

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Honorable Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

FEB 08 2017

S.C. SUPREME COURT

WILLIAM GREGG,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000892

APPENDIX

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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ATTORNEYS FOR RESPONDENT

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(2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that these allegations should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. These allegations are so vague that it is impossible for the State to respond.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Chief Criminal Appeals & Post Conviction
Relief

MARY S. WILLIAMS
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

May 6, 2009

William Gregg
BCI / MLT - 2029 / 274507
4460 Broad River Road
Columbia, South Carolina, 29210

date: March 22, 2013

HON. James C. Campbell
CLERK of COURT
~~Post~~ Courthouse, Room 308
Sumter, South Carolina, 29150

RE: Amendment to Application / Affidavit attached

Dear Mr. Campbell,

Please see enclosed for your filing my Amendment to Application / Affidavit attached thereto as submitted to include the proof of service to the respondent being served with the same.

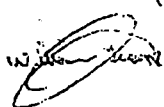
Please return my copy soon as practical and as to your convenience to do so. I thank you in advance for your attention given to this case position I'm in. If you have any questions, please do not hesitate to contact me above and below. I look forward to your immediate response. Thank you.

Respectfully Submitted.

Hon. Mary C. Williams
Asst. Attorney General
Po. box 11549
Columbia, South Carolina, 29211
Counsel for Respondent

William Gregg
BCI - MLT 2029 - 274507
4460 Broad River Rd.
Columbia, SC., 29210
Applicant

x William Gregg

x _____
Young, John S. Ketter, Esq.
Att. at Law
cr. file 1668 

date.

State of South Carolina
County of Sumter

William Gregg
Plaintiff,

Vs.

State of South Carolina
Respondent,

In the Court of Common Pleas
Third Judicial Circuit

Case No. 2008-CP-43-2479

Amendment to Application
Post Conviction Relief

Case file date: October 28, 2008

Please take Notice, that the applicant, William Gregg, by through his undersigned attorneys, hereby serves to the Attorney General, the following Application to Amend for Post Conviction Relief and any Amendment thereof. Attorneys involved in this Post-Conviction Relief matter to be meticulous in the preparation of any "ORDERS" prepared in this (PCR) matter.

Please take further Notice that the Applicant reserves the right to serve supplemental and additional Amendments as needed.

Specifically, the applicant Request that each and every issue within the Post-Conviction Relief Application and any Amendment thereof, be addressed in the "ORDER" of the court to be issued at the conclusion of the Evidentiary Hearing in this matter. Applicant Request this motion pursuant to S.C. code, § 17-27-80. Citing *Marlar V. State* (S.C. App 2007) 373 S.C. 275, 644 S.E.2d 769,

The Applicant would Amend his first set of Amendments by adding the following specific allegations of ineffective assistance of counsel

- 1) Counsel Ineffective cause: He did not move to dismiss the indictment on double jeopardy grounds constituted ineffective ~~performance~~ performance for purposes of ineffective assistance claim; claim was well established, straight-forward, and obvious and counsel's omission could not have been the result of any kind of strategy.
U.S.C.A. Amend 5, 6; S.C. Const. Art I, § 12

- 2.) Prosecution of state charges evolving from same facts was barred by statute providing that an acquittal under federal law was a bar to prosecution. as defendant did not raise issue in trial court and statute did not involve subject matter jurisdiction and therefore claim could not be raised for the first time on appeal. see State V. Rice (S.C. App. 2001) 348, S.C. 417, 559 S.E. 2d 360.
- 3.) In both the multiple punishment and multiple prosecution contexts this court has concluded that where the two offenses for which the defendant is punished or tried cannot survive the "same elements" test, the double bar applies. see Blockburger v. United States^{as party} 284 U.S. 299, 52 S.Ct. 180, 182,
- 4.) Trial attorney's failure to object to inadmissible hearsay evidence and lack of preparation and the pursuit of a highly prejudicial cross-examination of Kendrick Miller constituted ineffective performance for purposes of ineffective assistance claim.
5. Trial attorney's failure to investigate the absence of "medical evidence" was unreasonable and constituted ineffective assistance of counsel. (Amy Stephens, Forensic Technician), (Dr. Janice E. Ross, M.D. Pathologist (s))
6. Counsel's conduct, failed to file timely motion to suppress illegally seized evidence. (Sumter Sheriff's Department)
- 7.) I again remind "PCR counsel" that it is the burden placed on us to prove the allegations submitted and it is also a law that all available issues from the records must be raised adequate and accurately to the PCR for a findings of fact and conclusions of law specifically to each issue, and this is "why" counsel must procure all case files and submit the motion to counsel as Rule 71.1 (d) SERCP do commands.
Exhibit No. 1. Letter to Edgar Dowdall, Keffler Young Law Firm dated March 3, 2011

8. Applicant also compel you to add the issue that it is a "conflict of Interest" with the Motion Judge Cothran R. Terrell denied when funds was Requested for an Investigator, as the Record for sentencing do disclose the Judge is the sentencing judge in the applicants case. Applicant needs for the court to do an evaluation to. point Blank. this is an issue that will show that Judge Cothran should have Recused himself. From further being involved. Floyd V. State 303 S.C. 298, 400 S.E2d 145 (1997).

Wherefore, in the context of the entire Record and the trial judges firsthand appraisal. The Record of the Applicant's case fail to include improper (prejudicial) conduct that occurred at the Applicants trial, and that would have led an Appellate court to Reverse this judgment for the Applicant if the appellate court could have learned of the conduct from the Record. Such conduct includes the prosecutors failure to supply the Applicant with Brady Material 373 U.S. 83 83 S.Ct. 1194. (1963) see. Kyles v. Whitley

Hon. James C. Campbell
 Clerk of Court
 Courthouse, Room 308
 Sumter, S.C., 29150

Mary C. Williams
 P.O. box 11549
 Columbia S.C. 29211
 Counsel for Respondent

William Gregg,
 BCI 'MCT-2029' 274507
 4460 Broadriver Rd. 29210
 Applicant

date: March 22, 2013

By William Gregg

X
 C. Young, John S. Keffner, Esq
 Att. at Law
 Files / W/S, W/S

State of South Carolina
County of Sumter

William Gregg,
Plaintiff,

Vs.

State of South Carolina
Respondent,

In the Court of Common Pleas
Third Judicial Circuit

Certificate of Service

I William Gregg, declare under penalty of perjury that I mailed a copy of my Amendment to Application and Affidavit in support of that motion to the parties listed below, as addressed.

Regular communication by mail exists throughout the State of South Carolina and that is a proper circumstance of service by mail.

cc. Hon. James C. Campbell
Clerk of Court
~~Post Office~~ Courthouse, Room 308
Sumter, S.C. 29150

Hon. Mary C. Williams
Asst. Atty. Gen.
P.O. box 11549
Columbia S.C. 29211
Counsel for Respondent

Respectfully Submitted
William Gregg
BCI / MLT-2029 / 27450T
4460 Broad River Rd.
Columbia, S.C., 29210
Applicant

X
Young. John S. Ketter, esq.
Att. at Law

s. / William Gregg

cc. file / w.g. William Gregg

Date: March 22 2013

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

COURT OF COMMON PLEAS

WILLIAM GREGG)
274507

PETITIONER,)

v.)

TRANSCRIPT OF RECORD
08-CP-43-2479

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

December 17, 2014
Sumter, South Carolina

BEFORE :

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE

APPEARANCES:

JOHN S. KEFFER, ESQ.
Attorney for the Petitioner

DANIEL GOURLEY, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

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EXHIBITS

RESPONDENT'S:

No.	Description	I.D./EVD.
1	Letter	39/39

1 MR. GOURLEY: This is William Gregg versus
2 the State of South Carolina, docket number
3 2008-CP-43-2479. He's presently confined to the
4 State Department of Corrections pursuant to an order
5 of commitment of the Sumter County Clerk of Court.
6 He was indicted at the October 2007 term of the
7 Sumter County Carolina grand jury for murder,
8 possession of a firearm during a crime of violence,
9 and possession with intent to distribute heroine.
10 Mr. Hart represented him. He proceeded to trial
11 before the Honorable R. Ferrell Cothran, Jr., on
12 July 28th to 30th of 2008. He was found guilty of
13 murder and possession of a firearm during a crime of
14 violence. He was sentenced to 35 years imprisonment
15 for murder and a concurrent term of five years
16 imprisonment for possession of a firearm during a
17 crime of violence. He did not appeal his conviction
18 or sentence, subsequently filed an application for
19 post-conviction relief on October 27th, 2008,
20 alleging ineffective assistance of counsel for
21 failing to investigate, denial of due process and
22 fair trial and prosecutorial misconduct. The State
23 made its return on May 7th, 2009, and he is
24 represented here today by Mr. Keffer and I will turn
25 it over to Mr. Keffer, Your Honor.

PW - W. GREGG - DIRECT

1 THE COURT: All right.

2 Yes, sir.

3 MR. KEFFER: Thank you, Your Honor. Your
4 Honor, we'd like to call Mr. William Gregg.

5 THE COURT: All right.

6 THE CLERK: Place your left hand on the
7 Bible and raise your right hand. State your name
8 please.

9 THE WITNESS: It's William Gregg.

10 WHEREUPON,

11 **WILLIAM GREGG,**

12 having been duly sworn by the Clerk, testified
13 as follows:

14 THE CLERK: Come around, sir. State your
15 name please and spell your last for the record.

16 THE WITNESS: William Gregg, last name
17 G-R-E-G-G.

18 THE COURT: All right, yes, sir.

19 **DIRECT EXAMINATION**

20 BY MR. KEFFER:

21 Q Good morning, Mr. Gregg, you're currently
22 incarcerated at Broad River in Columbia; is that
23 right?

24 A That's correct.

25 Q And back in 2008 you were sentenced for murder;

PW - W. GREGG - DIRECT

1 is that correct?

2 A Yes, I was.

3 Q And subsequently you had filed what's commonly
4 referred to as a post-conviction relief petition; is
5 that right?

6 A Yes.

7 Q And in fact, you had filed one back in October of
8 2008, do you recall?

9 A Repeat the question.

10 Q Your application for PCR, you filed it in October
11 of 2008; is that right?

12 A October 2008, that's correct.

13 Q And subsequently you had filed an amendment to
14 that petition; is that correct?

15 A That amendment should be in your possession.

16 Q Right, but you had filed an amendment; is that
17 right?

18 A That's correct.

19 Q In both your application and your amendment you
20 had made allegations of ineffective assistance of
21 counsel, do you recall?

22 A That's correct. Right.

23 Q Is that right?

24 A That's right.

25 Q In fact, your attorney at that time, Mr. Chris

PW - W. GREGG - DIRECT

1 Hart, you recognize him in the courtroom today?

2 A Yes, I do.

3 Q Okay. One of your allegations was that Mr. Hart
4 did not properly investigate the case; is that
5 correct?

6 A Yes, sir.

7 Q Can you tell the Court a little bit about that.
8 What specifically what did Mr. Hart not do in
9 preparation for your case?

10 A Well, Mr. Hart represented me for approximately
11 about 18 months. During that time I believe I'd
12 seen him maybe all together maybe about three times,
13 twice maybe, two or three times, about. Yeah, three
14 to five times. During the investigation we had —
15 the whole case surrounded around the witnesses
16 alleging that I committed this crime. The area in
17 that part of town where the crime took place, it was
18 known to be a dark area, and the — prior to the
19 investigation there was a witness that I had no idea
20 about. I didn't recall who he was.

21 Q Specifically who was that witness?

22 A Kendrick Miller.

23 Q Okay. Was he a witness who testified at trial?

24 A Yes.

25 Q In fact, he identified you as being at the scene;

PW - W. GREGG - DIRECT

1 is that right?

2 A Well, to my knowledge, as it stands today I
3 haven't had a chance to review the record or the
4 transcript, or any type of materials in reference to
5 Mr. Miller.

6 Q You have not reviewed his testimony is what
7 you're saying; is that right?

8 A I have no idea what he said.

9 Q Going back towards Mr. Hart, did — what
10 specifically did Mr. Hart not do in preparation for
11 your case in your opinion?

12 A Well, like I said, it went towards a show-up
13 hearing, and it was a Neil versus Biggers hearing
14 that I believe I didn't, I didn't get. I didn't
15 have an opportunity to exercise my right to that
16 Neil versus Biggers hearing.

17 Q So are you testifying that that Neil versus
18 Biggers hearing was waived by Chris?

19 A Yes.

20 Q And how do you think that affected your trial?

21 A The whole, the whole trial, the testimony was
22 based on the identification of those witnesses, what
23 those witnesses alleged.

24 Q Mr. Gregg, is there anything else you can think
25 that Mr. Hart did or didn't do in preparation for

PW - W. GREGG - DIRECT

1 your case and the trial?

