

The Supreme Court of South Carolina

Darrell L. Goss, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Deadra L. Jefferson
Charleston County
Trial Court Case No. 2011-CP-10-03782

ORDER

The request for an extension until May 23, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 24, 2012

cc: Appellate Defender Elizabeth A. Franklin-Best
Assistant Attorney General Ashleigh R. Wilson

ORIGINAL



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

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

April 23, 2012

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

RECEIVED

APR 23 2012

S.C. Supreme Court

Re: Darrell L. Goss v. State

Dear Mr. Shearouse:

The Petition for Writ of Certiorari and accompanying appendix are due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the petition.

By copy of this letter, I am informing Matthew J. Friedman, Esquire, of the Attorney General's Office, of my request.

Sincerely,

Elizabeth A. Franklin-Best
Appellate Defender

EAF/cms

cc: Matthew J. Friedman, Esquire

April 10, 2012

Clerk of Court
Supreme Court

Dear Clerk :

I would ask that you send me a copy of my letters dated December 19, 2011 and December 22, 2012 addressed to Chief Justice Toal that was sent to your office for filing.

Thank you in advance for your prompt assistance in this matter. Kind Regards, I am

Sincerely,
Darrell L. Goss

Darrell L. Goss #305517

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, SC 29472

Cc : file

RECEIVED

APR 18 2012

S.C. SUPREME COURT

Darrell L. Goss #305517
Lieber Corr. Inst. E/B 42
P.O. Box 205
Ridgerville, SC 29472

FIRST CLASS



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0004238017 APR 10 2012
MAILED FROM ZIP CODE 29472

RECEIVED

APR 10 2012

MAIL ROOM
LIEBER C

The Supreme Court
P.O. Box 11330
Columbia, SC 29211

SCDC
FOR LEGAL MAIL USE ONLY
ONLY MAIL ADDRESSED TO A COURT,
A LAWYER OR TO A JUDGE. ANY
OTHER USE AND THE MAIL WILL BE
RETURNED TO THE INMATE.

2921131330





SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

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

RECEIVED

FEB 23 2012

February 23, 2012

S.C. Supreme Court

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

Dear Mr. Shearouse:

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

Darrell L. Goss v. State of South Carolina

2/23/12

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

Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

January 11, 2012

RECEIVED

JAN 11 2012

S.C. Supreme Court

Ms. Amanda K. Haffenden
Circuit Court Reporter
P O Box 424
Summerville, SC 29484

Dear Ms. Haffenden:

Please provide us with the following transcript:

Darrell L. Goss v. State of South Carolina Case #: 10-CP-10-03782

County: Charleston Date of Trial: September 16, 2011

Presiding Judge: Deadra L. Jefferson

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

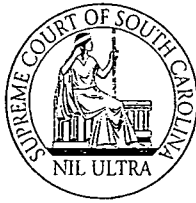
Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,


Lorie French
Legal Services Coordinator

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



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 28, 2011

Darrell L. Goss #305517
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: Goss, Darrell L. v. The State

Dear Mr. Goss:

We are in receipt of your letter to Chief Justice Toal filed through the Clerk of Court. Please be advised the Chief Justice cannot intervene in your appeal. Also, this office does not provide copies. If you want a clocked copy of a filing returned to you, you must provide the copy and a stamped, self-addressed envelope with sufficient postage to insure a return delivery. Otherwise, you may submit a check or money order to this office in the amount of \$5.70 which represents our standard copy rate of \$.25 per page for eighteen (18) pages plus \$1.20 postage.

Please be advised that since you were represented at your PCR hearing by appointed counsel, Charles T. Brooks, III, Esquire, The Division of Appellate Defense will be assuming representation for your appeal. If you have not been contacted by them yet, you should immediately contact the South Carolina Commission on Indigent Defense, P O Box 11589, Columbia, South Carolina, 29211, Columbia, South Carolina, 29201. Their telephone number is 734-1330.

Very truly yours,

CLERK

DES/jj

cc: Appellate Defense
Charles Thomas Brooks, Esquire
Assistant Attorney General Matthew J. Friedman

December 22, 2011

RECEIVED

DEC 28 2011

S.C. SUPREME COURT

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

Re: Darrell L. Goss v. State of South Carolina
Charleston County PCR Appeal - 11-CP-10-3782

Dear Mr. Shearouse:

Enclosed please find for filing the original and one (1) copy of my letter dated December 22, 2011 and attachments to Chief Justice Toal.

I would ask that you return the filed copy to me.

