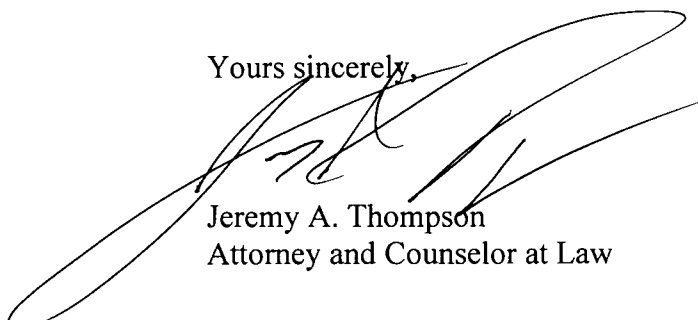
Jeremy A. Thompson
Attorney at Law

RE: Quandelle J. Wilson, #337054 v. State of South Carolina; 10-CP-40-0045

Dear Mr. Shearouse:

Enclosed please find the original and two (2) copies of my Notice of Appeal in the above-captioned action. I would appreciate your filing the original, clocking the copies, and returning the two (2) clocked copies to me in the envelope provided. Inasmuch as I was court-appointed in this matter, I will now be turning this file over to the South Carolina Commission on Indigent Defense, Office of Appellate Defense for perfection of this appeal. I would note that Judge Barber issued a written Order of Dismissal in this case which was filed with the Richland County Clerk of Court's Office on August 22, 2011. A copy of that Order is also enclosed. With my thanks for your assistance in this matter and my best regards, I am,

Yours sincerely,


Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
Enclosures

cc: Brian T. Petrano, Assistant Attorney General (w/ Notice of Appeal)
Sharon Graham, South Carolina Office of Appellate Defense (w/ Notice of Appeal)
Quandelle J. Wilson, #337054 (w/ Notice of Appeal)

1612 Marion Street, Suite 210
Columbia, South Carolina

P O Box 12891
Columbia, SC 29211

Phone: 803-779-2555
Fax: 803-779-2556

RECEIVED

SEP 12 2011

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James R. Barber, III, Presiding Judge

10-CP-40-0045

QUANDELLE J. WILSON, #337054,

Petitioner,

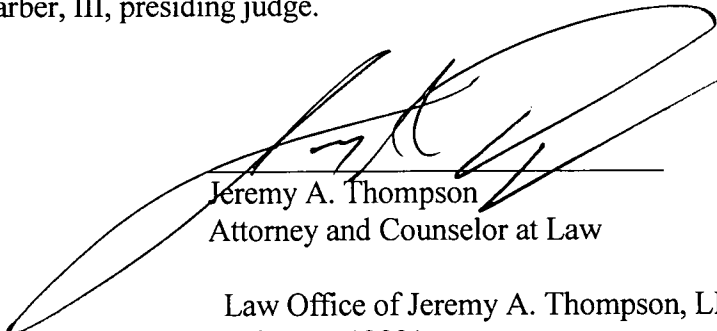
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Quandelle J. Wilson, #337054, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed August 22, 2011, and received by counsel on August 25, 2011, issued by the Honorable James R. Barber, III, presiding judge.



Jeremy A. Thompson
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555 Phone
803-779-2556 Fax
jeremyatlaw@yahoo.com E-mail

ATTORNEY FOR PETITIONER

This 7th day of September, 2011.

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

RECEIVED

SEP 12 2011

S.O. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James R. Barber, III, Presiding Judge

10-CP-40-0045

QUANDELLE J. WILSON, #337054,

Petitioner,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Brian T. Petrano, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 7th day of September, 2011.

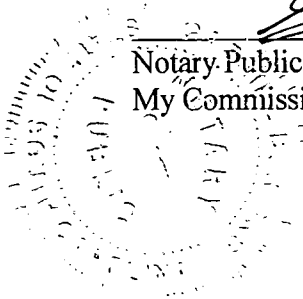

Jeremy A. Thompson
Attorney and Counselor at Law

SWORN TO BEFORE me this 7th day
of September, 2011.



(L.S.)
Notary Public for South Carolina

My Commission Expires: ~~9/17/11~~ 2/16



RECEIVED
8/23/11

Form 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010CP4000045

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

Quandelle J #337054 Wilson

vs.