2 A Well, I notice in my application before you went
3 to that Kendrick Miller's allegation, there's some
4 prior amendments that I also would like to amend
5 before that, you know.

6 Q Can you elaborate on that a little bit more.

7 What other areas was Mr. Hart ineffective in your
8 opinion?

9 A He — the motion I was filed with the Tucker,
10 Tucker hearing, Steve versus Tucker.

11 Q Okay.

12 A Counsel was ineffective for not — one second.
13 If we can, can we get back to that Kendrick Miller
14 situation?

15 Q Okay. If you could, if you could testify a
16 little more specifically about Kendrick Miller and
17 what in your opinion what Mr. Hart did or didn't do
18 as pertained to him as a witness at trial.

19 A Say that again.

20 Q What did Mr. Hart not do as it pertains to
21 Kendrick Miller?

22 A I never knew who Kendrick Miller was until the
23 day of trial.

24 Q So he never identified Kendrick Miller to you as
25 a —

PW - W. GREGG - CROSS

1 A That's correct.

2 Q ---as a potential witness in the case; is that
3 right?

4 A That's right, I never knew who he was.

5 Q And at trial Kendrick Miller identified you as
6 the defendant; is that right?

7 A That's right.

8 Q I mean, he testified you were there?

9 A Right.

10 Q And as a result you were found guilty; is that
11 right?

12 A That's right.

13 Q Mr. Gregg, please answer any questions the State
14 may have on cross-examination.

15 A Again, I haven't been supplied with the
16 information pertaining to Kendrick Miller so...

17 **CROSS-EXAMINATION**

18 BY MR. GOURLEY:

19 Q Mr. Gregg, you said you met with Mr. Hart about
20 three to five times prior to your trial?

21 A Yeah.

22 Q And during those meetings did y'all go over
23 discovery material, the evidence that the State had
24 against you?

25 A What was, what was the material that was in the

PW - W. GREGG - CROSS

1 original files, it was — a little.

2 Q Okay, so you went over some of the State's
3 evidence and things like that prior to your trial?

4 A Right.

5 Q Okay. And y'all talked about any kind of
6 defenses to these charges? Well, let me say, you
7 raised an alibi defense at your trial, right? You
8 were saying you were never there, you were never
9 present, you didn't commit this?

10 A That's right.

11 Q Okay. And you had —

12 A In that, in that alibi defense there was a
13 detective that initially went out and investigated
14 those witnesses.

15 Q Okay.

16 A By the name of Lieutenant Wesley Gardener.

17 Q Okay.

18 A He never appeared at trial. I never...

19 Q Okay. But you did have some alibi witnesses
20 testify on your behalf, right?

21 A I had one.

22 Q Was it Lillian Komen and Cheryl Williams?

23 A Yes.

24 Q Okay. And they both testified that, I believe it
25 was Cheryl testified that you were at her house the

PW - W. GREGG - CROSS

1 night of the shooting and stayed at her house for
2 another four or five days, right? Do you recall
3 that?

4 A There was some testimony to that effect.

5 Q Okay. And so if I understand your testimony
6 correctly, you're concerned Mr. Heart didn't advise
7 you of Kendrick Miller's testimony prior to trial,
8 you weren't aware of any of that?

9 A I wasn't aware who Kendrick Miller was.

10 Q Okay.

11 A This is a witness that's alleging that he
12 actually seen me at this crime, and I haven't,
13 haven't seen him until the day of the crime, I mean,
14 till the day of trial.

15 Q Did you know Kendrick Miller before any of that?

16 A Again, I didn't know who he was.

17 Q Okay.

18 A By the name of Kendrick Miller I didn't know who
19 he was.

20 Q Now during the trial Kendrick Miller stated that
21 he knew you since you were about 15 years old. Do
22 you remember that?

23 A It's impossible.

24 Q And you would dispute that?

25 A I lived in New York. I was born and raised in

PW - W. GREGG - CROSS

1 New York.

2 Q Right. And the victim —

3 A My age is 48. If I'm 48 and Kendrick Miller says
4 he knows me at — then how old is Kendrick Miller?

5 Q I'm not sure.

6 A You state, just stated that Kendrick Miller said
7 that he knew me at 15 years old. Could you please
8 state for the record how old Kendrick Miller is.

9 THE COURT: Just let him ask the
10 questions. I mean, in a minute your lawyer, your
11 lawyer is gonna be up and we can ask him that.

12 BY MR. GOURLEY:

13 Q Now the — Darryl Herriot also identified you as
14 the shooter as well, right? It wasn't just Kendrick
15 Miller who identified you as the shooter, correct?

16 A I believe, I believe they conversed back and
17 forth with, concocted a story that said I committed
18 the crime.

19 Q Okay. And then a gun, the bullet fragments match
20 the gun that was found at your house, correct? Or
21 could have been shot from that gun is what the
22 testimony was, right?

23 A Negative.

24 Q Okay. Well, if the record says that would you
25 dispute it?

1 A Excuse me?

2 Q If the experts testified to that in the record
3 would you dispute that?

4 A Again, that information, what you're alleging
5 right now I hadn't had a chance to review that
6 testimony when it comes to expert. Kendrick Miller,
7 I haven't had a chance to review those records. I
8 don't know, we have, we have experts whose
9 testimonies and records that I have not seen.

10 Q Okay.

11 MR. GOURLEY: Your Honor, that — just for
12 the record that's Ken—

13 THE WITNESS: You're depriving me of my
14 full bite, my full bite at the apple.

15 MR. GOURLEY: I understand, Mr. Gregg.

16 And Your Honor, for the record that's
17 Kenneth Whittler. His testimony starts on page 50.

18 THE COURT: Okay.

19 MR. GOURLEY: Just for the record. Mr.
20 Gregg, I appreciate that. That's all the questions
21 I have.

22 THE COURT: All right. Anything —

23 MR. KEFFER: Nothing further, Your Honor,
24 no other witnesses.

25 THE COURT: All right, you can step down.

1 Was there anything else you want to say? I mean,
2 you're welcome to, if you want to make a short
3 statement because what's gonna happen is —

4 THE WITNESS: Counsel is ineffective
5 because—

6 THE COURT: Hold on. Hold on.

7 THE WITNESS: He did not move to dismiss
8 the indictment on double jeopardy claim.

9 THE COURT: Hold on a second. Hold on.
10 When I'm talking, don't.

11 THE WITNESS: I'm sorry.

12 THE COURT: In just a second they're going
13 to call your lawyer up so, but go ahead, you can put
14 on the record whatever you want.

15 THE WITNESS: You're asking me to step
16 down.

17 THE COURT: No, I said you can put on the
18 record anything you want, but what I'm telling you
19 is that your old lawyer is getting ready to be
20 called up here and will be put under
21 cross-examination so.

22 THE WITNESS: Okay. We move to, one, I
23 have more amendments in my application that I would
24 like to.

25 THE COURT: Okay, tell us what they are.

1 THE WITNESS: Counsel was ineffective
2 because he did not move to dismiss the indictment on
3 double jeopardy.

4 THE COURT: All right.

5 THE WITNESS: Now you want to go further
6 or?

7 THE COURT: No, what I've doing is giving
8 you an opportunity to put on the record anything you
9 think your lawyer failed to do at the trial. Now is
10 your chance. I mean, even though there isn't a
11 question I want to hear what you think was done
12 wrong so that's what you need to do now.

13 THE WITNESS: I'm doing something wrong
14 here because —

15 THE COURT: No, I'll let you know.

16 THE WITNESS: Well, the first question as
17 far as today whether Blockburger analysis permit
18 subsequent prosecute there in criminal conviction
19 and sentence and where a judicial order has
20 prohibited the criminal applicant.

21 MR. GOURLEY: Your Honor, just for the
22 record, I would object to him reading anything.

23 THE COURT: Is this a part of what you
24 filed?

25 THE WITNESS: This is all going to see

1 according to — yes, it's part of ineffective
2 assistance of counsel and —

3 THE COURT: But I mean, was this filed
4 with your PCR?

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay, that's a part of the
7 record. You don't have to read that. I just meant
8 is there anything else that's not a part of your
9 paperwork that you wanted to say 'cause I've got
10 that. But is there anything else that you think
11 that he did that's not in your paperwork? So you
12 don't have to read that, I've already got it.

13 THE WITNESS: That's before you?

14 THE COURT: Yeah. Oh, yeah, sorry, yeah,
15 that's part of the pleadings. So if there's
16 anything — if they're not, that's okay.

17 THE WITNESS: Should I, I would like to
18 elaborate on the record because, once again, it goes
19 according to the same Mullins test.

20 THE COURT: Yeah, as long as you don't
21 read it. I mean, because if you read it you're
22 joust reading something I'm reading. So if there's
23 something you want to tell me, that's fine.

24 THE WITNESS: I'm being deprived to read
25 the material that —

1 THE COURT: No, you're not being deprived
2 of anything. That material is in the record already
3 so there's no point in reading it into the record.
4 That's part of the record. If what you're telling
5 me that that document you're reading from was filed
6 with your PCR. And that's what you said, right?

7 THE WITNESS: There was something in that.

8 THE COURT: Okay. So it's already a part
9 of the record.

10 THE WITNESS: Okay. Now I want to ask you
11 this because prior to me even coming here I had a --
12 there's an order that was placed, that's appointed
13 counsel.

14 THE COURT: Uh-huh.

15 THE WITNESS: Mr. Keffer, on July 10th.
16 And I'd like to state for the record that the judge,
17 R. Ferrell Cothran is a part of that record also.

18 MR. GOURLEY: Judge, if I could just
19 elaborate. I think it was Mr. Donald was
20 originally retained or appointed to Mr. Gregg's case
21 and Mr. Donald then went and worked for the
22 Solicitor's Office, then it was Mr. Young, and now
23 it's, I think, Mr. Keffer.

24 THE COURT: So this order is just an order
25 substituting you?

1 MR. KEFFER: Right. Your Honor,
2 procedurally Charles Brooks was first appointed back
3 in 2008, and then subsequently the petitioner had
4 moved to remove Mr. Brooks. Mr. Donald, my former
5 partner was appointed. Mr. Donald now works with
6 the Solicitor's Office in this circuit. Mr. Young,
7 my other partner, was appointed but he was removed
8 from the case this past summer, and now I'm on the
9 case and have been on the case since July or August.
10 There have been a number of attorneys involved in
11 this case, probably about four at least.

12 THE COURT: Okay. All right, well, that's
13 okay, as long as all he did was substitute a lawyer
14 and there's nothing, there's nothing substantive he
15 did. He just did something so you have to have an
16 order in the file allowing him to be your lawyer so
17 that's not a problem. But you know, that's on the
18 record for appeal purposes.

19 THE WITNESS: All right.

20 THE COURT: Anything else you want to tell
21 me?

22 THE WITNESS: Well, will I be able to come
23 back and take the stand and finish giving the
24 testimonies and allegations why I'm alleging that
25 Mr. Hart was ineffective?

1 THE COURT: No, now is the time to do it.

2 THE WITNESS: So just basically state
3 everything, keep going?

4 THE COURT: Yeah. Yeah, just don't read
5 it.

6 THE WITNESS: Just don't read it?

7 THE COURT: Right. I've already got, I
8 have in the file what you were getting ready to read
9 from apparently. Y'all — that is a part of the
10 file, right?

11 MR. GOURLEY: I believe so, Your Honor.

12 MR. KEFFER: It is, Your Honor. He's
13 raised a number of matters. He's raised eight on an
14 amendment and three in the original, all of which
15 are part of the record.

16 THE COURT: Why don't we do this, can you
17 tell me what those issues are.

18 Listen to him carefully and then that may
19 be the quickest way to do it.

20 And you can just synopsize it so we can
21 have it all on the record since I've got the record
22 here.

23 BY MR. KEFFER:

24 Q You had raised in your application ---

25 A Hold on a second please. And I just don't want

1 to miss anything. This is my bite at the apple.

2 THE COURT: Right, no, I understand, and
3 that also.

4 THE WITNESS: My full bite at the apple,
5 I'm saying, full bite at the apple, you know.

6 THE COURT: I understand, and that's what
7 I'm gonna let him do is just —

8 THE WITNESS: I already been sitting and
9 waiting on this case for the last seven years.

10 THE COURT: Right, so let him ask you the
11 questions about each of these. Make sure that
12 they're the ones you want to bring up and then I'll
13 look through the file. Okay, go ahead.

14 BY MR. KEFFER:

15 Q You had raised an issue of double jeopardy
16 stating counsel was ineffective for not dismissing
17 the indictment. Is that correct, Mr. Gregg?