Thank you for your prompt assistance in this matter. With Kind Regard, I am

Sincerely,

Darrell L. Goss

Darrell L. Goss #305517

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, S.C. 29472

Cc: file

December 22, 2011

RECEIVED

DEC 28 2011

S.C. SUPREME COURT

The Honorable Jean H. Toal
Chief Justice, The Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

Re: Darrell L. Goss v. State of South Carolina
Charleston County PCR Appeal - 11-CP-10-3782
Request for Leave to Proceed In Interest of
Self

Dear Chief Justice Toal:

This is to address the fundamental miscarriage of justice that has taken place in my PCR case.

Enclosed please find my motion to alter or amend judgment (i.e., Rule 59(e), SCRPC) and my motion for a new post-conviction relief hearing (i.e., Rule 59(a), SCRPC) that I intended and attempted to file with the Common Pleas Court within ten (10) days after I received written notice of the final order from my court-appointed counsel Charles T. Brooks, III on December 7, 2011 denying my PCR application. and documents to support my attempt to file the afore-said motions in a timely manner.

Be advised that my court-appointed counsel (i.e., Mr. Brooks) refuses to file the afore-said motions on my behalf at my request.

In Marler v. State, 373 S.C. 275, 644 S.E.2d 769 (2007), this Court held that counsel has an obligation to review the final order and file a Rule 59(e), SCRPC motion if the order fails to make specific findings and the reasons for those findings as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRPC.

Therefore, Mr. Brooks is refusing to fulfill his obligation required by this Court which is extremely prejudicial to my PCR case.

Your Honor, this constitutes a fundamental miscarriage of justice because I should not have to bear the burden of my counsel's errors when he has neglected his duty imposed by this Court. Furthermore, when official documents prove and show that I exercised due diligence in attempting to file the afore-said motions in a timely manner.

Your Honor, I'm respectfully asking you and this Court to remand this case back to the

Common Pleas Court and order that my counsel file the afore-said motions in my PCR case.

Thank you for your prompt attention and assistance in this matter. With Kind Regard, I Remain

Sincerely,
~~Darrell L. Goss~~
Darrell L. Goss #305517
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, S.C. 29472

Enclosures

CC: file

December 22, 2011

RECEIVED

DEC 28 2011

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

S.C. SUPREME COURT

Re: Darrell L. Goss v. State of South Carolina
Charleston County PCR Appeal - 11-CP-10-3782

Dear Mr. Shearouse:

Enclosed please find for filing the original and one (1) copy of my letter dated December 22, 2011 and attachments to Chief Justice Toal.

I would ask that you return the filed copy to me.

Thank you for your prompt assistance in this matter. With Kind Regard, I am

Sincerely,

Darrell L. Goss

Darrell L. Goss #305517

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, S.C. 29472

Cc: file

November 21, 2011

Charles T. Brooks
PCR Attorney

Re: Goss v. State

Dear Mr. Brooks:

Once you have receive the final order from the PCR judge in my case please make sure that you carefully review that order to make sure it addresses all of my allegations that I presented at the hearing and if it does not; then file a motion to alter or amend judgment (Rule 59(e)) within ten (10) days.

Also, please forward me a copy of the PCR transcript.

Thank you in advance for your prompt assistance in this matter.

Sincerely,
Darrell L. Goss
Darrell L. Goss #305517
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472
Cc: file

THE BROOKS LAW OFFICES, LLC

CHARLES T. BROOKS, III,
Attorney

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

IRMA R. BROOKS
Attorney

November 28, 2011

Darrell L. Goss, 305517
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina, 29472

Re: Darrell L. Goss v State of South Carolina

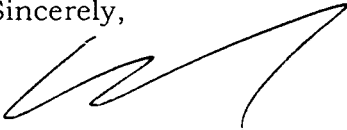
Dear **Mr. Goss**:

Please be advised that we review the final order to make sure it complies with my recollection.

Also, please be advised that you can obtain the PCR transcript from Appellate Defense since they will handle the appeal.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III
CTB, III/jlb

THE BROOKS LAW OFFICES, LLC

CHARLES T. BROOKS, III,
Attorney

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

IRMA R. BROOKS
Attorney

December 5, 2011

Darrell L. Goss, 305517
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina, 29472

Re: Darrell L. Goss v State of South Carolina

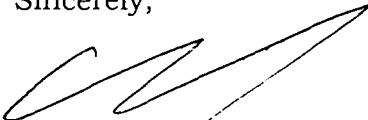
Dear **Mr. Goss:**

Please find enclosed a copy of the Notice of Appeal that we are filing on your behalf in reference to your PCR matter that was heard on September 17, 2011.

