The Supreme Court of South Carolina

Kimjaro Presley, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Alison Renee Lee
Richland County
Trial Court Case No. 2006-CP-40-06751

ORDER

For good cause shown, the request for an extension until May 11, 2012 to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY _____
Clerk

Columbia, South Carolina

April 13, 2012

cc: Tara Shurling, Esquire
Assistant Attorney General Robert Corney

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Alison Renee Lee, Circuit Court Judge

Case No. 2006-CP-40-06751

KIMJARO PRESLEY, 299377,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RECEIVED
APR 18 2012
S.C. SUPREME COURT

PETITIONER'S MOTION FOR EXTENSION OF TIME

THIS MATTER comes before the Court by way of an appeal from a Post-Conviction Relief Order. The Petition for Writ of Certiorari is due for filing on today's date; April 11, 2012. Because of my heavy work load and court schedule I have been unable to complete this Petition by today. For that reason, I now respectfully request a 30-day extension of time in which to prepare and submit my Petition for Writ of Certiorari on behalf of this client.

Since this is my third extension request, opposing counsel, Robert Corney, Assistant Attorney General, has signed this motion. (In compliance with *In Re: Extensions in Criminal and Post-Conviction Relief Cases,* S. C. Sup. Ct. Order dated March 18, 2009) (Davis Adv. Sh. No. 13 at 1). I no longer have an associate lawyer in my firm.

Respectfully submitted,

Tara D. Shurling

TARA DAWN SHURLING
Attorney and Counselor at Law

April 11, 2012.

ATTORNEY FOR APPELLANT.

I CONSENT:

Robert Corney
Assistant Attorney General

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM Richland COUNTY
Court of Common Pleas
Alison Renee Lee, Circuit Court Judge

Case No. 2006-CP-40-06751

KIMJARO PRESLEY, 299377,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petitioner's Motion for Extension of Time in the above-entitled case have been served upon opposing counsel, Rob Corney, Assistant Attorney General, Assistant Attorney General, by depositing in the U.S. Mail, postage prepaid, this 11th day of April, 2012.

Tara D. Shurling

TARA DAWN SHURLING
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 11th day
of April, 2012.

Sharon H. McCollister (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan. 16, 2017

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorney and Counselor at Law
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

E-Mail: tdslaw@shurlinglaw.com

(803) 738-8622
(Fax) (803) 738-1600

April 11, 2012

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

RE: Kimjaro Presley, 299377 v. State of South Carolina; 2006-CP-40-6751.

Dear Mr. Shearouse:

Enclosed for filing please find the Petitioner's Motion for Extension of Time and my Certificate of Service in the above-captioned case. I would appreciate your returning two (2) clocked copies of the Motion in the envelope provided. Thank you for your assistance in this matter. I remain,

Sincerely yours,

Tara Dawn Shurling
Attorney and Counselor at Law

RECEIVED
APR 18 2012
S.C. SUPREME COURT

TDS/sm
Enclosures
cc: Rob Corney, Assistant Attorney General (w/enclosure)
Kimjaro Presley, 299377 (w/enclosure)
Jae Park (w/enclosure)

The Supreme Court of South Carolina

Kimjaro Presley, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Alison Renee Lee
Richland County
Trial Court Case No. 2006-CP-40-06751

ORDER

For good cause shown, the request for an extension until April 11, 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 _____
Clerk

Columbia, South Carolina

March 13, 2012

cc: Tara Shurling, Esquire
Assistant Attorney General Robert Corney

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM Richland COUNTY
Court of Common Pleas
Alison Renee Lee, Circuit Court Judge

Case No. 2006-CP-40-06751

KIMJARO PRESLEY, 299377,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITIONER'S MOTION FOR EXTENSION OF TIME

THIS MATTER comes before the Court by way of an appeal from a Post-Conviction Relief Order. The Petition for Writ of Certiorari is due for filing on March 12, 2012. Because of my heavy work load, I will be unable to complete this Petition by that date and, for that reason, I now respectfully request a 30-day extension of time in which to prepare and submit my Petition for Writ of Certiorari on behalf of this client.

Since this is my second extension request, opposing counsel, Rob Corney, Assistant Attorney General, has consented to this request by phone.

RECEIVED
MAR 19 2012
S.C. SUPREME COURT

Respectfully submitted,

Tara Dawn Shurling

TARA DAWN SHURLING
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER

March 12th, 2012

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM Richland COUNTY
Court of Common Pleas
Alison Renee Lee, Circuit Court Judge

Case No. 2006-CP-40-06751

KIMJARO PRESLEY, 299377,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petitioner's Motion for Extension of Time in the above-entitled case have been served upon opposing counsel, Rob Corney, Assistant Attorney General, Assistant Attorney General, by depositing in the U.S. Mail, postage prepaid, this 12th day of March, 2012.