18 A That's correct.

19 Q Can you elaborate and tell the Court how counsel
20 was ineffective.

21 A Well, that's what I was getting into before and I
22 got interrupted.

23 THE COURT: Let me just — let me —

24 THE WITNESS: Both of these cases —

25 THE COURT: Stop a minute. Let me tell

1 you something, I'm not interrupting here. And I'm
2 trying to give you an opportunity to say what you
3 need to say, but I'm not gonna sit here and have
4 you read to me what's already in the file so ---

5 THE WITNESS: Yes, sir.

6 THE COURT: You know, some people may say
7 it's interrupting. What we call it is the court
8 system. So let him ask you the question and then if
9 there's something you want to add to that, you're
10 welcome to do that.

11 All right, go ahead.

12 THE WITNESS: I was originally charged
13 with, in my indictment I had three initial charges.
14 One was murder, the second one was possession of a
15 firearm during the commission of a violent offense,
16 the third one being PWID heroine. Before trial
17 counsel made a motion to sever count three of my
18 indictment. This indictment was still presented
19 before the jury as well as the case at my trial. I
20 believe that the appearance of those charges was
21 prejudicial to me. It proves different conduct and
22 different elements. It goes back to the Blockburger
23 test to establish that it says that the respondent
24 attempted to prove that the defendant engaged in
25 conduct that was later the subject of a criminal

1 prosecution.

2 In South Carolina you have Article 1,
3 Subsection 12 which is double jeopardy and
4 self-incrimination. I believe that just in
5 appearance alone that was — before the — on the
6 indictment it was prejudicial to me. Now I'm not
7 alleging a subject matter jurisdiction issue. What
8 I'm raising is a double jeopardy fault.

9 BY MR. KEFFER:

10 Q Okay. Mr. Gregg, you also raised in your
11 petition a failure to investigate medical evidence.
12 Do you recall putting that in your amendment?

13 A Again, I haven't had a chance to review that
14 portion of the record.

15 Q Okay. You also raised counsel's failure to move
16 to suppress illegally seized evidence; is that
17 correct?

18 A It goes back to the statement that the attorney
19 general just made about a bullet that was taken from
20 a wall from a residence that was away from the crime
21 scene. It happened at another, a different
22 location. That location would have been 111 Palm
23 Springs, Palm Springs Drive.

24 Q Okay.

25 A And this location and incident which falls under

1 the third count of the indictment, happened the
2 second day after the crime. Again, I had no
3 knowledge of it. I didn't have, I never received a
4 warrant on those, on those charges. I never
5 received a warrant on the, on the weapons charge.
6 So what I'm alleging is the investigation and
7 insufficiency of counsel at the time of representing
8 me.

9 Q You'd also raised an issue involving the denial
10 of due process; is that correct?

11 A Yes, sir.

12 Q And can you elaborate a little more clearly on
13 those issues?

14 A You went back to the original application?

15 Q Yes.

16 A Again —

17 Q I just want to make sure we have everything on
18 the record about what you had put down on your
19 application and your amendment. That's what we're
20 really trying to do right now. We had talked about
21 Kendrick Miller. We had talked about the medical
22 evidence. We had talked about the failure to
23 investigate the crime scene and whatnot. I'm trying
24 to get from you everything that's on your
25 applications, for the record.

1 A Did you mention State versus Rice?

2 Q Go ahead and elaborate on that.

3 A Rice is — State versus Rice, it's a South
4 Carolina appeals case and it's 348 South Carolina
5 417, 559 Southeastern 2d 360.

6 Q And how is that a part of your application?

7 A It goes back to the initial charge where to state
8 charges involving from the same facts was barred by
9 statute providing that an acquittal under federal
10 law was barred from prosecution.

11 Q And how does that pertain to this case?

12 A Again, it raises a statute that's in South
13 Carolina.

14 Q Okay. Mr. Gregg, is there anything else that we
15 haven't covered that's in the record that you'd like
16 alleged? Is there anything else you need to —

17 A The solicitor— the attorney general just
18 mentioned something about a bullet and he said
19 medical evidence. Can you tie those in 'cause —

20 Q Well, that's what I'm asking you. You had raised
21 in your application that counsel is ineffective for
22 not reviewing the medical evidence. That's part of
23 your application; is that right?

24 A That's right.

25 Q Okay. And now you're raising, or now you've

1 raised the issue of the retrieval of a bullet
2 fragment from that location which was not the
3 location where the incident took place; is that
4 right?

5 A That's right.

6 Q Is there anything else out there that you need to
7 put out to the record for today? And understand,
8 your applications, both the amendment and the
9 initial one are all part of the record. Everything
10 that you submitted is part of the record and will be
11 reviewed by the Court. It's already in the record;
12 but is there anything else that we haven't talked
13 about that you feel like we need to talk about?

14 A Well, again, will I be able to come back and take
15 the stand because you basically — am I being rushed
16 off the stand 'cause —

17 Q You're not being rushed off the stand, but we are
18 covering your application and amendments. That's
19 why I keep coming back to the same question. Is
20 there anything that we haven't discussed or you
21 haven't testified to?

22 A Well, one of the things that me and you discussed
23 was — I'm missing portions of my transcript again.

24 Q Okay.

25 A I haven't had a chance to review testimonies and

1 things that happened in my trial.

2 Q Are you asking for a continuance today until
3 you've had the opportunity to review those?

4 A Or either a motion to reconstruct a record
5 because as you can see, I'm being thrown under the
6 bus.

7 Q Are you asking the Court to continue —

8 A Yes.

9 Q —this hearing —

10 A Yes.

11 Q —until you've had an opportunity to review the
12 pertinent parts of the record that you've not had

13 —

14 A Yes, I would. I would like to review those
15 records.

16 THE COURT: All right, let me ask you
17 this, when did he get the records? He says he —
18 you're saying you don't have the transcript?

19 THE WITNESS: It would go all the way back
20 to the supplemental, the supplemental, the motion
21 that I filed —

22 THE COURT: Hold on a minute.

23 THE WITNESS: —when I was being
24 represented by —

25 THE COURT: Hold on a minute. Hold on,

1 let me check, because what you have to have is a
2 transcript of the hearing or the trial and that's
3 what you...

4 THE WITNESS: A complete.

5 THE COURT: Right.

6 THE WITNESS: Transcript.

7 THE COURT: Right.

8 THE WITNESS: And I don't have that.

9 THE COURT: All right. Well, he's looking
10 to see.

11 MR. GOURLEY: Judge, we gave him
12 everything —

13 THE WITNESS: My transcript —

14 THE COURT: Hold on a minute.

15 MR. GOURLEY: Judge, we sent everything to
16 the attorneys. It's the attorney's responsibility
17 to give it to Mr. Gregg. We don't send the
18 applicant anything. He's represented by an
19 attorney. That would be highly improper.

20 THE COURT: So —

21 THE WITNESS: I don't have jury selection,
22 Your Honor. I don't have numerous testimonies.

23 THE COURT: Well now, jury selection is
24 not something that — if, unless a Batson issue is
25 raised. What I'm asking you is, did any of the

1 lawyers, it looks like, I mean, I'm not from here so
2 I'm seeing this for the first time.

3 THE WITNESS: That's right.

4 THE COURT: Did any of the lawyers send
5 you a copy of the transcript?

6 THE WITNESS: It's — I'd like to direct
7 your attention to a motion I was filed.

8 THE COURT: Which one? All I've got is a
9 return.

10 THE WITNESS: September 15th, 2009.

11 THE COURT: Hold on just a second. Y'all
12 found that? Apparently there was a motion filed in
13 2009?

14 THE WITNESS: It's a motion to relieve
15 counsel Charles C. Brooks and a motion to have
16 counsel appointed due to conflict of interest and
17 other justification shown.

18 THE COURT: Okay, that was done.

19 THE WITNESS: As re-submitted because this
20 is —

21 THE COURT: But now —

22 THE WITNESS: Y'all —

23 THE COURT: You filed that motion in 2009
24 to have your former lawyer replaced and wasn't that
25 done?

1 THE WITNESS: I wasn't denying that
2 counsel wasn't replaced. In that motion I'm
3 alleging lacking of the abilities to procure files
4 and examine files, to correct files, for an
5 evidentiary hearing to be held. That has inflicted
6 a wound on me.

7 THE COURT: Well now, let me just make
8 sure, you understand that at a PCR hearing, which is
9 what we're at, post-conviction relief, the only
10 issue that I'm doing is, you made allegations that
11 your lawyer was ineffective and that there may have
12 been errors at the trial. I can't, all I can do is
13 listen to the testimony you have and either uphold
14 the case which then you can, of course, appeal; or
15 throw it out and send you back to the beginning. So
16 you know, the issue is what happened at your trial
17 for this thing. We're not re-hearing the evidence.
18 Basically you're just supposed to —

19 THE WITNESS: Beginning meaning we're
20 gonna back up before we get started? I mean,
21 because if we back up to the beginning we're talking
22 about when I was arrested in New York City —

23 THE COURT: No, we're talking about the
24 trial.

25 THE WITNESS: —that initiated arrest.

1 THE COURT: No, that's — we're talking
2 about the trial; and if there was an issue of your
3 arrest in New York, whether or not that was brought
4 up at the trial, that may be some issue that you
5 want to bring out. But you know, now is the time
6 for you to bring that out. I'm assuming somebody is
7 going to call his former lawyer, and you know, he'll
8 call your former lawyer in a second and then your
9 lawyer will get a chance to ask him some of these
10 questions about why he didn't do certain things.
11 But at a PCR like this it's called a post-conviction
12 relief because all I'm doing is trying to review the
13 trial. I mean, I'm not re-trying the case.

14 THE WITNESS: I understand.

15 THE COURT: So I mean, you've asked for a
16 continuance but it sounds like you had the
17 transcript and you got a different lawyer.

18 THE WITNESS: No, I didn't have the
19 transcript, Your Honor. We had, my transcript
20 consists of 100 to 399 pages outside of the
21 testimonies of Kendrick Miller.

22 THE COURT: You don't have 100 through
23 392?

24 THE WITNESS: I have 1 through 392, but I
25 don't have —

1 THE COURT: Well, that's all there is.

2 THE WITNESS: I don't have Kendrick
3 Miller's testimony, and I don't have all those ---

4 THE COURT: Did Kendrick Miller testify at
5 the trial?

6 THE WITNESS: Yes, he did.

7 THE COURT: All right. Well, give me a
8 minute. Do y'all know whether or not -- well, wait
9 a minute.

10 MR. GOURLEY: Judge, Kendrick Miller's
11 testimony starts on, I believe, page 65.

12 THE WITNESS: Not in mines. Not in my
13 record it doesn't.

14 THE COURT: All right, hold on a minute.

15 MR. GOURLEY: Your Honor, I'm mistaken,
16 hold on. Oh, that's right.

17 THE WITNESS: Kenneth Whittler, I don't
18 have his either.

19 THE COURT: Hold on, let's find Miller
20 first.

21 THE WITNESS: Amy Stephans, I don't have
22 hers either.

23 THE COURT: Hold on a second. I mean, if
24 they testified they should be in here.

25 MR. GOURLEY: Judge, I remember what

1 happened. There was a court reporter change in the
2 middle of the trial so there's a second excerpt of
3 the trial from the second court reporter where they
4 put flopped out. It's in your packet. That was the
5 July 29th day. It's numbered 1 through 99.

6 THE COURT: And I have that?

7 MR. GOURLEY: You got the other portion.

8 THE WITNESS: I don't have that and —

9 MR. GOURLEY: It's sent to his attorney,
10 Judge.

11 THE COURT: Did you happen to get that or
12 is that something that —

13 MR. KEFFER: Judge, we had it.

14 THE COURT: Did you send it to him?

15 MR. KEFFER: I don't know if our office
16 sent it to him or not, but I met with him last week.

17 THE WITNESS: Wait a minute, you mean to
18 tell me —

19 THE COURT: Wait, wait, let him finish.

20 MR. KEFFER: We have it. He's told me
21 last week when I met him he didn't have it, but we,
22 I mean we had his testimony. We had that part
23 'cause he's saying that we didn't have it. I can't
24 tell the Court whether or not he's actually received
25 it. I think he did receive the big bulk of it but

1 he told me when I met with him that he did not have
2 the second part.

3 THE WITNESS: I asked counsel to invoke my
4 rights, Your Honor.

5 THE COURT: In what? What rights?

6 THE WITNESS: I mean, to procure the files
7 and examine files in order for to have an
8 accomplished professional norms at this trial. It
9 can't get done if the record is not before the
10 court.

11 THE COURT: Well, let me tell you, as much
12 as I hate I think he's probably entitled to review 1
13 through 99. I mean, you know, I do. Especially, is
14 that the Miller, that's what he's referring to?

15 MR. KEFFER: That is Kendrick Miller. And
16 the witnesses who I.D. 'd him at the scene he claims
17 he doesn't have a copy of it. He did tell me that
18 last when I met with him at Broad River. I have a
19 copy. I mean, I had a copy. I've reviewed it; I've
20 read it. He claims he doesn't have a copy of it.
21 He told me that last week, last Thursday I think. I
22 don't know why he wouldn't have had a copy of it
23 'cause he had a copy of everything else. He did
24 tell me he didn't have a copy of it.