Also, please be advised that the Office of Appellate Defense will take over your appeal.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III
CTB, III/jlb

Enclosure as Stated

The Brooks Law Offices, LLC

Charles T. Brooks, III
Attorney

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

Irma R. Brooks
Attorney

December 5, 2011

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Darrell L. Goss v State of South Carolina
Case No. 2011-CP-10-3782

Dear Sir or Madam:

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

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

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/jlb

Enclosed as stated

Cc: Matthew Friedman, Office of Attorney's General
South Carolina Office of Appellate Defense
Darrell L. Goss, 305517

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Deadra L. Jefferson, Circuit Court Judge

Case No: 2011-CP-10-3782

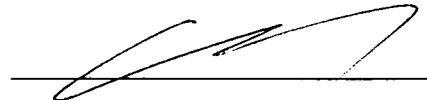
Darrell L. Goss.....Appellant
S.C.D.C. 305517

v.

The State.....Respondent

NOTICE OF APPEAL

Darrell L. Goss appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Deadra L. Jefferson, November 23, 2011, which I, Charles T. Brooks, III, received on December 5, 2011.



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

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

December 7, 2011

Charles T. Brooks
PCR Attorney

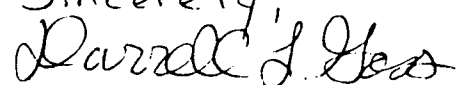
Re: Goss v. State

Dear Mr. Brooks:

Enclosed please find the Motion to Alter or Amend Judgment regarding the Court's Order filed December 1, 2011 in reference to my PCR matter.

I would ask that you re-type this Motion and file it with the Court on or before December 15, 2011.

Thank you in advance.

Sincerely,

Darrell L. Goss #305517
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

Cc: file

December 7, 2011

Clerk of Court
Common Pleas

Re: Darrell L. Goss v. State of South Carolina
Case No.: 2011-CP-10-3782

Dear Clerk:

Enclosed please find the original and one (1) copy of the Motion to Alter or Amend Judgment for filing.

I would ask that you return the filed copy to me.

Your assistance is greatly appreciated.

Sincerely,
Darrell L. Goss
Darrell L. Goss # 305517
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

Cc: file

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Darrell L. Goss,
Applicant,

Vs.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
CASE NO. : 2011-CP-10-3782

MOTION TO ALTER OR
AMEND JUDGMENT

Applicant, Darrell L. Goss, pro se, hereby moves The Honorable Deadra L. Jefferson, Circuit Judge, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, for an order altering or otherwise amending the Order issued and filed December 1, 2011.

1). The Order fails to make specific findings of fact and conclusions of law relating to Applicant's allegation presented that counsel was ineffective for failing to investigate and should be altered or amended to address the afore-said allegation.

2). On page (5), paragraph (2), line (7-8), the Court stated "counsel stated a few of the potential alibi witnesses have a record"; however, in actuality, counsel did not testified

to this. Therefore, the Order should be altered or amended to delete the afore-said statement.

3). On page (6), paragraph (3), line (4-5), the Court stated "counsel testified he did not recall telling Applicant not to tell him anything about the case." ; however, in actuality, counsel did not testified to this, but counsel testified that it was possible that he did tell Applicant not to tell him anything about the case. Therefore, the Order should be altered or amended to correct the afore-said statement.

Respectfully Submitted,
Darrell L. Goss

Darrell L. Goss # 305517

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, SC 29472

Ridgeville, South Carolina
December 7, 2011

CERTIFICATE OF SERVICE

2011-CP-10-3782

The undersigned hereby certifies that a true and correct copy of the Motion to Alter or Amend Judgment was served upon all known counsel of record, as follows:

Matthew J. Friedman
Attorney General Office
P.O. Box 11549
Columbia, SC 29211

On December 7, 2011

Darrell L. Goss
Darrell L. Goss

December 8, 2011

Charles T. Brooks
PCR Attorney

Re: Goss v. State

Dear Mr. Brooks:

Enclosed please find for service upon you the Motion for New Post-Conviction Hearing.

I would ask that you re-type this Motion and file it with the Court on or before December 15, 2011.

Thank you in advance.

Sincerely,
Darrell L. Goss
Darrell L. Goss #305517
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, S.C. 29472

Cc: file

December 8, 2011

Clerk of Court
Common Pleas

Re: 2011-CP-10-3782

Dear Clerk:

Enclosed please find for filing the original and one (1) copy of the Motion for New Post-Conviction Hearing.

I would ask that you return the filed copy to me.

Your assistance is greatly appreciated.