Tara D. Shurling

TARA DAWN SHURLING
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 12th day
of March, 2012.

Sharon H. McCollester (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan. 16, 2017

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorneys and Counselors at Law
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

Christina Dixon Parnall
Associate Attorney

(803) 738-8622
Fax (803) 738-1600
E-Mail: tdslaw@shurlinglaw.com

March 12, 2012

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

RE: Kimjaro Presley, 299377 v. State of South Carolina; 2006-CP-40-6751.

Dear Mr. Shearouse:

Enclosed for filing please find the Petitioner's Motion for Extension of Time and my Certificate of Service in the above-captioned case. I would appreciate your returning two (2) clocked copies of the Motion in the envelope provided. Thank you for your assistance in this matter. I remain,

Sincerely yours,

Tara D. Shurling

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm
Enclosures
cc: Rob Corney, Assistant Attorney General (w/enclosure)
Kimjaro Presley, 299377 (w/enclosure)
Jae Park (w/enclosure)

S.C. SUPREME COURT
MAR 19 2012
RECEIVED

The Supreme Court of South Carolina

Kimjaro Presley, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Alison Renee Lee
Richland County
Trial Court Case No. 2006-CP-40-06751

ORDER

The request for an extension until March 12, 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 Brenda L. Shealy
Chief Deputy Clerk

Columbia, South Carolina

February 13, 2012

cc: Tara Shurling, Esquire
Assistant Attorney General Robert Corney

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorney and Counselor at Law
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

(803) 738-8622
Fax (803) 738-1600
E-Mail: tdslaw@shurlinglaw.com

Christina Dixon Parnall
Associate Attorney

February 8, 2012

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

Re: Kimjaro Presley, 299377 v. State of South Carolina; 2006-CP-40-6751.

Dear Mr. Shearouse:

I am retained counsel for this client for the perfection of his appeal. This is an appeal from a Post-Conviction Relief action. My Petition for Writ of Certiorari is due on February 9, 2012. Because of my heavy work schedule, I have been unable to complete my work on this Petition by today and I will be out of town in a deposition tomorrow. I now respectfully request a 30-day extension of time in which to prepare and submit my Petition for Writ of Certiorari on behalf of this client.

There have been no previous extension requests in this matter. By copy of this letter, I am advising opposing counsel, Rob Corney, Assistant Attorney General, of this request. With my thanks for the Court's kind assistance in this matter, I remain,

Sincerely yours,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm.

cc: Rob Corney, Assistant Attorney General
Kimjaro Presley, 299377
Jae Park

RECEIVED
FEB 10 2012
S.C. SUPREME COURT

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorneys and Counselors at Law
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

Christina Dixon Parnall
Associate Attorney

(803) 738-8622
Fax (803) 738-1600
E-Mail: tdslaw@shurlinglaw.com

January 10, 2012

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

RECEIVED
JAN 13 2012
S.C. Supreme Court

RE: Kimjaro Presley v. State; 2006-CP-40-6751.

Dear Mr. Shearouse:

I received the PCR transcript in the above-captioned matter on today's date. I would ask that my time limits for filing the Petition for Writ of Certiorari and Appendix in this appeal be set from that date. By copy of this letter, I am notifying opposing counsel of this request. With my thanks for your kind attention, I am,

Sincerely yours,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm
cc: Brian Petrano, Assistant Attorney General
Kimjaro Presley , 299377
Jae Park

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorney and Counselor at Law
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

Christina Dixon Parnall
Associate Attorney

(803) 738-8622
Fax (803) 738-1600
E-Mail: tdslaw@shurlinglaw.com

September 8, 2011

Karen E. Ambroziak
Circuit Court Reporter
1083 Langford Road
Blythewood, SC 29016

Re: Kimjaro Presley, 299377 v. State of South Carolina; 2006-CP-40-6751.

Dear Ms. Ambroziak:

I am requesting the transcript of the PCR hearing held in the above captioned matter on March 15, 2010 before the Honorable Alison Renee Lee. Please do not use all caps to transcribe this record and be sure to include all the required page headers and indexes to testimony and exhibits. I have enclosed a good-faith check for $25.00. The balance will be paid immediately upon receipt of this transcript and your invoice. Thank you for your assistance in this matter. I remain,

Sincerely yours,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm
Enclosure
cc: Daniel Shearouse, Clerk, SC Supreme Court
Brian T. Petrano, Assistant Attorney General
Desiree Allen, Court Administration
Kimjaro Presley, 299377
Jae Park

RECEIVED
SEP 09 2011
S.C. SUPREME COURT

LAW OFFICE OF

TARA DAWN SHURLING

Attorney and Counselor at Law, PA
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

(803) 738-8622
Fax (803) 738-1600
E-Mail: tdslaw@shurlinglaw.com

Christina Dixon Parnall
Associate Attorney

September 8, 2011

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

RE: Kimjaro Presley, 299377 v. State of South Carolina;2006-CP-40-6751.