25 THE WITNESS: It state's it's conclusory

1 in nature. Everything is summary and fashion, I
2 mean.

3 MR. GOURLEY: Judge, just for the record,
4 you know, Mr. Keffer has a copy of it; he's
5 reviewed it. He's the attorney in the case, not Mr.
6 Gregg. If there's any allegations, of course
7 Mr. Keffer is the one. Mr. Keffer is not a conduit
8 to Mr. Gregg. Mr. Gregg can raise any kind of
9 allegations he wants to raise. My other concern is
10 Mr. Hart's representative, he's not gonna be
11 available in the April term.

12 THE COURT: Let me ask you this, you
13 reviewed 1 through 99. Is there anything in there
14 that supports any of his allegations?

15 MR. KEFFER: No.

16 THE COURT: You're sure?

17 MR. KEFFER: Positive.

18 THE COURT: Okay.

19 MR. KEFFER: I reviewed it three times.

20 THE COURT: Okay.

21 MR. KEFFER: Read it three times.

22 Specifically Kendrick Miller's testimony three times
23 and Mr. Hart's cross-examination, no.

24 THE COURT: Okay, all right. What I'm
25 gonna do, I'm going just for the record, I'm gonna

1 protect your interest. I'm assuming you're making a
2 motion to continue because you didn't have pages 1
3 through 99. And just, again, to protect your
4 interest on appeal, I'm denying that just because
5 your lawyer just told me that he's read it and
6 there's nothing in there to support your interest.
7 Now, you know, that — after your lawyer testifies
8 that may change but, at this point I don't see any
9 point, I mean, if nobody had it today that'd be one
10 thing, but apparently your lawyer has reviewed it
11 and there's nothing in there to help you.

12 THE WITNESS: I seen my lawyer one time,
13 Your Honor.

14 THE COURT: Well, I, yeah, I know. I
15 mean, but he's had the file and reviewed it.

16 THE WITNESS: And Your Honor —

17 THE COURT: Again, he's not, he's doing
18 what I'm doing. You know, we've got the file and
19 we're looking to see if anybody made a mistake.

20 THE WITNESS: Did he mention that Kendrick
21 Miller had drug charges, that he was a convicted
22 felon?

23 MR. KEFFER: All that is in the record.
24 All that is testified to, brought out on
25 cross-examination and the State, Mr. Kendrick's

1 record and what he was convicted of.

2 THE COURT: Yeah, so apparently it was.
3 All right, I tell you what, is there anything else
4 you want to say 'cause, I mean, all these questions,
5 see, you may be —

6 THE WITNESS: I would like to have a
7 continuance, Your Honor, until I can review the
8 files myself.

9 THE COURT: Okay. Well, that's what I'm
10 saying. And I understand you're making that motion.
11 I'm gonna protect your interest for appeal but I'm
12 denying that motion. I want to hear your lawyer
13 testify, and I assume some of these questions may be
14 asked and answered for you. Okay, all right.

15 I've got all of that they tell me so
16 unless there's anything else that you want to point
17 out to me, then I want to hear from your lawyer at
18 the trial.

19 THE WITNESS: I'd like to reserve that
20 right if I can.

21 THE COURT: Reserve a right to what?

22 THE WITNESS: You said if there's anything
23 I would like to tell you.

24 THE COURT: All right, I was —

25 THE WITNESS: I can't tell you anything if

1 I haven't had a chance to review it.

2 THE COURT: Well see, what happens here
3 is, if he testifies you can be called in rebuttal
4 so. You can step down now, and then if your lawyer
5 wants to call you in rebuttal he can do that. I
6 need to take about a five minute break between
7 these, so you can go ahead and step down.

8 And I know y'all are — I got to make a
9 quick call that I got a little problem in my office
10 so hold on just a second.

11 Can I have a copy of that 1 through 99. I
12 don't have that in my package either.

13 MR. GOURLEY: Yes, sir.

14 (WHEREUPON, a recess was taken from the
15 proceedings.)

16 THE COURT: Okay, any other witnesses for
17 the Applicant?

18 MR. KEFFER: No, Your Honor.

19 THE COURT: You can call your first
20 witness.

21 MR. GOURLEY: Yes, Your Honor, we call
22 Mr. Hart to the stand please.

23 THE CLERK: State your name please.

24 THE WITNESS: Christopher Hart.

25 WHEREUPON,

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CHRISTOPHER HART,

having been duly sworn by the Clerk, testified
as follows:

THE CLERK: Come around, sir. State your
name and spell your last for the record.

THE WITNESS: Christopher Hart, that's
H-A-R-T.

DIRECT EXAMINATION

BY MR. GOURLEY:

Q Mr. Hart, how long have you been practicing law?

A This will be 14 years now.

Q And were you appointed or retained to represent
Mr. Gregg?

A I was retained by Mr. Gregg's wife in New York.

Q Okay. And how many times did you meet with him
prior to his trial?

A I would say anywhere from seven to ten times.

Q Okay. Did you file Rule 5 and Brady motions in
this case?

A I did.

Q Did you review that with Mr. Gregg?

A Yes. We have a policy in my office, once we
receive discovery from the solicitor's office we
mail the discovery to the client.

Q Okay.

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1 A Ask them to review it, jot down any notes,
2 concerns, or questions so when I come visit with him
3 that we can discuss it and that's what I did with
4 Mr. Gregg.

5 Q Do you have a copy of that letter that you sent
6 discovery with?

7 A Yes.

8 Q Is it on the desk still?

9 A Yes.

10 MR. GOURLEY: Your Honor, may I approach
11 the witness?

12 THE COURT: Yes, sir.

13 BY MR. GOURLEY:

14 Q This is the letter you sent Mr. Gregg showing the
15 State's evidence or discovery?

16 A It is.

17 Q Okay.

18 MR. GOURLEY: Your Honor, I'd like to make
19 this State's 1.

20 THE COURT: Any objection?

21 MR. KEFFER: No objection, Your Honor.

22 THE COURT: All right.

23 (WHEREUPON, Respondent Exhibit No. 1 was
24 marked for identification and
25 admitted into evidence.)

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1 BY MR. GOURLEY:

2 Q Mr. Hart, did y'all talk about Mr. Gregg's
3 version of the facts and circumstances around this?

4 A Yes, I did.

5 Q Do you recall what those were?

6 A Yes. First I tried to figure out how he was
7 involved. Mr. Gregg is from New York so I was
8 trying to piece together how did he end up here in
9 South Carolina, specifically Sumter, South Carolina.

10 Q Right.

11 A So he advised me that he had a wife in New York,
12 and on the way down from New York he would visit
13 with his girlfriend in North Carolina and then come
14 to his wife here in Sumter.

15 Q Okay.

16 A So I was trying to piece together about who the
17 different players were and why he was where he was
18 at the time, why he was being accused of that. He
19 informed me that Pam, which is his wife here in
20 Sumter.

21 Q Right.

22 A Her brother was Kevin Franklin who was murdered.
23 And he told me that, you know, at the time that he
24 was involved in drug sales and someone had broken
25 into the trailer that him and Pam lived in.

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1 Q The defendant was — all right, Mr. Gregg was
2 involved in drug sales?

3 A That's correct.

4 Q Okay.

5 A That's correct. At some point in time he had
6 suspected that Pam may have told Kevin about how
7 much money was in the house and how much drugs was
8 in the house. And I think, — I don't know exactly
9 how many times, but I know it was more than one that
10 the trailer had been broken into and drugs and money
11 and items were stolen out of the trailer.

12 Q Okay. And the — Pam Franklin is the person you
13 would represent, correct?

14 A That is his wife here in Sumter.

15 Q Okay.

16 A Or was at the time.

17 Q And she testified at trial as well?

18 A That's correct.

19 Q And she essentially testified basically what you
20 just relayed or stated?

21 A That's correct. Pam is — I'm trying to, I'm
22 pretty sure Pam gave consent to allow the police to
23 come in and search the house.

24 Q Right.

25 A And Pam is the one who pointed out the evidence,

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1 specifically the bullet.

2 Q Okay.

3 A She's the one who gave that to the police.

4 Q Okay. So there was no basis to challenge the
5 bullet as some kind of illegal search and seizure?

6 A She gave consent.

7 Q So —

8 A Right, right.

9 Q And regarding that bullet, that bullet was
10 matched as a possible, as a match to the bullet
11 found in the victim, right?

12 A Right, it was —

13 Q Fired from the same gun?

14 A It was possible, yes.

15 Q Right?

16 A Okay.

17 Q Can you briefly describe the State's evidence
18 against Mr. Gregg?

19 A Sure. When I met with Mr. Gregg — and normally,
20 and I'm used to this from doing so much of it.
21 Normally when you first meet with them you don't get
22 the full story, and it takes time for the client to
23 trust you and to build that trust with them. And
24 the more you visit with them and the more you sit
25 down and talk to them, they begin to trust you more.

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1 You build that trust and rapport between each other.
2 I like Mr. Gregg; I still like him. I think he, you
3 know, he's very personable. He's very intelligent.
4 He has been well read on the law. Specifically,
5 during our conversations in the jail I can
6 specifically remember a lot of conversation about
7 his extradition, and he wanted me to challenge the
8 expedition— extradition, and he had concerns and
9 issues about the extradition. And I tried to sort
10 of highlight for him the issues that we needed to
11 focus on.

12 Q Right.

13 A He was charged with murder. He wasn't charged
14 with the extradition. So I was hired and retained
15 to represent him on the murder charge, that we
16 needed to focus our efforts and energy on the murder
17 charge. But for some reason he continued to want to
18 go to the extradition.

19 Q Okay.

20 A So I asked him, you know, how he's involved. He
21 told me about his wife in New York, his girlfriend
22 in North Carolina, about his wife here in Sumter.
23 And I asked him who was the driver. He told me that
24 that was Kevin. But the biggest question that I had
25 for him was, who is the guy who identified you as

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1 the shooter.

2 Q Uh-huh.

3 A Who is this guy? And he's correct, I represented
4 him for at least 18 months; I thought it was more.
5 And each time I would ask him who is this guy, who
6 is the person who identifies you as the shooter
7 because we come to learn it was Darryl, it was
8 Darryl Herriot. And Darryl Herriot said
9 specifically, I was the passenger, we pulled up. It
10 was a dirt road. As a matter of fact, it was Hubcap
11 Lane right off of Sumter highway. There's a
12 pawnshop right out front. And he said he pulled up
13 next to William Gregg's car. And he didn't refer to
14 William as William; he referred to William as Bubba
15 or Bubbie. But for two years I asked William who is
16 this guy, and he says I don't know, I just know him
17 as a guy name Black. I said what does he do? He
18 says, well, I think he drives a truck. Where does
19 he live? He says, well, I think he lives in North
20 Carolina, I don't know. So I repeatedly asked him
21 who is this guy because this is the guy, he doesn't
22 put you at the scene, he says he saw you pull the
23 trigger because -- when he said William Gregg pulled
24 the trigger, actually a bullet grazed the top of his
25 head which is when he jumped out of the vehicle and

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1 he could see the flash from the gun and. So I
2 needed to know this so what I did was I hired a
3 private investigator; and I hired a private
4 investigator to go out to the scene, take pictures
5 of the scene, video the scene, interview any
6 potential witnesses. And the investigator actually
7 interviewed Kendrick Miller.

8 Q Okay.

9 A Kendrick Miller was not that important of a
10 witness in the sense of Kendrick Miller says he
11 heard some shots, but he didn't see any of the
12 shooting. He didn't see anything take place. The
13 person who I needed to know who the person was, was
14 Darryl Herriot; and for some reason William Gregg
15 would not tell me who he was. So we got to trial,
16 and he talked about the Neil v. Biggers hearing.
17 Well, you know, talking to the Solicitor they knew
18 who he was. And when Darryl Herriot took the stand
19 the solicitor asked Darryl Herriot, do you know the
20 person seated at the stand with Mr. Hart. I'm kind
21 of summarizing here.

22 Q Uh-huh.

23 A He says, well, how do you know him? He says,
24 well, that's Bubba. Well immediately, he knows this
25 guy so he says, well — and this was the most

RW - C. HART - DIRECT

1 shocking part to me which Mr. Gregg didn't share it
2 with me. He says, the way I know Bubba is we have a
3 baby by the same momma. He says, that car, I seen
4 my daughter drive the car at the flea market. So he
5 knows William Gregg intimately, but William Gregg
6 would never share with me who Darryl Herriot was and
7 Darryl Herriot is the main person who identifies him
8 as the shooter.

9 Q Uh-huh. Would you classify this evidence as
10 overwhelming?

11 A Absolutely. Definitely overwhelming when I
12 repeatedly asked him who Darryl Herriot was. I
13 can't investigate anything I don't know. Even
14 though I sent the investigator out to ask, we
15 couldn't find anything but Mr. Gregg knew him
16 intimately and — couldn't get anything out of him.