Sincerely,
Darrell L. Goss
Darrell L. Goss #305517
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, S.C. 29472

Cc: file

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Darrell L. Goss,
Applicant,

Vs.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEA
THE NINTH JUDICIAL CIRCUIT
CASE NO. : 2011-CP-10-3782

MOTION FOR NEW
POST-CONVICTION
RELIEF HEARING

Applicant, Darrell L. Goss, pro se, hereby moves the Honorable Deadra L. Jefferson, Circuit Judge, pursuant to Rule 59(a) of the South Carolina Rules of Civil Procedure, for an order granting him a new post-conviction relief hearing.

This motion is based upon the Court's manifest of injustice by, committing clear error of law.

ARGUMENT

The PCR Court erred in forcing Applicant against his will to accept court-appointed counsel and in denying his request to proceed pro se.

Prior to the PCR hearing, Applicant advised the PCR judge that he was discharging court-appointed counsel because he did not had reasonable time to confer with counsel regarding the claims that was to be presented and requested to proceed pro se. The PCR Court denied Applicant's request and forced Applicant against his will to accept court-appointed counsel. This ruling was in error. Rule 71.1(d), SCRCP allows a PCR applicant to reject or discharge court-appointed counsel and proceed pro se. Whitehead v. State, 310 S.C. 532, 426 S.E. 2d 315 (1992). Moreover, Rule 71.1(d), SCRCP provides in pertinent part:

Counsel shall be given reasonable time to confer with Applicant...

In this case, counsel did not had reasonable time to confer with Applicant about the claims Applicant

intended to raise at the PCR hearing. Thus, counsel inadequately raised Applicant's claim. Particularly, counsel inadequately raised Applicant's claim that his trial counsel was ineffective in presenting an incredible witness as rebuttal evidence as opposed to presenting credible witnesses as rebuttal evidence at trial. At the PCR hearing, counsel stated that Applicant alleges that his trial counsel was ineffective in failing to present rebuttal witnesses at trial. Counsel failed to state the other portion of Applicant's claim (i.e., trial counsel was also ineffective in presenting an incredible witness as rebuttal evidence).

Applicant should have been allowed to discharge court-appointed counsel and proceed pro se to adequately raise his own claims. Applicant was deprived of a fair hearing as guaranteed by the Due Process Clause of the Fourteenth Amendment as he was not allowed to be fully heard in his claims to the PCR court.

CONCLUSION

Applicant respectfully ask the Court to grant him a new post-conviction relief hearing.

Respectfully Submitted,
Darrell L. Goss

Darrell L. Goss #305517

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, S.C. 29472

Ridgeville, South Carolina
December 8, 2011

THE BROOKS LAW OFFICES, LLC

CHARLES T. BROOKS, III,
Attorney

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

IRMA R. BROOKS
Attorney

December 13, 2011

Darrell L. Goss, 305517
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina, 29472

Re: Darrell L. Goss v State of South Carolina

Dear **Mr. Goss:**

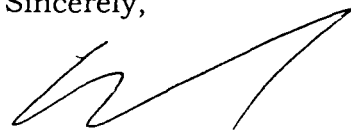
Please be advised that we have filed the Notice of Intent to Appeal, therefore we can no longer file anything in Common Pleas as everything is in the Court of Appeals now.

The Office of Appellate Defense is now handling. Their address is:

South Carolina office of Appellate Defense4
1330 Lady Street, Suite 401
Columbia, South Carolina, 29201

With kind regards, I am,

Sincerely,

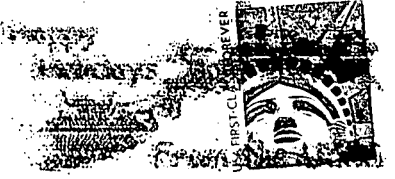


Charles T. Brooks, III
CTB, III/jlb

Charles T. Brooks, III
The Brooks Law Office, LLC
Post Office Box 3512
Sumter, S. C., 29151

COLUMBIA SC 29101

DEC 15 2011 10:31 AM



RECEIVED

EA33

DEC 16 2011
MAIL ROOM
LIEBER C.I.

Darrell L. Goss, 305517
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina, 29472

29472+0205



COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 106
CHARLESTON, S.C. 29401-2258
(843) 958-5000
(843) 958-5020 FAX
www3.charlestoncounty.org



FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
100 BROAD STREET, SUITE 143
CHARLESTON, S.C. 29401-2265
(843) 958-4400
(843) 958-4434 FAX
www3.charlestoncounty.org

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

From: Clerk of Court, Charleston County, South Carolina.