Dear Mr. Shearouse:

I have now been retained to perfect the appeal in the above captioned Post-Conviction Relief case. I have the materials needed for the Appendix, with the exception of the PCR transcript, which I have ordered on today's date. I will, of course, inform the court upon receipt of the transcript so my time limits for filing the Petition for Writ of Certiorari can be set from that date. By copy of this letter, I am notifying opposing counsel of this information. With my thanks for your kind attention, I am,

Sincerely yours,

Tara Dawn Shurling
Attorney and Counselor at Law

RECEIVED
SEP 09 2011
S.C. SUPREME COURT

TDS /sm
cc: Brian T. Petrano, Assistant Attorney General
Kimjaro Presley, 299377

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorneys and Counselors at Law
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

Christina Dixon Parnall
Associate Attorney

(803) 738-8622
Fax (803) 738-1600
E-Mail: tdslaw@shurlinglaw.com

August 18, 2011

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

Re: Kimjaro Presley, #299377 v. State of South Carolina; 2006-CP-40-6751.

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal on behalf of the above-captioned Post-Conviction Relief client. I would appreciate your returning two (2) clocked copies to me in the self-addressed stamped envelope provided. Although I was retained in this matter, I may be turning this file over to the South Carolina Office of Appellate Defense for perfection of this appeal. I believe this client may be indigent. I was retained by his family and my fee agreement expressly excludes representation on appeal. The family has not yet advised me whether they intend to hire me to handle this appeal. I am asking that they make this decision immediately. I will advise the Court within ten days whether I will be remaining on as counsel or requesting to be relieved. With my thanks for your assistance in this matter, as always, I remain,

RECEIVED
AUG 19 2011
S.C. SUPREME COURT

Sincerely yours,
Christina Parnall
FOR
Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosures
cc: Brian Petrano, Assistant Attorney General
Sharon Graham, South Carolina Office of Appellate Defense
Kimjaro Presley, 299377
Jae Won Park

LAW OFFICE OF

TARA DAWN SHURLING, PA

Attorneys and Counselors at Law
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Columbia, South Carolina 29204

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Fax (803) 738-1600
E-Mail: tdslaw@shurlinglaw.com

Christina Dixon Parnall
Associate Attorney

August 18, 2011

Brian T. Petrano
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, S. C. 29211

RE: Kimjaro Presley, #299377 v. State of South Carolina; 2006-CP-40-6751.

Dear Mr. Petrano:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. I was retained in this matter and I am awaiting the client's family decision as to whether they will be hiring me for the appeal. I have notified the South Carolina Commission on Indigent Defense, Office of Appellate Defense, that it may be a couple of weeks before the file is turned over to them should the family choose representation by their office. Therefore, I will keep you informed of the client's decision. Thank you. I remain,

Sincerely yours,
Christina D Parnall
FOR
Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosure
cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina

RECEIVED
AUG 19 2011
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Alison Renee Lee, Presiding Judge

2006-CP-40-6751

KIMJARO PRESLEY, 299377,

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his intent to appeal the Order of Dismissal denying his Post-Conviction Relief filed on February 11, 2011, and the Supplemental Order which was filed July 20, 2011 following the Applicant's Motion to Alter or Amend pursuant to Rule 59(e) SCRCP.

Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 18th day of August, 2011.

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

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Allison Renee Lee, Presiding Judge

2006-CP-40-6751

KIMJARO PRESLEY, 299377,

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Brian T. Petrano, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 18th day of August, 2011.

Sharon McCollister
Sharon McCollister
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE me this 18th day
of August, 2011.

Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/12/2013

Form 4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2006CP4006751

Kimjaro #299377 Presley *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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

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

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

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

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

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

_____
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 20 July 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Kimjaro #299377 Presley
Tara D Shurling
ATTORNEY(S) FOR THE PLAINTIFF(S)

Brian T Petrano
ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride
Clerk of Court

SCRCP APP-24/FORM 4

FILED
RICHLAND COUNTY
2011 JUL 20 AM 10:18
JEANETTE W. McBRIDE
C.C.P. & G.S.

JUL 25 2011

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Kimjaro Presley, 299377, Applicant, v. State of South Carolina, Respondent,	)	DOCKET NO. 2006-CP-40-06751 **SUPPLEMENTAL ORDER**

RICHLAND COUNTY
FILED
2011 JUL 20 AM 10: 09
JEANETTE W. McBRIDE
C.C.P. & G.S.