17 Q Did y'all discuss any possible defenses to this
18 case?

19 A Yes, we did.

20 Q And —

21 A I'm sorry, go ahead, I'm sorry.

22 Q Did that include alibi?

23 A Yes, it did.

24 Q Could you briefly go into that?

25 A Again, I was hired by the wife in New York. The

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1 girlfriend who he would stop and see in, I want to
2 say it was Fayetteville; I'm not sure the exact
3 time. I want to say it was Fayetteville, North
4 Carolina. So I'm asking Mr. Gregg, I say, look,
5 we're about to go to trial. Let me back up. We had
6 an offer of 15 years which for a murder trial I
7 thought was great. You just don't see a 15 year
8 offer on a murder trial.

9 Q Right.

10 A So that raised some, okay, what's going on with
11 this case, there's some problems, there's some
12 issues with the case. I investigated all that. I
13 think — I can't tell you why, but Harry Conner was
14 the solicitor; he offered 15 years. So I took the
15 offer to Mr. Gregg. I took the offer to his wife in
16 New York who actually hired and retained me. She
17 thought it was a great offer. I thought it was a
18 great offer. Mr. Gregg didn't think it was a great
19 offer, and he didn't think it was a great offer for
20 the sole fact that he didn't think he was properly
21 extradited. So once again, as we tried to discuss
22 the case and discuss the facts of the case and I'm
23 telling him I think this is, you need to go with a
24 set number because you're looking at a minimum of 30
25 and you can get all the way up to life when you can

RW - C. HART - DIRECT

1 get 15; and he says, well, no, I didn't extradite me
2 right and this is just not right and I ain't taking
3 the offer. So we had to prepare for trial. So I
4 said, we got to come up with a defense, we need
5 something. We got, you know, I don't know who the
6 guy was identifying you, you don't know him, give me
7 something. He says, well, they can't put my at the
8 scene, I wasn't here at the time. I asked him where
9 he was, where was he. He says, I was in North
10 Carolina. I said, who were you with? I was with my
11 girlfriend. So he gave me the information to the
12 girlfriend. I contacted her; I talked to her. She
13 says, yes, he was here. If I remember specifically
14 she says, the reason why I know he was here is
15 because it was my daughter's birthday. So we
16 arranged for her to come down. She didn't have any
17 means of transportation or funds for transportation.
18 I'm trying to figure out if the wife in New York
19 paid for, if the wife in New York paid for her
20 transportation or rather, we advanced those. I
21 can't remember, but I do remember there were some
22 issues about transportation so she actually rode the
23 bus here to Sumter. And she testified. She
24 testified that he was here. I'm sorry, he was in
25 North Carolina with her at the time that the

RW - C. HART - CROSS

1 shooting took place.

2 Q Regarding any kind of medical evidenced, did
3 y'all have any discussion of any type of medical
4 evidence in this case or anything like that that you
5 recall?

6 A What's the medical? Tell me, what's the medical?

7 Q I'm not completely sure. I just, if there was
8 any kind of discussion, any kind of medical evidence
9 maybe of the victim or anything? Are you aware of
10 any kind of medical evidence that was produced in
11 this trial? I'm not aware of any but...

12 A I ---

13 Q Okay.

14 A I don't know any medical evidence.

15 MR. GOURLEY: Your Honor, that's all the
16 questions I have.

17 Thank you, Mr. Hart.

18 THE COURT: Yes, sir.

19 MR. KEFFER: Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 BY MR. KEFFER:

22 Q So Mr. Hart, you even hired a private
23 investigator; is that right?

24 A Yes, sir.

25 Q Went out to the crime scene, took pictures and

RW - C. HART - CROSS

1 whatnot?

2 A Yes, sir.

3 Q You reviewed that with your client as well?

4 A Yes, I did.

5 Q Your private investigator actually spoke with
6 Kendrick Miller?

7 A Yes, he did.

8 Q And did — and he spoke also with Darryl Herriot;
9 is that right?

10 A No, no, no. He didn't speak with Darryl Herriot.

11 Q Okay.

12 A He didn't speak with Darryl Herriot because we
13 couldn't discover who Darryl Herriot was, how he was
14 involved, because I repeatedly asked Mr. Gregg who
15 is this person who is saying you're the one who
16 fired the gun. He says, I don't know him.

17 Q Okay. But he was, Darryl Herriot was identified
18 as a witness by law enforcement earlier on?

19 A Yes, sir.

20 Q We just couldn't locate him or find this
21 individual; is that right?

22 A Yes, sir.

23 Q Okay. And Mr. Gregg told you he didn't know who
24 he was?

25 A Yes, sir.

RW - C. HART - CROSS

1 Q You subsequently found out that he also had a
2 child with the same woman that Mr. Gregg did; is
3 that right?

4 A Pam, that's correct. That is correct.

5 Q Going back to Pam, it was her house where the
6 bullet fragments were found; is that right?

7 A Right, that's correct.

8 Q And I think you testified that she, in fact, had
9 given consent to law enforcement to search?

10 A That was my understanding.

11 Q So there was no reason, therefore, to file any
12 type of motion to suppress?

13 A That's correct.

14 Q And consent was given, to your knowledge consent
15 was given freely?

16 PETITIONER GREGG: Whoa, whoa, whoa —

17 THE COURT: Hold on, wait a minute. You
18 can ask him to come talk to you but...

19 (Mr. Keffer and Mr. Gregg confer.)

20 BY MR. KEEFER:

21 Q Did you provide any warrants to Mr. Gregg?

22 PETITIONER GREGG: No, these warrants —

23 THE WITNESS: I can't tell you specif—

24 THE COURT: Just, wait a minute, just keep
25 it — go ahead.

RW - C. HART - CROSS

1 THE WITNESS: This has been 2006, 2007. I
2 can't tell you — whatever I was provided by the
3 Solicitor, Mr. Gregg has in his possession or he had
4 in his possession.

5 MR. KEFFER: Okay.

6 Your Honor, one moment to speak to my
7 client.

8 THE COURT: Okay.

9 MR. KEFFER: Your Honor, I don't have any
10 other questions for Mr. Gregg — Mr. Gregg, I'm
11 sorry, Mr. Hart.

12 THE COURT: Let me ask you something.
13 There's been some questions about Kendrick Miller
14 and the fact that — I'm trying to look through it.
15 About the fact that Mr. Miller said that he knew
16 this defendant since they were 15, and of course,
17 the defendant says he didn't live here. Do you
18 remember anything about that?

19 THE WITNESS: What I can remember, Your
20 Honor, is that Kendrick Miller lived on the same
21 dirt road as Mr. Gregg, right up maybe briefly up
22 the street from what I can remember. Where the
23 shooting took place, I believe Kendrick Miller
24 testified is that he heard some shooting but he
25 didn't see anything so he could not identify

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1 Mr. Gregg as the shooter.

2 THE COURT: All right. And who did
3 identify Mr. Gregg as the shooter?

4 THE WITNESS: Darryl Herriot who was the
5 passenger in the car with Kevin Franklin.

6 THE COURT: With the victim?

7 THE WITNESS: That is correct.

8 THE COURT: And he testified at the trial,
9 right?

10 THE WITNESS: Yes, sir.

11 THE COURT: And he was subject to
12 cross-examination at the trial?

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. Okay, thank you,
15 appreciate it.

16 MR. GOURLEY: And Your Honor, just for the
17 record Darryl Herriot I.D.'s Mr. Gregg in court on
18 page 79 of the transcript.

19 THE COURT: I got that. I was just
20 looking through the —

21 PETITIONER GREGG: Your Honor.

22 THE COURT: Hold on a second. Anything
23 else from the State?

24 MR. GOURLEY: No, Your Honor.

25 THE COURT: Anything in rebuttal?

1 MR. KEEFER: Nothing, Your Honor. I would
2 ask the Court to consider allowing us to have the
3 affiant testify again.

4 THE COURT: Okay, all right. You're still
5 under oath so you can come on up and testify as to
6 what was just testified to. In other words, you're
7 limited to that. You're still under oath.

8 THE WITNESS: Your Honor, on page 237 on
9 my transcript.

10 THE COURT: Al right, hold on a second.

11 THE WITNESS: 'Cause I don't have a full
12 transcript, and I don't remember seeing Darryl
13 Herriot's testimony either.

14 THE COURT: Hold on just a second. 237?
15 All right, what you want me to look at?

16 THE WITNESS: The officer, Terrance Coker,
17 and he was the officer that was on the scene.

18 THE COURT: Yeah.

19 THE WITNESS: Was initially, you know,
20 when this crime supposedly happened. He was asked,
21 he says, can you tell us who Darryl Herriot is? He
22 says, no, sir, I have no idea. You don't know who
23 Darryl Herriot is? He says no. So you have never
24 met Darryl Herriot? He says, no, I haven't. And
25 this is the officer that responded. So evidently

1 Darryl Harriet is lying. He wasn't even nowhere
2 near the incident or not there. When you talked to
3 Kendrick Miller, he never told you about Darryl
4 Herriot, did he? At that time Miller was there very
5 excited. He made no notation and reference to
6 somebody else at the time. So I understand him
7 being nervous and excited. If Darryl Herriot was at
8 that car, wouldn't you agree that that's important
9 to this case? If Kendrick Miller saw Darryl Herriot
10 don't you think that's an important fact to know?

11 THE COURT: Okay, all right.

12 THE WITNESS: So —

13 THE COURT: Let me ask you this, you
14 testified earlier that you didn't know Mr. Miller,
15 right?

16 THE WITNESS: I testified and said that
17 Chris Hart didn't investigate Miller for me to know
18 who he was. I didn't know who he was.

19 THE COURT: But did he live on the same
20 road as you?

21 THE WITNESS: I never seen him.

22 THE COURT: How many people lived on that
23 road, do you recall? Described as a dirt road.

24 THE WITNESS: In that part of town you got
25 people, there's maybe a hundred or so trailers.

1 THE COURT: Okay.

2 Sorry, go ahead. Any other questions?

3 **REBUTTAL EXAMINATION**

4 BY MR. KEFFER:

5 Q Mr. Gregg, do you know who Kendrick Miller is?

6 A Did I know Kendrick Miller?

7 Q Yes, do you know Kendrick Miller?

8 A No, I didn't. I don't —

9 Q So when he testified he'd known you since he was
10 15 you have no idea who Mr. Kendrick Miller is?

11 A No, I didn't.

12 Q You say, no, I didn't. Do you know who he is or
13 not?

14 A I didn't know who Kendrick Miller was.

15 Q How about Darryl Herriot, do you know who Darryl
16 Herriot is?

17 A At the time I didn't know who Darryl Herriot was.

18 Q And you just heard your lawyer testify that he
19 has a baby with a woman that you have a baby with;
20 is that right?

21 A That's right, and I never seen, I never seen them
22 guys.

23 Q You didn't know at the time?

24 A That's right.

25 Q You had no — so your testimony is that you have

1 no idea who Darryl Herriot is?

2 A At the time I didn't know who they was.

3 Q Well, when did you know who he was? When did you
4 figure out who he was?

5 A The day that they came to the trial and pointed
6 the finger at me and alleged that I did this.

7 Q Well, how did your lawyer figure out that Darryl
8 Herriot had a baby, woman that you had a baby with,
9 how did he know about it?

10 A The testimony.

11 Q I'm sorry?

12 A I don't know, through testimony.

13 Q Okay. Did you review any material from the
14 private investigator that was hired by Mr. Hart?
15 Mr. Hart testified he hired a private investigator
16 and took pictures. Were you able to review any of
17 that material?

18 A No, I didn't.

19 Q You never had any conversations with Mr. Hart
20 about that?

21 A No.

22 MR. KEFFER: Your Honor, I don't have any
23 other questions.

24 THE WITNESS: I still to this day I
25 haven't received anything in Mr. Hart's file; I

1 don't have it.

2 MR. KEFFER: Please answer any questions
3 the State would have.

4 MR. GOURLEY: I don't have any further
5 questions, Your Honor.

6 MR. KEFFER: Nothing further, Your Honor.

7 THE COURT: Okay, you can step down.

8 All right, what I'm gonna do, obviously I
9 didn't have the 100, or 99 pages. I will take it
10 under advisement, read through all this transcript
11 which is going to be about 500 pages and let you
12 know something as soon as I can get through it all,
13 okay.

14

15 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

16

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August 20, 2007

ATTORNEY/ CLIENT INFO

William Gregg, III
Sumter-Lee Regional Detention Center
1250 Winkles Road
Sumter, South Carolina 29153

Re: The State v. William Gregg, III

Dear Mr. Gregg:

Please find enclosed a copy of the evidence in your case. This is the evidence the solicitor will present against you in trial. Please review carefully, notate any questions or comments you have, then contact me and I will come to visit you so we can discuss this material in detail.