State of South Carolina

Plaintiff

Defendant

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 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:

2011 AUG 23 PM 3:06
JEANETTE W. McBRIDE
CLERK OF COURT
RICHLAND COUNTY

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)

- Affirmed;
- Reversed;
- Remanded;
- Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

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

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

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 22 August 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Jeremy A Thompson
Quandelle J #337054 Wilson

Brian T. Petrano

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride
Clerk of Court

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2010-CP-40-00045

Wilson, Quandelle J., #337054,)
Applicant,)

ORDER OF DISMISSAL

v.)
State of South Carolina,)
Respondent)

RICHLAND COUNTY
FILED
2011 AUG 22 PM 3:04
JEANETTE M. BRIDGE
CLERK

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 5, 2010. The Respondent made its Return on February 22, 2011. An evidentiary hearing into the matter was convened on June 7, 2011 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Jeremy A. Thompson, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Nicole Singletary, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently incarcerated at the South Carolina Department of Corrections ("SCDC") pursuant to order of commitment of the Clerk of Court for Richland County. He was indicted for murder during the July 2008 term of the Richland County Grand Jury. On

SCANNED

September 21, 2009, Applicant pled guilty to voluntary manslaughter. The Honorable L. Casey Manning sentenced Applicant to confinement for a period of twenty five (25) years.

The Applicant explained that he attempted to appeal his guilty plea and his appeal was dismissed on November 11, 2009.

In the PCR application 2010-CP-40-00045 the Applicant alleges ineffective assistance of counsel, specifically:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See Attachment
- (b) _____
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) See Attachment
- (b) _____
- (c) _____

18. State clearly the relief you seek in filing this application.
Resentencing after vacation of involuntary plea, due to erroneous indictment

NOW COMES THE ABDIE NAMED APPLICANT, BEFORE THIS HONORABLE COURT IN THE ABOVE CAPTIONED MATTER SPECIFICALLY ASSERTING CLAIMS OF BEING HELD UNLAWFULLY BY THE STATE OF SOUTH CAROLINA IN VIOLATION OF THE LAWS AND TREATISE OF THE UNITED STATES CONSTITUTION AND ARTICLES OF THE SOUTH CAROLINA CONSTITUTION, TO WIT: INEFFECTIVE ASSISTANCE OF COUNSEL, AND LACK OF JURISDICTION FOR SENTENCE UNDER CURRENT INDICTMENT. APPLICANT WILL SHOW THAT HE WAS DENIED DUE PROCESS OF LAW AND EQUAL PROTECTIONS AFFORDED HIM AS A U.S. CITIZEN.

Questions

(A) Was counsel at applicant's plea hearing ineffective for failing to motion for the admission of applicant's statement to arresting officer, explaining his position or why he made it
took place involuntarily as it did thus potentially having a

17

Favorable bearing on how the court would dispose of case?

(b) Did said counsel's performance fall below the standards of professional norms expected of an attorney for not exercising due diligence with applicant and his concerns of going forward with guilty plea, when facts of case warranted a decisively different legislative intent?

(c) Did said counsel's performance sustain its low standards when there was a failure to hold the adversarial process to the highest possible standard advocated by the judicial process by neglecting to file and submit a motion to quash indictment for murder, when facts and evidence warranted an indictment for involuntary manslaughter?

(d) Did counsel's performance continue on the slippery slope of fundamental indifference when there was a failure to file motion to quash indictment of murder, because of its defectiveness of not putting defendant on proper notice?

Procedural History

The applicant, Guadalupe J. Wilson, is an inmate at the Broad River Correctional Institution (S.C.D.C.) Applicant was indicted for Murder in Richland County. Applicant was represented by Nicole Singleberry, who was appointed by the state. The honorable L. Casey Manning, circuit judge, presided at the plea hearing. The applicant pleaded guilty to voluntary manslaughter and was sentenced to twenty five years. Counsel for applicant filed a timely notice of appeal from guilty plea and on appeal, applicant, was represented by Joseph H. Savitz, III, Senior appellate defender, of the South Carolina Office of Appellate Defense. Counsel at plea hearing failed to raise issue of involuntary plea for review by the Court of Appeals, pursuant to Rule 803(d)(5)(ii), SCAAR, which requires a "written explanation showing that there is an issue(s) which can be reviewed on appeal. . . . including how the issue(s) was raised below and the ruling of the lower court on that issue(s)." The court after careful review dismissed appeal because of the failure to establish any genuine issues for appellate review. The appeal was dismissed on 11/9/2009.