The enclosed document is being returned for the following reason(s):

- The document is not signed / notarized
- The filing fee is insufficient. The correct amount is _____
- This document is a copy. We must have an original
- This is not a Charleston County case
- The check or money order must be made payable to the Clerk of Court
- This case is ended. Date ended _____
Reason ended _____
- Your check must be signed
- Inmate litigation must comply with S.C. Code of Laws, Title 24, Chapter 27
- There is not a case listed in our system that matches this caption
- Information may be obtained from our web-site at www3.charlestoncounty.org
- The required new case coversheet is not included. (SCCA234) July 1, 2004
- The required motion/order coversheet is not included. (SCCA/233)-Jan 15, 2003
- The required order (Form 4) coversheet is not included. (SCRCP Form 4C)-Oct 17, 2011
- Other all documents must be filed by you appointed counsel. See attached

Please make the necessary corrections and return this document for filing. Thank you for your assistance.

Staff initials 

Date 12/12/11

Common Pleas

CASE HISTORY FOR CASE 2011CP1003782

Darrell L Goss VS South Carolina State of

CASE TYPE: CP/Post Convict Rel 500

STATUS: Disposed

JUDGE: Clerk Of Court C P, G S, And Family Court

FILED DATE: 5/27/2011

CASE PARTIES:

Plaintiff Goss, Darrell L
#305517 Lieber Ci E/A - 33, Post Office Box 205, ,

Defendant South Carolina State of

Plaintiff Pro Se Goss, Darrell L
#305517 Lieber Ci E/A - 33, Post Office Box 205, Ridgeville, SC 29472

Plaintiff Attorney Wilson, Joseph C.
Pierce Hems Sloan & Mcleod, Llc, P.O. Box 22437, Charleston, SC 29413

Plaintiff Attorney Brooks, Charles Thomas
Law Office Of Charles T. Brooks, Iii, 309 Broad St., Sumter, SC 29150

Defendant Attorney Friedman, Matthew J.
Sc Attorney General's Office, P.O. Box 11549, Columbia, SC 29211

- This is your appointed counsel.

CASE HISTORY FOR CASE 2011CP1003782

Goss, Darrell L
#305517 Lieber Ci E/A - 33
Post Office Box 205

Age: Unknown
DL#:

DOB: Unknown
SSN: 000-00-0000

COST ORIGINAL BALANCE DUE DISBURSED PAY PRIORITY

Total:

ATE	TIME	EVENT DESCRIPTION
9/20/2011	10:00 AM	Order/Substitution Of Counsel-Brooks in place of Wilson
11/20/2011	12:48 PM	Order/Order application for PCR is denied
12/1/2011	11:55 AM	Order/Dismissal with prejudice
Print Date:	12/12/2011	
Print Time:	12:37:03PM	
Requested By:	COCBLC	CaseHistory.rpt

5/27/2011 2:35 PM Filing recorded: Post Conviction Relief
7/6/2011 12:21 PM Order/Joseph Wilson is appt counsel for plnff

December 19, 2011

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

Re: Darrell L. Goss v. State of South Carolina
Case #: 2011-CP-10-3782

Dear Ms. Shearouse:

Enclosed please find for filing the original and one (1) copy of my letter to Chief Justice Toal.

I would ask that you return the filed copy to me.

Thank you.

Sincerely,
Darrell L. Goss
Darrell L. Goss #305517
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, S.C. 29472

RECEIVED

DEC 21 2011

S.C. SUPREME COURT

Enclosed as stated

Cc: file

December 19, 2011

The Honorable Jean H. Toal
Chief Justice, The Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

Re: Darrell L. Goss v. State of South Carolina
Case #: 2011-CP-10-3782

Dear Chief Justice Toal:

I would take this opportunity to make you aware of the miscarriage of justice that has taken place in my Post-Conviction Relief (PCR) case:

Since July 13, 2011, Charles T. Brooks, III, Esquire was appointed counsel in my case.

On September 16, 2011, an evidentiary hearing was held into the matter of my PCR application at the Charleston County Courthouse. At the hearing, I moved to relieve Mr. Brooks as counsel and proceed pro se; on the basis that I had not had reasonable time to confer with Mr. Brooks regarding my claims that was to be presented. The PCR judge refused to allow me to proceed pro se without first cond-

ucting a waiver hearing. The hearing concluded and the matter was taken under advisement.

On November 21, 2011, I wrote Mr. Brooks a letter in advance advising him to carefully review the final order from the PCR judge in my case once he received it to make sure it addresses all of my claims that I presented at the hearing and if it does not; then file a Rule 59(e), SCRPC motion (i.e., motion to alter or amend judgment) within ten (10) days asking the PCR judge to specifically address my rejected claim(s).