Sincerely,

Christopher R. Hart

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

William Gregg, #274507,

Applicant,

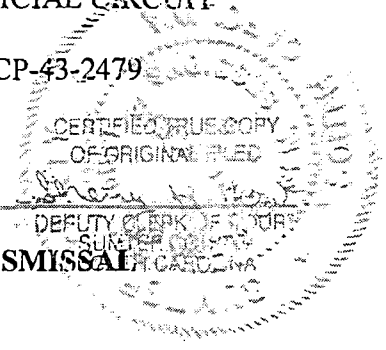
v.

State of South Carolina,

Respondent.

RECORDED
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
2015 MAY 18 10:24

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.
Case No. 2008-CP-43-2479



ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 27, 2008. Respondent made its return on May 6, 2009. An evidentiary hearing in to the matter was convened on December 17, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by John S. Keffer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the October 2007 term of the Sumter County Grand Jury for (1) Murder, (2) Possession of a Firearm During Crime of Violence, and (3) Possession with Intent to Distribute Heroin (2007-GS-43-0796). Christopher Hart, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr., on July 28-30, 2008. Applicant was found guilty of Murder and Possession of a Firearm During Crime of

Violence.¹ Applicant was sentenced to thirty-five (35) years imprisonment for Murder and a concurrent term of five (5) years imprisonment for Possession of a Firearm During Crime of Violence. Applicant did not appeal his conviction and sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Failed to investigate case.
2. Denial of due process and fair trial.
3. Prosecutorial misconduct.

This Court notes Applicant failed to present sufficient testimony and arguments in support of his claims of a due process violation and prosecutorial misconduct.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Chris Hart, Esquire (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified that he was sentenced for murder in 2008. Applicant stated Chris Hart was his trial attorney. Applicant stated he met with Trial Counsel approximately three to five times prior to his trial. Applicant recalled reviewing discovery with Trial Counsel. Applicant recalled discussing various defenses with Trial Counsel.

¹ As a result of a pre-trial motion by the defense, the charge of Possession with Intent to Distribute Heroin was not tried during this trial.

Applicant stated that he felt he received ineffective assistance of counsel because Trial Counsel failed to properly investigate his case. Applicant stated Trial Counsel represented him eighteen months and only saw him about three to five times. Applicant stated that there were various witnesses alleging that he committed this crime. Applicant stated the area was known to be dark. Applicant further stated Trial Counsel failed to investigate the medical evidence in his case.

Applicant stated Kendrick Miller identified him as the shooter. Applicant recalled Trial Counsel requesting a Neil v. Biggers hearing to determine the identification. Applicant stated that he did not know who Kendrick Miller was prior to trial. Applicant stated he did not know how Kendrick Miller could identify him as the shooter when Applicant did not know him.

Applicant stated Trial Counsel should have moved to dismiss the indictment on a double jeopardy grounds. Specifically, Applicant stated he was indicted for murder, possession of a firearm, and possession with intent to distribute heroin. Applicant recalled Trial Counsel made a motion to sever the charges. Applicant stated the appearance of charges were prejudicial. Applicant cited to the Blockburger test. Applicant stated Trial Counsel failed to move to suppress illegally seized evidence. Specifically, Applicant stated the bullet taken from the wall was introduced into evidence.

Following Applicant's testimony, Trial Counsel was called to testify by the State. Trial Counsel stated that he had been practicing law for fourteen years and was retained to represent Applicant. Trial Counsel stated he met with Applicant seven to ten times prior to his trial. Trial Counsel stated he filed Brady and Rule 5 motions. Trial Counsel stated he reviewed the discovery material with Applicant prior to trial. Trial Counsel stated he hired a private investigator to help him investigate the case. Trial Counsel stated the investigator took pictures

of the scene and interviewed Kendrick Miller. Trial Counsel stated Kendrick Miller was not an important witness because he only heard shots and did not see anything take place.

Trial Counsel stated Applicant was very personable and intelligent person. Trial Counsel stated he first met with Applicant and got the true story. Trial Counsel stated Applicant was very concerned about extradition and wanted to challenge his extradition. Trial Counsel stated he discussed Applicant's version of facts. Specifically, Trial Counsel stated Applicant was traveling to New York from time to time. Trial Counsel stated he had a girlfriend that lived in North Carolina and a wife that lived in Sumter, South Carolina. Trial Counsel stated Applicant's wife's brother was Kevin Franklin (victim). Trial Counsel stated Applicant was known to be in the drug trade and his house was burglarized. Trial Counsel stated it was alleged that Victim was the person who burglarized Applicant's house.

Trial Counsel characterized the evidence against Applicant as "overwhelming." Specifically, Trial Counsel stated Darrell Harriott was a key eye witness who positively identified Applicant as the shooter. Trial Counsel stated he continually asked Applicant how Darrell Harriott knew Applicant, but Applicant failed to explain their connection. Trial Counsel stated Darrell Harriott's had a daughter with Applicant's wife. Trial Counsel stated Applicant would drive Darrell Harriott's daughter around in his vehicle and Darrell Harriott was able to identify the vehicle and Applicant. Trial Counsel further stated Darrell Harriott knew Applicant as "bubba," Applicant's nickname.

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. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. 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).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; 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, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Ineffective assistance of counsel for failing to investigate.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to investigate his case is meritless. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

In the instant case, Trial Counsel testified he met with Applicant seven to ten times prior to his trial. Trial Counsel stated he filed Brady and Rule 5 motions. Trial Counsel stated he reviewed the discovery material with Applicant prior to trial. Trial Counsel stated he hired a private investigator to help him investigate the case. Trial Counsel stated the investigator took pictures of the scene and interviewed Kendrick Miller. Trial Counsel stated Kendrick Miller was not an important witness because he only heard shots and did not see anything take place. Based on the foregoing, this Court finds Trial Counsel's actions were reasonable in the circumstances and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Additionally, this Court finds Applicant can show no prejudice as he failed to present any evidence or witnesses in support of his argument that Trial Counsel failed to investigate his case.

See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Furthermore, this Court agrees with Trial Counsel's assertion that there was clear evidence of overwhelming guilt. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial). Based off of the foregoing, this Court finds this allegation should be denied and dismissed.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

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. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-

conviction relief. Rule 71.1(g), SCRCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 13 day of May, 2015.



J. CORDELL MADDOX, JR.
Presiding Judge
Third Judicial Circuit

Anderson, South Carolina

The Supreme Court of South Carolina

William Gregg, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-001802

Lower Court Case No. 2008CP4302479

ORDER

Petitioner has served and filed a *pro se* notice of appeal in this case. The notice of appeal is from an order dated May 13, 2015, and this order was apparently filed with the clerk of the circuit court on May 18, 2015. The proof of service for the notice of appeal indicates that it was served on counsel for the State on August 21, 2015.

To determine the timeliness of the service of the notice of appeal, petitioner's counsel, John Stephen Keffer, Esquire, was requested to provide the date on which he received written notice of entry of the order under appeal. This information has not been provided.

Accordingly, based on petitioner's failure to establish that the notice of appeal has been timely served under Rules 243(b) and 203(b) of the South Carolina Appellate Court Rules (SCACR), the notice of appeal is hereby dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY


CLERK

Columbia, South Carolina
September 30, 2015

cc: John Stephen Keffer, Esquire
Daniel Francis Gourley, II, Esquire
Kenneth R. Young, Jr., Esquire
Mr. William Gregg, #274501

FORM 5

STATE OF SOUTH CAROLINA RECORDED IN THE COURT OF COMMON PLEAS
County of Sumter 2015 NOV 12 PM 2:48

William Gregg 27450
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbar 2015-CP-43-2448
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA
APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Facility
4460 Broad River rd. Columbia S.C. 29210

2. Name and location of Court which imposed sentence Sumter County
Court of General Sessions

3. Name(s) of co-defendant(s) (if any) _____

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) Murder (2007 45-43-0796 for all)
Charges

RECEIVED

- (b) Possession of a Firearm during Crime of Violence
- (c) P.W.I.D Possession with Intent to distribute Heroin

5. The date upon which sentence was imposed and the terms of the sentence:

(a) July 30 2008 35 years

(b) July 30 2008 5 years

(c) as a result of a plea trial motion by the defense, the defense P.W.I.D Motion was not filed during this trial.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered No@ to (7), state your reasons for not so appealing:

(a) Trial Counsel failed to file a Direct Appeal as requested, Christopher Hart have given a written statement showing that the Direct Appeal was filed out of time and no method of collection was placed Noil Submitted ² to the Appellate court Records.

The Applicant makes it known that Trial counsel should have petitioned the appellate court for a belated appeal.

(b) ~~John S. Keffel esq~~ First post conviction relief counsel was ineffective (c) ~~for failing to seek review of denial of first PCR relief application despite defendant's timely request.~~

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

- (a) Ineffective assistance of Trial counsel
- (b) Ineffective assistance of PCR counsel
- (c) This is an Austin Petition Against My PCR Attorney MR. John S Keffel esq

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

- (a) See Attached sheet
- (b) See Attached sheet
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. PCR Application
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Sumter County Court of General Sessions
 - ii. _____
 - iii. _____

iv. _____

(c) the disposition thereof:

i. dismissed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. May 13, 2015

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Counsel failed to perform His duties
- (b) Counsel failed to perform His duties
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Christopher Hart, PA
3814 N. Main Street, Columbia SC. 29203
- ii. John S. Keffer esq.
23 West Calhoun Street Sumter SC. 29150
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. arraignment, Preliminary Hearing, Trial and Sentencing.
- ii. Post Conviction Relief Hearing PCR
- iii. _____

19. State clearly the relief you seek in filing this application:

Evidentiary Hearing
59e Motion filed And Appeal
Immediate Release

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Sumter)

VERIFICATION

I, William Gregg, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

William Gregg

SWORN to and subscribed before me this 15th day of Dec 2015.

SWORN H. Jap (L.S.)
Notary Public

My Commission Expires: March 5, 2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, William Grega, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

William Grega
Applicant

SWORN or affirmed to and subscribed before me this
15th day of October, 2015.

Susan H. Dye
Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

Ineffective Assistance of Trial Counsel

(a) Attachment to PC Application

RECORDED
2015 NOV -2 PM 2:45

Counsel Ineffective cause He did not move to dismiss the indictment on equal grounds constituted ineffective performance for purposes of ineffective assistance claim:

Counsel's conduct failed to file timely motion to suppress illegally seized evidence.

Trial Counsel's failure to object to inadmissible Hearsay evidence

Defendant prejudiced during trial and it being a result from trial counsel's failure to object to erroneous use of law may stand as what the solicitor made discussion about count 2 and 3 in the presence of the jury.

Alibi issue Trial counsel erred in failing to instruct the trial court to instruct the jury on the law of alibi

Counsel ineffective cause the record before this court does not indicate applicants arrest Sep. 29. 2006 case No 204:590 prosecuted by Federal authorities on ground that evidence of conspiracy pre dating his arrest constituted prior bad act evidence was not preserved for review pursuant to orders of commitment Sumter County Clerk of court.

Counsel ineffective when he failed to file a direct appeal as requested.

October 14 2015
Sumter Clerk of Court
Files / u2a

Respectfully Submitted
s/ William E. Zegg

Ineffective Assistance of PCR Counsel

1 of 2 pg.

(b) Attachment to PCR Application

PCR Counsel was ineffective when he failed to file 59(e) motion to preserve review of PCR order, when petitioner did not waive his right to review.

PCR counsel was ineffective when he failed to submit motion for correction to the trial transcript, when petitioner specifically ask for him to do so.

PCR counsel was deficient when asked to invoke petitioner's rights to have case files procured from the following 1.) trial attorney's case files 2.) solicitor's office William Gregg v. State is of 2008 CR 43-2479 3.) Attorney General's office 4.) SLED 5.) Sumter Sheriff's office see. lead detective investigative files Supplemental Reports and 6.) Clerk of Court files. Petitioner specifically ask counsel to have these placed available so that the due diligence method will be conformed to.

PCR counsel failed when he was advised to have or subpoena witnesses present at the PCR hearing to offer testimonies in the effect, that had he testified he would have draw evidentiary inferences from them.

PCR counsel failed to object to erroneous use of law, my stances are when the solicitor made discussion about count #3 in the indictment before and in the presence of the jury.

PCR counsel was compelled to add the issue that he / it is a "conflict of interest" with the Motion judge Cothran denied when funds was requested for an investigator. Judge Cothran is the sentence judge in my case.

1 of 2

Ineffective Assistance of PCIR Counsel

2 of 2 pg.

Petitioner also requested PCIR counsel to prehear the issue regarding the White v. State Review ie a motion filed with Clerk of court for appeal Direct, Counsel failed tremendously.