As a result of the action by the Court of Appeals, applicant filed a timely application for post conviction relief and in the application, he asserts claims of being held in custody unlawfully by the State of South Caro-

(3)

finds in violation of the Laws and Treatise of the United States Constitution and the Articles & Sections of the South Carolina Constitution, for the following reasons:

- (1) Ineffective Assistance of Counsel
- (2) Subject Matter Jurisdiction
- (3) Violation of Due Process.

The issues and claims raised by the applicant, are proper before this Court, under the South Carolina Post Conviction Relief Acts 17-27-20, challenging the validity of his conviction and sentence. Stating that counsel of plea failed to perform with a normal degree of skilled knowledge, and professional judgment that is required of an attorney, who practices criminal law, pursuant to the standards brought forth in Strickland v. Washington, for failing to motion for a Jackson v. Devo hearing to determine the need for applicant's statement made to investigating officer, to be admitted into evidence because of the mitigating nature of information that factually underscored a correct charge of involuntary manslaughter.

In light of this factual project, applicant asserts that his guilty plea was not knowing and intelligent and therefore involuntary for voluntary manslaughter. In United States v. Liberty, 38 F.3d 883, 529 (10th Cir. 1997), aff'd — U.S. —, 114 S. Ct. 354, 133 L.Ed.2d 271 (1996). The

longstanding test for determining the validity of a guilty plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Hill v. Lockhart*, 474 U.S. at 56, 106 S.Ct. 366, 369, 38 L.Ed.2d 203 (1985) (quoting *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S.Ct. 1160, 1164, 27 L.Ed.2d 1162 (1970)). A guilty plea entered upon the advice of counsel is invalid if the plea was coerced, *Osborn v. Skillinger*, 997 F.2d 1324, 1337 (10th Cir. 1993), or if the advice of the defendant's counsel was not within the range of competence demanded of attorneys in criminal cases, *Hill v. Lockhart*, 474 U.S. at 56, 106 S.Ct. at 369; *McLain v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449, 25 L.Ed.2d 463 (1970).

Appellant advances several reasons why his guilty plea was not voluntary: (1) Judgment was defective, (2) All facts of case was incomplete, and (3) Appellant's attorney rendered ineffective assistance for failing state issues for appeal, causing appeal to be dismissed.

Appellant asserts that in his statement to investigating officer who directed interrogation, the victim, who was sitting in his vehicle, appeared to reach down after applicant responded in the negative about a significant amount of money owed for drugs. (*State v. Rash*, 189 S.C. 42, 50, 178 S.E.2d 430 (1950). Defendant need not wait until the assailant gets the drop on him in order to be entitled to use force in self-defense. Compare *State v. Burriss*, 334 S.C. 256, 53 S.E.2d 104 (S.C. 1999). A person who shoots another can be acting

lawfully, even if he is in unlawful possession of a weapon if he was entitled to arm himself in self-defense at the time of the shooting. In light of this legality applicant must be allowed to withdraw his guilty plea.

Subject Matter Jurisdiction

(3) Applicant brings this claim before the Court, pursuant to the applicable law and doctrine, that Subject Matter Jurisdiction may be raised at anytime and is not subject to statute of limitations or precluded on procedural grounds. See *Slack v. State*, 429 S.E.2d 201 (S.C. 1993); *Drowning v. State*, 465 S.E.2d 358 (1995)

The trial Court lacked Subject Matter Jurisdiction to accept applicant's plea for voluntary manslaughter. Applicant contends that he was never indicted by a grand jury for voluntary manslaughter. The issue regarding subject matter jurisdiction may be raised at any time, in any manner, before any court, or by the Court itself. *Langhorne v. Com.* 35 Va. App. 19, 542 S.E.2d 710, 712 (2001); *Anderson v. Anderson*, 299 S.C. 110, 115, 322 S.E.2d 297, 300 (1989). When a Court is without jurisdiction of subject matter, any action with respect to such case, other than dismissal, is absolutely void. *Eagle v. Global Associates*, 292 S.C. 354, 356 S.E.2d 417 (S.C. App. 1987); *Peake v. Peake*, 294 S.C. 591, 327 S.E.2d 375 (S.C. App. 1985).