Applicant filed a Rule 59(e) motion asking this Court to alter or amend its Order of Dismissal dated February 8, 2011 on the basis that the Court failed to address several of the Applicant's allegations of ineffective assistance of counsel. Those allegations include the following:

1. Defense counsel was ineffective for failing to advise the Applicant why the State wanted to amend his waiver of grand jury presentment during the guilty plea proceeding.
2. Defense counsel was ineffective for failing to properly advise the Applicant that he would not be parole eligible if he pleaded guilty to the charges against him.
3. Defense counsel was ineffective for failing to advise the Applicant not to speak to the police without defense counsel being present.
4. Defense counsel was ineffective for failing to ensure that a plea agreement was in place before allowing the Applicant to make the statement to police on September 19, 2003.

Additionally, the Applicant is concerned that this Court's Order of Dismissal does not make sufficient findings of fact and conclusions of law, pursuant to S.C. Code Ann. § 17-27-80, as to whether defense counsel was ineffective for failing to negotiate a plea agreement with the State that ensured that the Applicant would receive some benefit for his cooperation with the prosecution of his co-defendants.

Based upon the testimony presented, the following findings of fact and conclusions of law are issued:

a/p
#1

SCANNED

Plea counsel's performance was not deficient concerning the amendment of one armed robbery indictment during the guilty plea proceeding. During the sentencing phase of the guilty plea, the Solicitor reviewed the Applicant's prior record. In addition, the Solicitor explained that the Applicant's plea bargain did not include his North Carolina charges. See January 21, 2004 Guilty Plea transcript, p. 38. The Applicant failed to satisfy his burden of proof and demonstrate that Plea counsel's performance was deficient for covering this issue at the plea. It is obvious that both the State and Plea counsel properly explained the limits of their authority concerning what charges were to be resolved because of this plea. There is no prejudice even if this Court were to find that Plea counsel did not adequately advise the Applicant about the amendment to the waiver of the attempted armed robbery.

Plea counsel certainly explained to the Applicant that he would not be parole eligible if he pleaded guilty to the charges against him. Applicant's request for parole at the plea was not an indication that he did not know that parole was not possible, but rather was simply a generic request for mercy that is not uncommon. Plea counsel's performance would not be deficient even if this Court were to find that Plea counsel did not adequately advise the Applicant that Applicant would not be eligible for parole if he pled guilty to the charges against him. Plea counsel is not required to so advise.

This Court found that Plea counsel did advise Applicant not to speak with the police without Plea counsel being present. Plea counsel testified that when he was retained by the Applicant's family around June 2003, the Applicant had already given statements essentially confessing to seven or eight offenses. Plea counsel met with the Applicant and told him not to talk to anyone; if they were going to give statements it needed to be done at the right time. He also sent an "Edwards"[1] letter to the Richland and Lexington County Solicitors and to the Sheriff explaining that his client, the Applicant, did not want to be questioned in the absence of counsel. Plea counsel testified that he was very surprised when he later learned that the Applicant, on his own, contacted an investigator that the Applicant knew and gave several devastating statements around September 12, 2003 (2nd statement). The Applicant's claim that Plea counsel never told him to not talk to law enforcement was not credible, and Plea counsel's testimony that he did give that warning was credible.

[1] Edwards v. Arizona, 451 U.S. 477 (1981).

AP
#2

Plea counsel's performance was not deficient for failing to ensure that a plea agreement was in place before allowing the Applicant to make the statement to police on September 19, 2003 (3rd statement). Plea counsel testified that the purpose of the third statement was to cooperate in an attempt to get some benefit later. The State had significant incriminating evidence against the Applicant with the prior statements and, after discussing the case with the Solicitors and the U.S. Attorney's Office, Plea counsel determined that the best course of action was to cooperate in the hopes of minimizing any future charges. Tav Swarat, a former Assistant Solicitor for Lexington County, testified about his role in prosecuting the Applicant and the co-defendant(s). Swarat was willing to tell the Court that the Applicant cooperated but there were no deals offered or agreements made about the sentence Applicant could receive. There was nothing for Plea counsel to negotiate. The State had sufficient incriminating evidence against the Applicant with the June statement (1st statement) to get fifty (50) years and enough with the 2nd statement to get a life sentence. Plea counsel's decision to cooperate by giving the 3rd statement was an appropriate strategy given these circumstances and the failure to secure a plea agreement prior to the 3rd statement does not render Plea counsel's performance deficient.