On December 7, 2011, Mr. Brooks forward me the final order from the PCR judge dismissing my PCR application along with the Notice of Appeal that he had filed with the Courts on my behalf (Note: I did not discuss my right to appeal with Mr. Brooks nor did I informed Mr. Brooks that I wanted him to file an appeal on my behalf). After reviewing the order, I became aware that the PCR judge failed to address one (1) of my claims (i.e., trial counsel was ineffective in failing to investigate). Therefore, I wrote Mr. Brooks requesting that he file the Rule 59(e) motion asking the PCR judge to specifically address my rejected claim in order to preserve that claim for appellate review.

Mr. Brooks responded to my request informing me that he can no longer file anything in the Common Pleas Court on my behalf because he has already filed an appeal.

Also, be advised that in the abundance of cautious I tried to file the Rule 59(e) motion pro se due to the ten (10) day limitation. However, unfortunately, the court returned my pro se motion refusing to file it; informing me that my counsel must file all documents in my case.

Your Honor, this creates a miscarriage of justice because first, I tried to relieve Mr. Brooks as my counsel and proceed pro se in my case but, was wrongfully denied my constitutional right to proceed pro se; then second, Mr. Brooks wrongfully files an appeal on my behalf without my consent; and third, Mr. Brooks fails to perform his duty to review the final order in my case and file a Rule 59(e) motion where the order failed to make specific findings of facts and conclusions of law relating to each of my claims presented at the PCR hearing, after I warned him in advance to carefully review the final order and file a Rule 59(e) if the order fails to specifically address each of my claims presented. Now as a result of Mr. Brooks' prejudicial acts and omissions,

My claim (i.e., trial counsel was ineffective in failing to investigate) is deemed abandoned and therefore; can not be raised on appellate review. This is a manifest of injustice because had not the PCR judge wrongfully denied my constitutional right in refusing to allow me to proceed pro se without first conducting a waiver hearing to determine whether I was competent or not to represent myself; then I would have been allowed to file the pro se Rule 59(e) motion in my case asking the PCR judge to specifically address my rejected claim. Therefore, my claim would have been properly preserved for appellate review.

Your Honor, in the interest of justice, I'm respectfully asking you to please investigate this matter and take such action deemed just and proper. Specifically, I would ask that you either stay the time for appeal in this case until the motion is filed and heard or allow the afore-said claim to be preserved for appellate review.

Your prompt attention and assistance in this matter is greatly appreciated. With Kind Regards,
I am

Sincerely,

Darrell L. Goss

Darrell L. Goss #305517

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, S.C. 29472

Enclosures

Cc: South Carolina Office of Appellate Defense
Matthew J. Friedman, Esq., Asst. Attorney General
Charles T. Brooks, III, Esq., PCR Attorney
file

November 21, 2011

Charles T. Brooks
PCR Attorney

Re: Goss v. State

Dear Mr. Brooks:

Once you have receive the final order from the PCR judge in my case please make sure that you carefully review that order to make sure it addresses all of my allegations that I presented at the hearing and if it does not; then file a motion to alter or amend judgment (Rule 59(e)) within ten (10) days.

Also, please forward me a copy of the PCR transcript.

Thank you in advance for your prompt assistance in this matter.

Sincerely,
Darrell L. Goss
Darrell L. Goss #305517
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472
Cc: file

THE BROOKS LAW OFFICES, LLC

CHARLES T. BROOKS, III,
Attorney

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

IRMA R. BROOKS
Attorney

November 28, 2011

Darrell L. Goss, 305517
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina, 29472

Re: Darrell L. Goss v State of South Carolina

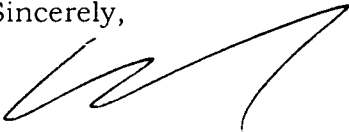
Dear **Mr. Goss:**

Please be advised that we review the final order to make sure it complies with my recollection.

Also, please be advised that you can obtain the PCR transcript from Appellate Defense since they will handle the appeal.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III
CTB, III/jlb

December 7, 2011

Charles T. Brooks
PCR Attorney

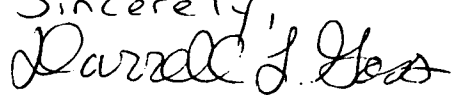
Re: Goss v. State

Dear Mr. Brooks:

Enclosed please find the Motion to Alter or Amend Judgment regarding the Court's Order filed December 1, 2011 in reference to my PCR matter.

I would ask that you re-type this Motion and file it with the Court on or before December 15, 2011.

Thank you in advance.

Sincerely,

Darrell L. Goss #305517
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

Cc: file

THE BROOKS LAW OFFICES, LLC

CHARLES T. BROOKS, III,
Attorney

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

IRMA R. BROOKS
Attorney

December 13, 2011

Darrell L. Goss, 305517
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina, 29472

Re: Darrell L. Goss v State of South Carolina

Dear **Mr. Goss**:

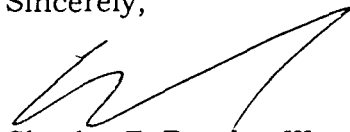
Please be advised that we have filed the Notice of Intent to Appeal, therefore we can no longer file anything in Common Pleas as everything is in the Court of Appeals now.