(6)

Here a Court of General Sessions, convened on June 26, 2001, the Grand Jurors of Richland County true bill the indictment of murder on July 19, 2001. But later through plea negotiations with prosecutors, pleaded guilty to voluntary manslaughter, a lesser included offense that excluded the element of notice, and a forethought, thus violating applicant's 8th (5th) amendment right found in the United States Constitution. I quote in part; no person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury. Applicant was never afforded his Constitutional right to be indicted for voluntary manslaughter. The South Carolina Supreme Court dealt with a similar issue in State v. Beachum, 342 S.E.2d 597 (S.C. 1976). Beachum argued the court lacked subject matter jurisdiction to accept plea and convict him for voluntary manslaughter, when there was no indictment for manslaughter at the time of plea. The S.C. Supreme Court agreed with Beachum and went on to comment no person shall be held to answer for any crime unless presentment or indictment of a grand jury. South Carolina Constitution, Article I, §11; S.C. Code Ann. §17-9-10 (1976). Presentment of a grand jury is a condition precedent to the trial of a crime except in certain minor offenses. State v. Hawn, 184 S.C. 411, 25 S.E.2d 700 (1940). Presentment during plea hearing did not remedy the lack of subject matter jurisdiction which existed at the commencement of plea hearing. Beachum's

(7)

kidnapping conviction and sentence was vacated. Applicant argues that he was never indicted by the grand jury and he as Beachum's, supra, sentence and conviction must be vacated.

The Court commented in *Russell v. United States*, 369 U.S. 749, 763-64, 92 S. Ct. 1038, 1041, 9 L.Ed. 2d 240 (1962), the Court stated, first, that to ensure the defendant's sixth (6th) Amendment right to know what he is charged with, the indictment must contain the elements of the offense intended to be charged and "sufficiently apprise the defendant of what he must be prepared to meet." *Russell*, supra. Second, to guarantee a defendant's Fifth (5th) Amendment protection against double jeopardy "the record must show with accuracy to what extent he may plead a former acquittal or conviction."

The applicant here plea was unknowingly involuntary because the indictment fail to include the essential elements of time and date of assault and the time and date of death.

The Court went on to comment in *Stirone v. United States*, 361 U.S. 212, 214, 80 S. Ct. 270, 273, 4 L.Ed. 2d 258 (1960). This fundamental protection "is designed as a means, not only of bringing to trial persons accused of public offenses upon just grounds, but also a means of protecting the citizen against unfounded accusation, whether it comes from the government, or be prompted by partisan passion or private enmity. No person shall be required . . . to answer for any

of the higher crimes unless... [the grand jury] shall declare... that there is good reason for his accusation and trial." (Quoting *Ex Parte Bain*, 121 U.S. 111, 7 S. Ct. 781, 786-787, 30 L.Ed. 849 (1887)). The Court has stressed that the indictment must be complete and definite in its charges, because to allow the prosecutor, or the Court to make a subsequent guess to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to the grand jury which indicted him. See also *Carter v. State*, 495 S.E.2d 773, 777 (1998), *Plante v. State*, 446 S.E.2d 437 (1994).

(3) Ineffective Assistance of Counsel

Trial Counsel was ineffective for not filing a motion to have the defective indictment quashed. See *State v. Wilson*, 433 S.E.2d 864 (S.C. 1993), *State v. Watts*, 467 S.E.2d 872 (S.C. App. 1996), *State v. Hector*, 155 S.F. 385 (S.C. 1930).

(4) Due Process Violation

(A) Applicant, who contends that the failure of counsel to motion for his statement to be entered into evidence for the

(9)

purpose of mitigating mens rea and correctly be charged with involuntary manslaughter.

(b) Applicant further contends that counsel failed to file and submit motion to quash indictment for murder, when there was evidence within statement made to interrogating officer suppressed by prosecution.

(c) Finally applicant asserts fervently that indictment for murder failed jurisdictional underpinning to be accepted by court, because it failed to include the essential elements of the day and time of assault.

(d) Plea to voluntary manslaughter is null and void because it wasn't presented to the grand jury mandated by the Fifth Amendment of the United States Constitution.

The aforementioned assertions are of an cumulative effect rising to an overwhelming violation of applicant's Due Process and Equal Protection found within the Fourteenth Amendment of the United States Constitution, and Art. 1, § 3 of the South Carolina Constitution.

And for all reasons proffered, applicant's plea, and sentence must be withdrawn, and vacated and released from his unlawful custody.