Plea counsel was not deficient for failing to negotiate a plea agreement that ensured that the Applicant would receive some benefit for his cooperation with the prosecution of his co-defendants. As stated above, the Solicitor testified that he was willing to tell the Court that the Applicant cooperated but there was never any agreement made or deal offered regarding any benefit the Applicant would receive in exchange for his cooperation. Plea counsel testified that the Applicant's 1st and 2nd statements were extremely incriminating and that, after discussing the case with solicitors, he felt the Applicant's best course of action was to cooperate in the hopes of minimizing any future charges. Plea counsel negotiated the best that he could and his performance was not deficient for failing to ensure that the Applicant receive some benefit for his cooperation with the prosecution of his co-defendants.

Based upon the above discussion, **IT IS HEREBY ORDERED** that the motion to amend the Order of Dismissal dated February 8, 2011 is granted solely to supplement the findings of fact and conclusions of law, ~~and~~ This Order is in addition to and supplements the Order dated February 8, 2011.

AND IT IS SO ORDERED.

ALISON RENEE LEE
Presiding Judge
Fifth Judicial Circuit

July 18, 2011
Columbia, South Carolina

Form 4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2006CP4006751

Kimjaro #299377 Presley *vs.* **State of South Carolina**

Plaintiff Defendant

RICHLAND COUNTY
2011 FEB 11 P 1:6
CLERK OF COURT

CHECK ONE:

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

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

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

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

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

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

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

_____
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 11 February 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Kimjaro #299377 Presley
Tara D Shurling
ATTORNEY(S) FOR THE PLAINTIFF(S)

Brian T. Petrano
ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride
Clerk of Court

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	
	)	DOCKET NO. 2006-CP-40-06751
Kimjaro Presley, 299377,	)	
	)	
Applicant,	)	
	)	
v.	)	**ORDER OF DISMISSAL**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

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PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 13, 2006.[1] The Respondent filed a Return and Motion to Dismiss and this Court issued a Conditional Order of Dismissal (COD) on or about May 24, 2007. The Applicant replied to the COD on or about June 13, 2007. As explained at the PCR hearing, the Applicant argued the PCR application was not untimely because there had been a motion for reconsideration that was denied without a written order. The transcript from the reconsideration hearing is part of the records before this Court. Prior to the hearing, the Respondent made a Motion for a More Definite Statement on March 9, 2010. The Applicant filed an Amended PCR Application on March 10, 2010. An evidentiary hearing into the matter was convened on March 15, 2010 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Tara Dawn Shurling, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant, Applicant's plea counsel, Ernest Latony (Tony) Dessausure, Esquire, Applicant's attorney from the reconsideration hearing, Jack Swerling, and attorney Samuel Mokeba, Esquire all testified. August Gustav Swarat, II, Esquire testified on behalf of the State regarding his role as then Assistant Solicitor for Lexington County. This Court had before it the records of the Richland County Clerk of Court, the transcripts of the

[1] Applicant filed a similar PCR application in Lexington County. Because the Applicant ultimately pled here in Richland County, the parties agreed to proceed with the PCR in Richland County and to withdraw the Lexington County PCR. Accordingly, the Lexington County PCR (2006-CP-32-04092) was dismissed on or about December 11, 2008.

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proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.[2]

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by Tony Dessausure, Esquire and Jack Swerling, Esquire. The Richland County Grand Jury indicted the Applicant at the July 2003 term of General Sessions for armed robbery (03-GS-40-5389). On November 21, 2003, the Applicant pleaded guilty to this charge, waived grand jury presentment, and pleaded guilty to an additional ten counts of armed robbery (03-GS-40-5780; 6247; 7443; 7444; 7445; 7446; 7447; 7448; 7587; 7589) and one count of kidnapping (03-GS-40-5778) arising in Richland County. Sentencing on these charges was deferred until January 21, 2004, when the Applicant also waived grand jury presentment and pleaded guilty to the following Lexington County charges: nine counts of armed robbery (03-GS-32-242; 243; 244; 4164; 4165; 4166; 4167; 4168; 4174), ten counts of kidnapping (03-GS-32-4156; 4157; 4158; 4159; 4163; 4169; 4170; 4171; 4172; 4173), two counts of criminal conspiracy (03-GS-32-4160; 4161), one count of assault and battery with intent to kill (03-GS-32-4162), and one count of first degree burglary (03-GS-32-4175). The Applicant's waiver of presentment on one of the Richland County armed robbery charges (03-GS-40-5780) was changed to a waiver of presentment for attempted armed robbery. The Applicant was represented at both of these proceedings by Ernest Latony ("Tony") Dessausure, Esquire. The Honorable G. Thomas Cooper, Jr., sentenced the Applicant to five years imprisonment for each conspiracy charge, twenty years imprisonment for the attempted armed robbery and assault and battery with intent to kill charges, thirty years imprisonment on each kidnapping charge, thirty years imprisonment on each armed robbery charge, and fifty years imprisonment on the first degree burglary charge. All of the sentences were to run concurrently.