The Office of Appellate Defense is now handling. Their address is:

South Carolina office of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina, 29201

With kind regards, I am,

Sincerely,



Charles T. Brooks, III
CTB, III/jlb

Charles T. Brooks, III
The Brooks Law Office, LLC
Post Office Box 3512
Sumter, S. C., 29151

COLUMBIA SC 29101
25 DEC 2011 09:32



RECEIVED

EA33

DEC 16 2011
MAIL ROOM
LIEBER C.I.

Darrell L. Goss, 305517
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina, 29472

29472+0205



December 7, 2011

Clerk of Court
Common Pleas

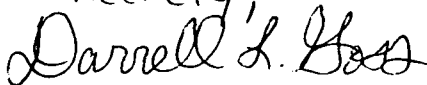
Re: Darrell L. Goss v. State of South Carolina
Case No.: 2011-CP-10-3782

Dear Clerk:

Enclosed please find the original and one (1) copy of the Motion to Alter or Amend Judgment for filing.

I would ask that you return the filed copy to me.

Your assistance is greatly appreciated.

Sincerely,

Darrell L. Goss # 305517
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

Cc: file

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Darrell L. Goss,
Applicant,

Vs.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
CASE NO. : 2011-CP-10-3782

MOTION TO ALTER OR
AMEND JUDGMENT

Applicant, Darrell L. Goss, pro se, hereby moves The Honorable Deadra L. Jefferson, Circuit Judge, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, for an order altering or otherwise amending the Order issued and filed December 1, 2011.

1). The Order fails to make specific findings of fact and conclusions of law relating to Applicant's allegation presented that counsel was ineffective for failing to investigate and should be altered or amended to address the afore-said allegation.

2). On page (5), paragraph (2), line (7-8), the Court stated "counsel stated a few of the potential alibi witnesses have a record"; however, in actuality, counsel did not testified

to this. Therefore, the Order should be altered or amended to delete the afore-said statement.

3). On page (6), paragraph (3), line (4-5), the Court stated "counsel testified he did not recall telling Applicant not to tell him anything about the case." ; however, in actuality, counsel did not testified to this, but counsel testified that it was possible that he did tell Applicant not to tell him anything about the case. Therefore, the Order should be altered or amended to correct the afore-said statement.

Respectfully Submitted,
Darrell L. Goss

Darrell L. Goss # 305517

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, SC 29472

Ridgeville, South Carolina
December 7, 2011

CERTIFICATE OF SERVICE

2011-CP-10-3782

The undersigned hereby certifies that a true and correct copy of the Motion to Alter or Amend Judgment was served upon all known counsel of record, as follows:

Matthew J. Friedman
Attorney General Office
P.O. Box 11549
Columbia, SC 29211

On December 7, 2011

Darrell L. Goss
Darrell L. Goss

COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 106
CHARLESTON, S.C. 29401-2258
(843) 958-5000
(843) 958-5020 FAX
www3.charlestoncounty.org



FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
100 BROAD STREET, SUITE 143
CHARLESTON, S.C. 29401-2265
(843) 958-4400
(843) 958-4434 FAX
www3.charlestoncounty.org

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

From: Clerk of Court, Charleston County, South Carolina

The enclosed document is being returned for the following reason(s):

- The document is not signed / notarized
- The filing fee is insufficient. The correct amount is _____
- This document is a copy. We must have an original.
- This is not a Charleston County case.
- The check or money order must be made payable to the Clerk of Court.
- This case is ended. Date ended: _____
Reason ended: _____
- Your check must be signed.
- Inmate litigation must comply with S.C. Code of Laws, Title 24, Chapter 27.
- There is not a case listed in our system that matches this caption.
- Information may be obtained from our web-site at www3.charlestoncounty.org.
- The required new case coversheet is not included. (SCCA234) July 1, 2004
- The required motion/order coversheet is not included. (SCCA/233)-Jan 15, 2003
- The required order (Form 4) coversheet is not included. (SCRCP Form 4C)-Oct. 17, 2011

Other

*All documents must be filed
by your appointed counsel.
See attached.*

Please make the necessary corrections and return this document for filing. Thank you for your assistance.