Petition specifically remind PCIR counsel that its a law that all available issues from the Records must be raised adequately and accurately to the PCIR court for findings of fact and conclusions of law specifically to each issue and submit a motion to amend as Rule 71.(d) SCRCP do commands. Counsel failed to do so.

October 14, 2015

Files / 117 G
Sumter County Clerk of Court

Respectfully Submitted

s/ William Gregg

2. of 2

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)
)
 William Gregg, #274507,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

2015-CP-43-2446

**RETURN AND MOTION TO DISMISS
 ALL CLAIMS BEYOND AUSTIN
 REVIEW**

In response to the post-conviction relief application filed November 2, 2015, Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the October 2007 term of the Sumter County Grand Jury for (1) Murder, (2) Possession of a Firearm During Crime of Violence, and (3) Possession with Intent to Distribute Heroin (2007-GS-43-0796). Christopher Hart, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr., on July 28-30, 2008. Applicant was found guilty of Murder and Possession of a Firearm During Crime of Violence.¹ Applicant was sentenced to thirty-five (35) years imprisonment for Murder and a concurrent term of five (5) years imprisonment for Possession of a Firearm During Crime of Violence. Applicant did not appeal his conviction and sentence.

Applicant subsequently filed for post-conviction relief on October 27, 2008 (2008-CP-43-2479). In his application, Applicant asserted claims of ineffective assistance of counsel, due process violation, and prosecutorial misconduct. An evidentiary hearing was convened on December 17, 2014, at the Sumter County Courthouse before the Honorable J. Cordell Maddox, Jr.

¹ As a result of a pre-trial motion by the defense, the charge of Possession with Intent to Distribute Heroin was not tried during this trial.

Applicant was present at the hearing and was represented by John S. Keffer, Esquire. By written Order filed May 16, 2015, Judge Maddox denied and dismissed Applicant's post-conviction relief action.

Applicant submitted a pro-se notice of appeal to the South Carolina Supreme Court on August 21, 2015. The South Carolina Supreme Court dismissed the appeal due to Applicant's failure to establish that it had been timely served under Rule 243(b) and 203(b). The Remittitur was issued October 16, 2015.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the prior post-conviction relief records, and appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of PCR Counsel
 - a. Failure to file an appeal

III.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under §17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin

recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, with the exception of Applicant's allegation that he is entitled to a review of his first PCR application pursuant to Austin v. State, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 

Attorneys for the Respondents
Post Office Box 11549
Columbia, South Carolina 29211

December 30, 2015.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

2015-CP-43-2446

WILLIAM GREGG, #274507,
Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,
Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss All Claims Beyond Austin** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Timothy Lee Griffith, Esquire
Timothy L. Griffith, Attorney at Law
360 W Wesmark Blvd, Second Floor
Sumter, South Carolina 29150**

DATED this 30th day of December, 2015.



Caroline Collins, Legal Assistant
For Respondent

State of South Carolina)
County of Sumter)

In the Court of Common Pleas
Third Judicial Circuit
2015-CP-43-2446

William Gregg,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)
_____)

Transcript of Record

March 18, 2016
Columbia, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

A P P E A R A N C E S:

Timothy L. Griffith, Esquire
Attorney for Applicant

Daniel F. Gourley, II, Esquire
Attorneys for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

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Proceedings 4
Certificate Page 19

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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No exhibits marked during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 9:48 a.m.)

MR. GOURLEY: Ready, Judge?

THE COURT: Whenever you are.

MR. GOURLEY: Yes, Your Honor. This is going to be *William Gregg v. the State of South Carolina*, Docket No. 2015-CP-43-2446. He's currently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court.

He was indicted at the October 2007 term of the Sumter County Grand Jury for murder, possession of a firearm during commission of a violent crime, and possession with intent to distribute heroin. Mr. Hart represented him. Proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr. And on July 28th through the 30th, 2008, he was found guilty of murder and possession of a firearm during the commission of a violent crime.

THE APPLICANT: I object, Your Honor.

MR. GRIFFITH: No.

THE APPLICANT: I have to.

MR. GRIFFITH: He has ---

THE APPLICANT: I mean ---

MR. GRIFFITH: --- to -- he has to finish what he's saying.

MR. GOURLEY: Applicant was sentenced to a 35-year ---

1 THE COURT: Why don't ---

2 MR. GOURLEY: --- imprisonment ---

3 THE COURT: --- y'all can -- y'all can be seated if
4 you like while he's doing it. Go ahead. I'm sorry to
5 interrupt you.

6 MR. GOURLEY: No. That's fine ---

7 THE APPLICANT: All due ---

8 MR. GOURLEY: --- Your Honor.

9 THE APPLICANT: --- respect too.

10 MR. GOURLEY: Applicant was sentenced to a 35-year
11 term of imprisonment for murder and a concurrent term of 5
12 years' imprisonment for possession of a firearm during the
13 commission of a violent crime. He did not appeal his
14 conviction or sentence.

15 THE APPLICANT: Wait.

16 MR. GOURLEY: He ---

17 THE APPLICANT: Objection, Your Honor. This ---

18 MR. GRIFFITH: You ---

19 THE APPLICANT: --- Count 3 also included him on this
20 ---

21 THE COURT: This isn't ----

22 MR. GRIFFITH: You have to ---

23 THE APPLICANT: --- on the face ---

24 THE COURT: --- time to object.

25 THE APPLICANT: --- of this indictment.

1 THE COURT: This is not the time to object ---

2 MR. GRIFFITH: You have ---

3 THE COURT: --- okay?

4 MR. GRIFFITH: --- to let ---

5 MR. GRIFFITH: You have to let ---

6 THE APPLICANT: I understand.

7 MR. GRIFFITH: --- him finish.

8 MR. GOURLEY: Applicant subsequently filed a
9 postconviction relief application on October 27th, 2008.
10 That was Docket No. 2008-CP-43-2479. In his application
11 applicant asserted various claims of ineffective assistance
12 of counsel, due process violations, and prosecutorial
13 misconduct.

14 An evidentiary hearing was convened on December 17th,
15 2014, at the Sumter County Courthouse before the Honorable
16 Cordell Maddox. Applicant was present at the hearing and
17 was represented by Mr. Keffer. By written order filed May
18 16th, 2015, Judge Maddox denied and dismissed the
19 applicant's postconviction relief application.

20 Applicant subsequently submitted a pro se notice of
21 appeal to the South Carolina Supreme Court on August 20 --
22 25th, 2015.

23 THE APPLICANT: With all due respect, Your Honor, I
24 have to stop him.

25 MR. GRIFFITH: You ---

1 THE APPLICANT: Because we -- I ---
2 THE COURT: No, sir.
3 MR. GRIFFITH: No.
4 THE APPLICANT: I ---
5 THE COURT: No. I -- I -- I ---
6 MR. GRIFFITH: He has to ---
7 THE APPLICANT: I understand ---
8 THE COURT: All right.
9 MR. GRIFFITH: --- to finish.
10 THE APPLICANT: --- now. With all ---
11 THE COURT: No.
12 THE APPLICANT: --- due respect ---
13 THE COURT: Be quiet.
14 THE APPLICANT: --- I mean ---
15 THE COURT: Mr. Gregg, don't speak again.
16 THE APPLICANT: Yes, sir.
17 THE COURT: You'll have a turn. You'll have a turn in
18 just a few moments. This is not your time.
19 THE APPLICANT: Yes, sir.
20 THE COURT: Continue.
21 MR. GOURLEY: Thank you, Your Honor. The South
22 Carolina Supreme Court dismissed the appeal due to
23 applicant's failure to establish that it had been timely
24 served under Rule 243(b) and 203 (b). And that remittitur
25 was issued on October 16th, 2015.

1 He subsequently filed his second application for
2 postconviction relief on November 2nd, 2015. The state
3 filed its return and motion to dismiss all claims beyond
4 the *Austin* review on December 30th, 2015. He's here,
5 represented by Mr. Griffith, Your Honor, and I'll turn it
6 over to Mr. Griffith.

7 THE COURT: Now, Mr. Griffith.

8 MR. GRIFFITH: Your Honor, Mr. Gregg is here today in
9 order to ask for a second appeal -- opportunity to appeal
10 because his first attorney did not file the appeal on time.
11 And so he would like another opportunity to appeal his
12 case.

13 And Mr. Gregg -- I -- I think he has a -- doesn't
14 really understand that this is his opportunity to basically
15 start over with the appeals-court process. And we would
16 ask that the Court grant that. I believe that the state is
17 in ---

18 THE APPLICANT: Your Honor ---

19 MR. GRIFFITH: --- a position to consent to that, Your
20 Honor.

21 THE APPLICANT: Your Honor, with all due respect, I
22 have a -- a -- in the district court, case number -- it's
23 *William Gregg v. Stevenson*. It's 4:15-4318-DCN-TER. At
24 this time, Your Honor, I also have some -- the -- the --
25 the attorney general was supposed to give me the transcript

1 of the evidentiary hearing that just took place back in
2 December that they're talking about, Your Honor.

3 THE COURT: Mr. Gregg, hold on just one minute. I --
4 I -- I need to ask Mr. Griffith a question and -- and I'll
5 let you speak in that -- after that, okay?

6 THE APPLICANT: Yes, sir.

7 THE COURT: Mr. Gregg [sic], you're saying that your
8 client wishes to be able to appeal the -- I guess the last
9 order issued in his case; is that right? The ---

10 MR. GRIFFITH: Your Honor ---

11 THE COURT: --- denial of -- of postconviction?

12 MR. GRIFFITH: Your Honor, he -- he wishes to appeal
13 his case. He ---

14 THE COURT: His -- the trial?

15 MR. GRIFFITH: --- his -- his -- for his trial; is
16 that correct ---

17 THE COURT: Or his plea ---

18 MR. GRIFFITH: --- the way ---

19 THE COURT: --- or whatever?

20 MR. GRIFFITH: --- you understand it?

21 MR. GOURLEY: Your Honor, it was my understanding that
22 the *Austin* review is the -- the belated appeal reviewed the
23 denial of his initial PCR application.

24 THE APPLICANT: Your Honor, in that *Austin* appeal --
25 that *Austin* action, my attorney, who was John S. Keffer, he

1 didn't -- it was numerous things that didn't take place at
2 that hearing, Your Honor. There's some fact-based issues
3 that need to be presented. And it never was, Your Honor.

4 You know, they're basically ---

5 THE COURT: Mr. Gregg ---

6 MR. GRIFFITH: Yes, Your ---

7 THE COURT: --- let me ---

8 MR. GRIFFITH: --- Honor.

9 THE COURT: --- finish ---

10 MR. GRIFFITH: He ---

11 THE COURT: --- let me ---

12 MR. GRIFFITH: --- wishes to ---

13 THE COURT: --- finish talking ---

14 MR. GRIFFITH: --- appeal to ---

15 THE COURT: I'm sorry?

16 MR. GRIFFITH: --- reopen his PCR, his initial PCR.

17 THE COURT: He wishes to appeal his ---

18 MR. GRIFFITH: The PCR ---

19 THE COURT: --- PCR ---

20 MR. GRIFFITH: --- denial.

21 THE COURT: --- denial ---

22 THE APPLICANT: I'm asking for a new trial, Your

23 Honor, because -- based on the ineffectiveness of counsel

24 that -- that represented me during the PCR. He -- he

25 enters -- he entered into the record out-of-court hearsay,

1 Your Honor.

2 THE COURT: I -- I understand, Mr. Gregg. I'm just
3 trying to ---

4 THE APPLICANT: And I ---

5 THE COURT: --- figure out ---

6 THE APPLICANT: --- also have ---

7 THE COURT: Hold -- not while I'm talking.

8 THE APPLICANT: I'm sorry.

9 THE COURT: I'm trying to figure out procedurally
10 where the case is. And that's why I need to talk to the
11 lawyers. Help ---

12 MR. GOURLEY: Your Honor ---

13 THE COURT: --- help me.

14 MR. GOURLEY: Mr. ---

15 THE COURT: One more ---

16 MR. GOURLEY: --- Gregg had a initial PCR application
17 that he was represented by Mr. Keffer in front of Judge
18 Maddox. That application was subsequently denied. At that
19 point in time, Mr. Keffer did not file a notice of appeal
20 following the denial of his application of Mr. Gregg's
21 initial PCR application.

22 Following that, Mr. Gregg filed his own pro se notice
23 of appeal, of course, under, you know, hybrid
24 representation ---

25 THE APPLICANT: I object ---

1 MR. GOURLEY: --- so on ---

2 THE APPLICANT: --- to that ---

3 MR. GOURLEY: --- and so forth.

4 THE APPLICANT: --- too, Your Honor.

5 MR. GRIFFITH: Shh. Shh.

6 THE APPLICANT: Because I ---

7 MR. GRIFFITH: Shh.

8 THE APPLICANT: --- knew -- I put him on notice, Your
9 Honor ---

10 (Whereupon, Mr. Griffith and the applicant conferred.)