(10)

This amendment to application for post-conviction relief in form of a memorandum of law is proper under § 17-27-60 of the Uniform Post-Conviction Act, (with Rule 71.1, South Carolina Rules of Civil Procedure that governs the enforcement of the Act.

Applicant, therefore asserts a property and liberty interest in Rule 71.1(d), SCRPC of its mandated entitlements and due process protection of those entitlements guaranteed by S.C. Const. ART. 1, § 3 and the Fourteenth Amendment of the United States Constitution. . .

At the evidentiary hearing, Applicant proceeded for the most part on the allegations stated in the application for post-conviction relief.

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 (1985).

The Applicant testified his case was pending for about two (2) years. The Applicant testified that he met with his plea counsel ten (10) to twelve (12) times and that he was not initially honest with plea counsel about the facts of the crime. Applicant explained that he shot a Mr. Bethea but instead told plea counsel that he shot someone else. Applicant testified that it was not until about two (2) weeks before plea that he finally told plea counsel the truth.

The Applicant testified that he met Mr. Bethea at the "hot spot" about a year prior to the shooting. The Applicant explained that he was buying drugs from Mr. Bethea because he had lost his job and had to pay some bills. He further explained that he asked Mr. Bethea to "front" him a pound of marijuana. The Applicant testified that he could not pay Mr. Bethea back the nine hundred (900) dollars he owed so Mr. Bethea threatened him on three (3) different occasions. The Applicant testified that he was "jumped" and a gun was put in his face and they threatened to kill him.

The Applicant testified he was going to boot-leg cigars and when he got to the black car he saw Mr. Bethea. Applicant explained that Mr. Bethea asked him if he had his money and reached for what Applicant thought was a gun, at which time the Applicant shot Mr. Bethea.

The Applicant testified that he lied to plea counsel all along about not knowing Mr. Bethea. Applicant testified that despite the transcript, he did not recall self-defense being an option if he went to trial. The Applicant testified that his appeal was dismissed because no issue was presented. The Applicant testified that he did not have a concealed weapon permit and the victim wanted his nine hundred (\$900) dollars.

Plea counsel testified that Applicant has a large file box and that she was with the public defender's office at the time she was representing him. Plea counsel testified that her relationship with the Applicant was good and that he would send her letters. She testified that they met about twenty (20) times.

Plea counsel testified that the Applicant's first story was that he was with his girlfriend at a beauty shop. Plea counsel testified that she got an investigator and that the first story was all fantasy. Plea counsel testified that she confronted the Applicant and he told her another story

about a car with another victim. Plea counsel testified that after the second story Applicant finally told her the third story that the Applicant stated at the PCR hearing. Plea counsel testified that her case notes from September 11, 2009 say that the Applicant finally admits that his other story was a lie and that letters prior to that date say that he did not shoot the victim.

Plea counsel testified that they did discuss trial and that in her trial box she has the direct exam questions that she and the Applicant went over, including self defense. Plea counsel testified that the Applicant did know that self-defense would be the strategy at trial.

Plea counsel testified that the public defender's office does not handle their own appeals but they do file the notice of appeal. Plea counsel testified that she did get a reply from the Court of Appeals to forward information to the Applicant. Plea counsel explained that she could not find any legal basis and that she did not consider arguing that SCACR Rule 203(d)(1)(B)(iv), SCACR is unconstitutional. Plea counsel testified that she told the Court of Appeals that she had no arguable basis and that the plea appeals eventually get forwarded to the Office of Appellate Defense. Plea counsel testified that she did write notice of appeal reasons for a plea when the State went outside of the scope of the plea.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied 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). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

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. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render

reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland that he was prejudiced by counsel's performance.

This Court finds that the Applicant's testimony at the PCR hearing is not credible. The Applicant's claim of ineffective assistance of counsel because he did not discuss a self-defense trial strategy with plea counsel is without merit and is directly refuted by plea counsel's testimony at the PCR hearing and by the transcript of record. Plea counsel testified that she not only discussed a self-defense strategy with the Applicant but that she actually went over direct examination questions, including self-defense, with the Applicant. Further, plea counsel mentions the self-defense strategy three (3) times at the plea hearing. See Plea transcript p. 33, ll. 19 - 20 ("At trial, what we would have been asking the Court was is for a self-defense charge"); p. 35, ll. 15 - 16 ("the bottom line, we would be asking for self-defense"); p. 38, ll. 24 - 25 ("we do believe at trial we would have gotten a self-defense charge"). Additionally, at the plea hearing the Applicant stated that he understood that by pleading, he was giving up any defenses he may have (Plea transcript p. 12, l. 13), and that he is completely satisfied with plea counsel's services. (Plea transcript p. 15, l. 22). This Court finds that the extensive guilty plea record speaks for itself as to the competency of counsel. When an ineffectiveness claim is presented the defendant must show that counsel's representation was deficient. Deficient representation amounts to conduct that is not objectively reasonable under the circumstances. Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052 (1984). In addition, the Applicant must show that the outcome of his proceeding was prejudiced and it is reasonably probable that the outcome would have been different had counsel's performance not been deficient.