The Applicant appeared again before Judge Cooper for reconsideration of the 50 year sentence on the First Degree Burglary on November 21, 2005. At the hearing Applicant was represented by Jack Swerling, Esquire. The motion for reconsideration was denied. The Applicant did not appeal his sentences or convictions.

[2] There are three (3) transcripts from the Applicant's guilty plea: the guilty plea on November 21, 2003, the sentencing on January 21, 2004, and on November 21, 2005 the motion for reconsideration.

In an Amended Application for Post-Conviction Relief filed on March 10, 2010, the Applicant more narrowly defined his allegations in support of his claim that he received ineffective assistance of counsel. In that Application, he alleged:

1. Defense counsel provided the Applicant ineffective assistance of counsel in the plea negotiation stage in that he failed to negotiate a plea agreement with the State that insured that he would receive some benefit for his cooperation with the prosecution of his co-defendants whether they pleaded guilty or went to trial and he was called upon to testify against them.

2. Defense counsel was ineffective in that he coerced the Applicant to plead guilty on all his charges in Richland and Lexington Counties without adequately reviewing the discovery material on the Lexington charges with him.

3. Defense counsel was ineffective for allowing the Applicant to plead guilty to his charges in Richland and Lexington Counties without first explaining to him the procedures that would be available to him if he went to trial through which he could attack the admissibility of his statements to law enforcement following his arrest.

4. Defense counsel was ineffective for neglecting to explain to the Applicant that if he proceeded to trial, and unsuccessfully attacked the admissibility of his confessions, he would have the right to have the ruling of the lower court reviewed by a higher court on appeal.

At the evidentiary hearing, Applicant proceeded on the allegations stated above from his amended application for post-conviction relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Jack Swerling testified he was retained to handle a Motion for Reconsideration that had already been filed by Mr. Dessausure. Applicant had no prior General Sessions convictions but did have one or more juvenile adjudications. Swerling received all of the discovery materials and the transcript of the plea prior to the hearing. There did not appear to be any issues or basis to attempt to withdraw the plea. Applicant made clear that there was no claim of ineffective assistance of counsel whatsoever against Mr. Swerling.

Plea counsel, Ernest Latony (Tony) Dessausure, testified that when he was retained by the Applicant's family around June 2003, the Applicant had already given statements essentially confessing to seven (7) or eight (8) offenses. (Applicant's Exhibit 1). He sent an "Edwards"[3] letter to the Richland and Lexington County Solicitors and to the Sheriff explaining that his client, the Applicant, did not want to be questioned in the absence of counsel. He met with the Applicant and told him not to talk to anyone; if they were going to give statements it needed to be done at the right time. He explained that eventually the Lexington County Solicitor agreed to some concessions in exchange for the plea, such as not pursing some associated charges, such as a kidnapping during an armed robbery. Plea counsel testified that he was very surprised when he later learned that the Applicant, on his own, contacted an investigator that the Applicant knew and gave several devastating statements around September 12, 2003. Plea counsel explained that he had advised the Applicant not to talk to law enforcement without him (counsel) being present. Plea counsel did not think it was ethical for the investigator to respond to the Applicant's request to talk to him and that the investigator should have been on notice of the Edwards letter sent to the Sheriff's department. However, he was not sure if the investigator himself knew that the Applicant had an attorney because Applicant asked his girlfriend to contact the investigator.

After the September 12 statement (2nd statement), Plea counsel was contacted regarding uncharged offenses against Applicant. The September statement changed the course of the case and Counsel attempted his best at "damage control." Plea counsel was present at Applicant's September 19, 2003 statement (3rd statement). The purpose of the 3rd statement was to cooperate in an attempt to get some benefit later. Applicant "gave away ¾ of the farm" prior to the 3rd statement and that after talking about the case with the Solicitors and the U.S. Attorney's Office the best course of action was to attempt to clean up the mess and cooperate in the hopes of minimizing any future charges. The State had sufficient incriminating evidence against Applicant with the June statement (1st statement) to get fifty (50) years and enough with the 2nd statement to get a life sentence.

Applicant was not being forced to trial at the time of the partial plea in November 2003 and additional discovery material regarding the Lexington County charges was received after the November 2003 plea to the Richland County charges. Plea counsel advised Applicant that they could challenge the statements if they went to trial but that most likely the statements would be

[3] Edwards v. Arizona, 451 U.S. 477 (1981).

used against him at trial. It was explained to Applicant that he could appeal a negative ruling regarding the statements if he was convicted at trial.