11 THE APPLICANT: I'm sorry. I mean, this is my
12 opportunity, Your Honor. I mean, I didn't ---

13 THE COURT: Somebody else ---

14 THE APPLICANT: --- I didn't ---

15 THE COURT: --- is talking ---

16 THE APPLICANT: --- I didn't waive none of my rights,
17 Your Honor, all the way from the time I got arrested on
18 September ---

19 THE COURT: Mr. Gregg ---

20 THE APPLICANT: --- 29th, 2006.

21 THE COURT: --- I can't conduct this hearing ---

22 MR. GRIFFITH: Mr. Gregg ---

23 THE COURT: --- if you keep talking over me.

24 (Whereupon, Mr. Griffith and the applicant conferred.)

25 THE APPLICANT: I'm sorry.

1 MR. GOURLEY: And -- and, Your Honor, subsequent to
2 that, the Supreme Court dismissed Mr. Gregg's pro se notice
3 of appeal because he was still continuing to be represented
4 by counsel and did not provide the appropriate documents to
5 effect the appeal. He subsequently filed his second
6 postconviction relief application, seeking a belated appeal
7 from the denial of his first application. And that's what
8 we're here for today.

9 I certainly agree with Mr. Gregg's stance that he
10 wanted to appeal the denial of his first postconviction
11 relief application and therefore -- and after having
12 discussions with Mr. Keffer, he is in agreement as well.
13 And therefore, we were going to consent to the belated
14 appeal from the first postconviction relief application.

15 MR. GRIFFITH: I ---

16 THE COURT: You agree ---

17 MR. GRIFFITH: Yes, Your Honor. And ---

18 THE COURT: All right.

19 MR. GRIFFITH: --- the way I understand it is he's
20 going to consent -- the state plans to consent. And, of
21 course, once that order is signed and delivered to me, I
22 can, again, send it right out for consideration -- the
23 appeal.

24 THE APPLICANT: Your Honor, this train is riding on
25 two tracks, Your Honor. I mean, he -- honestly, I was

1 arrested on September 29th, 2006. I didn't have -- it was
2 a warrantless arrest, Your Honor.

3 THE COURT: Well, but ---

4 THE APPLICANT: I mean, the attorney -- the attorney
5 general should have notice of that. And like I said, I
6 want to back up before we get started, all the way back to
7 the beginning.

8 THE COURT: Well, I ---

9 (Whereupon, Mr. Griffith and the applicant conferred.)

10 THE COURT: --- from what I understand, that's what
11 they're agreeing: for you to appeal your -- your trial or
12 plea. And again, I'm not sure which it was.

13 MR. GRIFFITH: PCR.

14 THE COURT: The state ---

15 THE APPLICANT: Trial.

16 THE COURT: --- agrees ---

17 THE APPLICANT: For the -- to -- to appeal the trial
18 or ---

19 MR. GRIFFITH: To ---

20 MR. GOURLEY: Your Honor, we're agreeing to appeal the
21 denial of his first postconviction relief application. I
22 believe, in that first postconviction relief application --
23 and to be completely candid with the Court, I don't
24 specifically remember Mr. Gregg's PCR hearing to the
25 fullest extent. But I believe it was an allegation that

1 Mr. Gregg said he did not have the opportunity to file his
2 direct appeal as well, following the denial of his trial.
3 So that would certainly be encompassed in the belated
4 *Austin* review.

5 THE APPLICANT: Well ---

6 THE COURT: All of ---

7 THE APPLICANT: --- will the ---

8 THE COURT: --- that sounds like that's what you're
9 asking the Court to do.

10 THE APPLICANT: Well, Your Honor, will that 59(e)
11 motion be addressed? Would ---

12 THE APPLICANT: Would it go up?

13 THE COURT: I'm sorry. What?

14 THE APPLICANT: I filed a Rule 50 -- I mean, the --
15 the 59(e) motion was -- I never waived the right to it.
16 And I basically tried to do everything I needed to get the
17 necessary laws, pursuant to *Marlowe v. State* ---

18 THE COURT: I assume that your -- that Mr. Griffith
19 could -- could make that part of -- of the appeal. I don't
20 know.

21 MR. GOURLEY: Your Honor, I -- the only hesitation
22 with that is a 59(e), I think, is going to his first
23 postconviction relief application. And as Your Honor is
24 aware, there's certain time limits to that.

25 Additionally, if I heard Mr. Gregg correctly, he

1 stated that he filed the 59(e) ---

2 THE APPLICANT: No.

3 MR. GOURLEY: --- motion ---

4 THE APPLICANT: Negative. I -- I did the proper
5 procedures to make that -- that -- that -- that 59(e)
6 motion accurate ---

7 MR. GOURLEY: And -- and if he did ---

8 THE APPLICANT: --- with the ---

9 MR. GOURLEY: --- then it ---

10 THE APPLICANT: --- Court.

11 MR. GOURLEY: --- would certainly be part of the
12 record.

13 THE COURT: Right.

14 THE APPLICANT: I filed ---

15 MR. GOURLEY: I have ---

16 THE APPLICANT: --- it to ---

17 (Whereupon, Mr. Griffith counseled the applicant.)

18 MR. GOURLEY: --- no ---

19 THE APPLICANT: --- to the judge or file it to the ---

20 THE COURT: Mr. Gregg ---

21 THE APPLICANT: --- to the attorney.

22 THE COURT: Mr. Gregg, you can't keep talking over
23 everybody.

24 THE APPLICANT: I understand. But they -- it's nobody
25 working with me, Your Honor.

1 THE COURT: Everybody ---

2 THE APPLICANT: I don't even know this guy.

3 THE COURT: Your attorney ---

4 THE APPLICANT: I haven't seen him ---

5 THE COURT: Your -- Mr. -- Mr. Gregg, it sounds like
6 to me your attorney has -- has gotten the state to agree to
7 what you want.

8 THE APPLICANT: Am I getting a new trial?

9 THE COURT: Not a new trial. You're getting a new --
10 a new hearing.

11 MR. GOURLEY: A -- a new --- an appeal ---

12 (Whereupon, Mr. Griffith counseled the applicant.)

13 MR. GOURLEY: --- from the denial of ---

14 THE COURT: An -- an appeal ---

15 MR. GOURLEY: --- the ---

16 THE COURT: --- from the ---

17 MR. GOURLEY: --- hearing.

18 THE COURT: --- denial. I'm sorry.

19 / THE APPLICANT: Your Honor, you -- you're -- are you
20 aware that I waited six years for my first PCR hearing?

21 (Whereupon, Mr. Griffith counseled the applicant.)

22 THE COURT: No, sir.

23 THE APPLICANT: It took me six years to wait.

24 THE COURT: But that ---

25 THE APPLICANT: In that -- in that hearing, I had

1 multiple attorneys come and see me, Your Honor, not just

2 ---

3 THE COURT: All right.

4 THE APPLICANT: --- Keffer. I had Edgar Donnald, who
5 I had ---

6 THE COURT: At any rate the Court approves the -- the
7 agreement.

8 MR. GOURLEY: Thank you, Your Honor.

9 MR. GRIFFITH: Thank you, Your Honor.

10 THE COURT: All right. If you would prepare an order.

11 MR. GOURLEY: Thank you, Your Honor.

12 (Whereupon, Mr. Griffith counseled the applicant.)

13 THE APPLICANT: I object to this hearing. Your Honor.
14 I object.

15 (Whereupon, the proceeding was concluded at 9:58 a.m.)

16 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 18TH
DAY OF MARCH, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

AUGUST 2, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2016 APR -7) PM 3:00

William Gregg, #274507,

2015-CP-43-2446

Applicant,

JAMES W. WATSON
CLERK OF COURT
SUMTER COUNTY, S.C.

v.

**ORDER GRANTING AN APPEAL
PURSUANT TO AUSTIN V. STATE¹**

State of South Carolina,
Respondent.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed November 2, 2015. The Respondent made its Return on December 30, 2015, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing on the matter was convened on March 18, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Timothy Griffith, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the October 2007 term of the Sumter County Grand Jury for (1) Murder, (2) Possession of a Firearm During Crime of Violence, and (3) Possession with Intent to Distribute Heroin (2007-GS-43-0796). Christopher Hart, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr., on July 28-30, 2008. Applicant was found guilty of

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Murder and Possession of a Firearm During Crime of Violence.² Applicant was sentenced to thirty-five (35) years imprisonment for Murder and a concurrent term of five (5) years imprisonment for Possession of a Firearm During Crime of Violence. Applicant did not appeal his conviction and sentence.

Applicant subsequently filed for post-conviction relief on October 27, 2008 (2008-CP-43-2479). In his application, Applicant asserted claims of ineffective assistance of counsel, due process violation, and prosecutorial misconduct. An evidentiary hearing was convened on December 17, 2014, at the Sumter County Courthouse before the Honorable J. Cordell Maddox, Jr. Applicant was present at the hearing and was represented by John S. Keffer, Esquire. By written Order filed May 16, 2015, Judge Maddox denied and dismissed Applicant's post-conviction relief action.

Applicant submitted a *pro-se* notice of appeal to the South Carolina Supreme Court on August 21, 2015. The South Carolina Supreme Court dismissed the appeal due to Applicant's failure to establish that it had been timely served under Rule 243(b) and 203(b). The Remittitur was issued October 16, 2015.

ALLEGATIONS

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:³

1. Ineffective Assistance of PCR Counsel
 - a. Failure to file an appeal from the denial of his first PCR application.

² As a result of a pre-trial motion by the defense, the charge of Possession with Intent to Distribute Heroin was not tried during this trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Prior to the start of the evidentiary hearing, the State indicated to this Court that they would be consenting to the grant of an Austin appeal. The State explained that they were consenting based off of their discussion with prior PCR Counsel, a review of the various documents filed by Applicant to the South Carolina Supreme Court, and discussion with Applicant's current PCR Counsel.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that the Applicant is entitled to appeal the denial of his first post-conviction relief application (2008-CP-43-2479) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

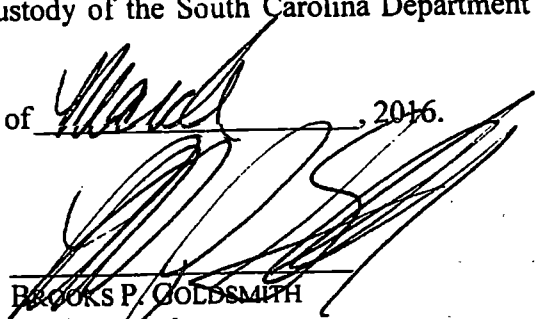
[Signature to follow]

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first post-conviction relief action (2008-CP-43-2479) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

1. That the Applicant be granted an appeal of case 2008-CP-43-2479 pursuant to Austin v. State; and
2. That the Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 30 day of March, 2016.



BROOKS P. GOLDSMITH
Presiding Judge
Third Judicial Circuit

_____, South Carolina.

WITNESSES

SCSO

Capt. James Turner

ARREST WARRANT NUMBER

H536869

D/A: 02/16/07

ACTION OF GRAND JURY

True Bill

Larry Holloman

Foreperson of Grand Jury

Date: *10/25/07*

VERDICT

DOCKET NO. 2007-GS-43-*796*

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

WILLIAM GREGG, III

Indictment for

MURDER, POSSESSION OF A
FIREARM DURING CRIME OF
VIOLENCE, POSSESSION WITH
INTENT TO DISTRIBUTE HEROIN

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER) MURDER, POSSESSION OF A FIREARM,
 DURING CRIME OF VIOLENCE, POSSESSION
 WITH INTENT TO DISTRIBUTE HEROIN

At a Court of General Sessions, convened on October 25, 2007, the Grand Jury of SUMTER County, South Carolina, do hereby return the following true bill of indictment against the Grand Jurors of SUMTER County present upon their oath:

Barbara Dinger
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

COUNT ONE – MURDER

That WILLIAM GREGG, III did in Sumter County on or about November 1, 2003, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Kevin Franklin by means of shooting him with a handgun, and that the said Kevin Franklin did die as a proximate result thereof.

COUNT TWO – POSSESSION OF A FIREARM DURING CRIME OF VIOLENCE

That WILLIAM GREGG, III in Sumter County on or about November 1, 2003, was in possession of and did visibly display a firearm during the commission of a violent crime as defined in Section 16-1-60, to-wit: handgun, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

COUNT THREE – POSSESSION WITH INTENT TO DISTRIBUTE HEROIN

That WILLIAM GREGG, III did in Sumter County on or about November 2, 2003, possess with intent to distribute a quantity of heroin, a controlled substance under the provisions of Act No. 445, Acts of 1971, General Assembly of South Carolina, as amended (Section 44-53-370 et. seq., 1976 Code of Laws of South Carolina, as amended), such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

P. Kelly Jackson
SOLICITOR