Strickland, 466 U.S. at 694. This Court finds that the Applicant's attorney demonstrated a normal degree of skill, knowledge and professional judgment that is expected of an attorney who practices criminal law. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, supra; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Regarding the issue of the notice of appeal, this Court finds that the Applicant has not met his burden of proof to demonstrate that he was denied the effective assistance of counsel. The Applicant relied on Halbert v. Michigan, 545 U.S. 605 (2005) in his criticism of our State appellate procedures for guilty pleas. This Court does not share the Applicant's interpretation of Halbert as applicable to our procedures because we do afford indigent defendants with appointed counsel for the purposes of their notice of appeal following a guilty plea. *See also*, Rule 602(c)(3) & (4), SCACR. This Court is not going to extend the analysis into a historical review of guilty pleas as a form of settlement and the nuances of appealing guilty pleas in general. For the purposes of this case, the Applicant has not demonstrated any deficient performance by plea counsel. Plea counsel explained that she filed the notice of appeal because it was requested by her client, but that when asked she had no good faith reason to satisfy the specifics of Rule 203(d)(1)(B)(iv), SCACR. To rule in favor of the Applicant would be to find that appointed guilty plea attorneys should on the one hand negotiate a favorable plea deal for their clients, then once the plea deal is approved by the plea Court, they should then file a notice of appeal (if asked to do so) and incorporate frivolous reasons to support the notice. In the alternative, to rule in favor of the Applicant would require this Court to find that Rule 203(d)(1)(B)(iv), SCACR is unconstitutional because it requires some sort of underlying rational to support the appeal of an agreed upon plea deal, i.e. a settlement. This Court is not at all convinced that such an argument

has merit. The public policy reasons for Rule 203(d)(1)(B)(iv), SCACR are obvious. If there are actual errors, rather than just a complaint as to the amount of time received within a given range then the rule exists and fully satisfies the Applicant's right to effective representation. Similarly, PCR exists to remedy any errors had counsel been deficient for failing to articulate a legitimate Rule 203(d)(1)(B)(iv), SCACR reason if one had actually existed in this case. This Court takes judicial notice that our appellate Courts render opinions (both published and unpublished) related to guilty pleas, so judicial review exists for pleas if warranted.

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, *supra*, for evaluating claims of ineffective assistance of counsel applies to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. This Court finds that the Applicant has not met the burden of proof with respect to the prejudice requirement.

The Applicant's allegation that plea counsel was ineffective for failing to preserve the issue for appeal is without merit. Plea counsel testified at the PCR hearing that she did file the notice of appeal on behalf of the Applicant but that she did not know of any legal basis for the appeal. She further testified that the Office of Appellate Defense handles appeals beyond that point. This Court finds that plea counsel was diligent in her representation of Applicant and that she performed within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). Accordingly, Applicant's allegation is dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

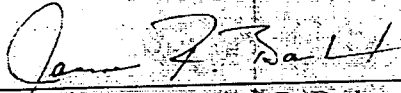
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71-1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

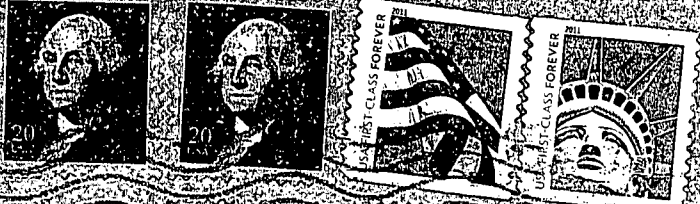
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 17 day of August, 2011.


The Honorable James R. Barber, III
Presiding Judge
Fifth Judicial Circuit

_____, South Carolina.



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The Honorable Daniel E. Shearouse
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