Plea counsel certainly explained to the Applicant that these were no parole offenses. Applicant's request for parole at the plea was not an indication that he did not know parole was not possible, but rather was simply a generic request for mercy that is not uncommon. Plea counsel and Applicant were concerned about whether the co-defendants would implicate the Applicant. They thought the co-defendant John Hayward was going to trial, but he ultimately pled. Applicant did not receive any offer or benefit conditioned on whether Hayward went to trial or pled guilty and no offer was made to Applicant regarding his testimony against Haywood; rather, the State agreed to note that the Applicant was cooperative. The U.S. Attorney agreed not to seek federal bank robbery charges. During the sentencing phase, Counsel did not consider objecting to references of other uncharged armed robberies against Applicant, the goal was to take care of all pending matters at the plea. He also did not consider objecting to the change of one of the grand jury waivers from armed robbery to attempted armed robbery.

Plea counsel never told the Applicant that the 1st Degree Burglary charge would be dismissed if he testified against Hayward at a trial. He explained to Applicant that he would ask for the minimum sentence. Plea counsel did not think Applicant would get three hundred and twenty-five (325) years like one of the co-defendants. Instead he thought Applicant might be sentenced to 30 - 35 years but the judge fully explained why he sentenced the Applicant to fifty (50) years. Plea counsel explained to Applicant the elements of first degree burglary and Applicant did not tell him that he never touched the victim. Plea counsel explained that it was his understanding that Hayward did the actual beating once she was tied up by the Applicant.

Mr. Samuel Mokeba was the public defender who represented co-defendant Hayward. Mokeba explained that while Applicant's statement(s) may have opened a case against Hayward, it was not a large portion of the State's case against Hayward.

Applicant testified that his family retained Plea counsel a few days after his arrest. He gave the June statements a few days after his arrest but before he had an attorney. Plea counsel never advised him not to talk to investigators; if his attorney had told him not talk with the authorities he would never have given the other statement. The Applicant claimed that he learned of Plea counsel's letters to the Solicitor after he received discovery and after he gave his statements. The Applicant claimed that he did not understand what he was waiving when one of

the armed robbery indictments was amended, he would not have pled guilty to the charges if he had known one armed robbery was not valid and was really only an attempted armed robbery.

The Applicant claimed that he found out about the 1st Degree Burglary charge just prior to sentencing. He was told he needed to plea to the Burglary charge and that it would be dropped after the co-defendant's court date whether or not he testified against the co-defendant. Applicant never told anyone else about this agreement. He never objected to the burglary charge at the plea because he thought there was only a thirty (30) year maximum. He did not know he would not be eligible for parole. Applicant claimed that he never hit the burglary victim but that he did tie her up and the co-defendant actually assaulted her.

Applicant claimed the investigator checked the boxes on his waiver form in his statement (Applicant's Exhibit 1) and the investigator made promises to him in exchange for the statement. Applicant wants to go to trial on everything. No one told him he could challenge the statement(s) at trial and that a jury would also have to find them to be voluntary. When he was told by the judge at the plea hearing that 1st Degree Burglary carried up to life imprisonment he thought that meant a life without parole sentence after strikes. The Applicant claimed that he called for the investigator so he could clear his soul.

Tav Swarat, a former Assistant Solicitor for Lexington County, testified about his role in the prosecuting Applicant and the co-defendant(s). Swarat was willing to tell the court that the Applicant cooperated but there were no agreements or deals about the sentence Applicant could receive. Most of the injuries to the burglary victim were done by the co-defendant but the victim also claimed that Applicant committed acts of violence against her. Under the theory of "hands of one, hands of all", Applicant was equally culpable.

Swarat explained that the co-defendant pled before the Applicant did and perhaps the Applicant's statements were useful but he did not want to use the Applicant's statements at a trial against the co-defendant. It was the co-defendant's attitude at his plea that caused him to get a sentence of three hundred and twenty-five (325) years. The Applicant's plea was delayed to accommodate the victims.

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." Id. The Applicant has failed to carry his burden in this action; therefore, this Court finds that the application must be denied and dismissed.

The Applicant's claim regarding a deal to "drop" the Burglary charge is not credible and is wholly without merit. There is no evidence of any agreement regarding the Burglary charge. The only evidence of such an arrangement comes from Applicant's own self-serving testimony. Similarly, Applicant's claim that he did not understand the plea court's explanation that 1st Degree Burglary carried a potential sentence of more than thirty (30) years is not credible. The elements of 1st Degree Burglary were discussed with Applicant and the plea court explained that 1st Degree Burglary "carries a penalty of 15 years to life, which is life without parole." Additionally, if Applicant truly thought he could not get more than thirty (30) years for 1st Degree Burglary, he would have mentioned that to Mr. Swerling to reconsider the sentence. This Court finds that the Applicant failed to demonstrate any prejudice.

This Court does not find the Applicant's testimony that he would not have pled guilty but instead gone to trial if Plea counsel had better explained how he could challenge his statements at trial and appeal that challenge and better explained the waiver of the amendment for the attempted armed robbery indictment credible. There is no prejudice even if this Court were to find that Plea counsel did not adequately advise the Applicant about challenging the statements or about the amendment to the waiver of the attempted armed robbery. By disposing of most, if not all, of the Applicant's claims due to lack of prejudice, this Court is in no way finding that Plea counsel's performance was deficient. "The object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." Strickland v. Washington, 466 U.S. 668, 697, 104 S.Ct. 2052, 2069 (1984).

Even if this Court were to entertain the Applicant's testimony that he would have gone to trial but for counsel's deficient performance, there is no deficient performance to satisfy Strickland's first prong. The Applicant was arrested for several charges; he waived his rights and gave a statement (dated June 23, 2003). It appears that Plea counsel was retained after the first statement. Even assuming the investigator was on notice as to Plea counsel's Edwards letter, law enforcement is free to respond to a defendant's request to waive their right to counsel and give a voluntary statement. The Applicant's claim that Plea counsel never told him not to talk to law enforcement was not credible, and Plea counsel's testimony that he did give that warning was credible. The Applicant gave a sworn statement and signed his name at least sixteen (16) times directly acknowledging that he was aware of his rights and was waiving them. See Applicant's Exhibit 1. Applicant's claim that the investigator made promises to him in exchange for his statement is completely refuted by the record.

Our South Carolina Supreme Court has addressed the Edwards issue as it relates to when it is the accused who initiates contact with law enforcement:

> Once an accused requests counsel, police interrogation must cease unless the accused himself "initiates further communication, exchanges, or conversations with the police." *Edwards v. Arizona,* 451 U.S. 477, 485, 101 S.Ct. 1880, 1885, 68 L.Ed.2d 378, 386 (1981).

State v. Kennedy, 333 S.C. 426, 431, 510 S.E.2d 714, 716 (1998). "Only in instances in which the suspect initiates subsequent conversations or communication with the investigating authority is a waiver of the right to counsel possible." (Citations omitted) State v. Henderson, 286 S.C.

465, 468, 334 S.E.2d 519, 521 (Ct. App. 1985). "In addition, a criminal suspect's rights are not violated when the suspect, not the police, 'initiates further communication, exchanges, or conversations with the police.' *State v. Howard,* 296 S.C. 481, 489, 374 S.E.2d 284, 288 (1988) (citing *Edwards,* 451 U.S. at 485, 101 S.Ct. 1880)." State v. Binney, 362 S.C. 353, 360, 608 S.E.2d 418, 421-2 (2005). *See also* State v. Wannamaker, 346 S.C. 495, 552 S.E.2d 284 (2001).

There is no credible testimony or other evidence in the record to indicate the Applicant's statement was not voluntary, therefore Plea counsel's performance and attempted "damage control" was not deficient. The Applicant has failed to satisfy his burden of proof and demonstrate otherwise.

Finally, Plea counsel's performance was not deficient concerning the amendment of one armed robbery indictment during the sentencing phase. During the sentencing phase of the guilty plea, the Solicitor reviewed the Applicant's prior record. In addition, the Solicitor explained that the Applicant's plea bargain did not include his North Carolina charges. See January 21, 2004 Guilty Plea transcript, p. 38. The Applicant failed to satisfy his burden of proof and demonstrate that Plea counsel's performance was deficient for covering this issue at the plea. It is obvious that both the State and Plea counsel properly explained the limits of their authority and representation concerning what charges were to be resolved because of this plea. In addition, the Applicant never argued that the sentencing court was possibly improperly influenced by any reference to the Applicant's prior record or other pending other charges. The judge stated his considerations for the sentence. Id., pp. 61 - 64.

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.

Applicant has failed to present evidence on any other allegations except as discussed in this Order. Applicant's failure to address other issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the 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.

ALISON RENEE LEE
Presiding Judge
Fifth Judicial Circuit

February 8, 2011
Columbia, South Carolina.

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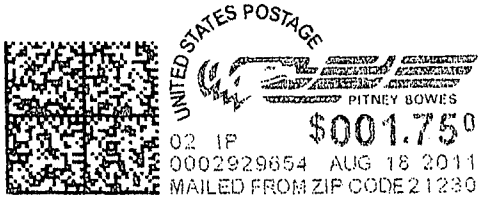

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