Staff initials: 

Date: *12/12/11*

December 7, 2011

Matthew J. Friedman
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

Re : Darrell L. Goss v. State of South Carolina
Case No. : 2011-CP-10-3782

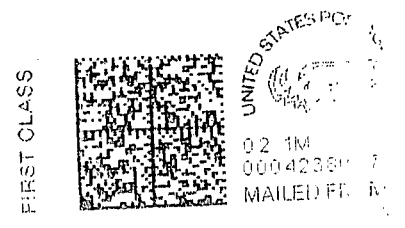
Dear Mr. Friedman :

Enclosed please find the Motion to Alter
or Amend Judgment for service upon you.

Sincerely,
~~Darrell L. Goss~~
Darrell L. Goss #305517
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

Cc : file

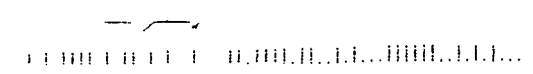
Darrell L. Goss #305517
Lieber Corr. Inst. E/A-33
P.O. Box 205
Ridgeville, S.C. 29472



The Supreme Court of South
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

DEC 1



per

The Brooks Law Offices, LLC

Charles T. Brooks, III
Attorney

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

Irma R. Brooks
Attorney

December 5, 2011

RECEIVED
DEC 8 2011
S.C. SUPREME COURT

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Darrell L. Goss v State of South Carolina
Case No. 2011-CP-10-3782

Dear Sir or Madam:

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

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

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/jlb

Enclosed as stated

Cc: Matthew Friedman, Office of Attorney's General
South Carolina Office of Appellate Defense
Darrell L. Goss, 305517

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Deadra L. Jefferson, Circuit Court Judge

Case No: 2011-CP-10-3782

Darrell L. Goss.....Appellant
S.C.D.C. 305517

v.

The State Respondent

NOTICE OF APPEAL

Darrell L. Goss appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Deadra L. Jefferson, November 23, 2011, which I, Charles T. Brooks, III, received on December 5, 2011.



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

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

RECEIVED
DEC 8 2011
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Deadra L. Jefferson, Circuit Court Judge

Case No: 2011-CP-10-3782

Darrell L. Goss.....Appellant
S.C.D.C.305517

v.

The State Respondent

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 5th day of December, 2011, I served the foregoing Notice of Appeal, Order of Dismissal, as well as Certificate of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on December 5, 2011, addressed to the following as indicated below:

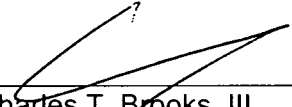
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

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

Office of Attorney's General
Attn: Matthew J. Friedman, Esq.
Post Office Box 11549
Columbia, South Carolina 29211-1549

Darrell L. Goss, 305517
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina, 29472

Dated: December 5, 2011


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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Darrell L. Goss, #305517,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2011-CP-10-3782

RECEIVED
 DEC 8 2011
 S.C. SUPREME COURT

ORDER OF DISMISSAL

FILED
 2011 DEC -1 AM 11:42
 JULIE J. ARMSTRONG
 CLERK OF COURT

Presiding Judge: Deadra L. Jefferson
 Applicant's Attorney: Charles T. Brooks, III., Esq.
 Respondent's Attorney: Matthew J. Friedman, Esq.
 Trial Counsel: James W. Smiley, IV., Esq.
 Date of Hearing: September 16, 2011
 Court Reporter: Amanda Haffenden

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 27, 2011. The Respondent filed its Return on August 18, 2011. An evidentiary hearing into the matter was convened on September 16, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, James W. Smiley, IV. Esquire also testified at the hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the Final Brief of Appellant, the Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, the Remittitur dated June 9, 2011, the PCR application, the State's Return thereto, a jail visit log,

1 of 12
[Signature]

and two letters from Applicant to trial counsel.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the September 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-10805), assault and battery with intent to kill (ABWIK) (2007-GS-10-10806), and kidnapping (2007-GS-10-10807). James W. Smiley, Esq., Esquire, represented the Applicant. The Applicant proceeded to trial on February 23–26, 2009, after which a jury found him guilty as indicted. The Honorable J.C. Nicholson, Jr. sentenced the Applicant to confinement for twenty (20) years for each offense. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Pachak, Esquire, of the South Carolina Commission on Indigent Defense, represented Applicant on appeal. After full briefing by both sides, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Goss, Op. No. 2011-UP-214 (S.C. Ct. App. filed May 17, 2011). The Remittitur was issued on June 9, 2011.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to investigate.
 - b. Failed to call rebuttal witnesses.
 - c. Failed to present an alibi defense.

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 and arguments presented at the hearing. This Court has further had the opportunity to

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JCY

observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified he retained trial counsel, who represented him for two (2) years prior to trial. He asserted he only met with counsel one (1) time to discuss a guilty plea. He testified it was his decision to reject the plea offer for twelve (12) years non-violent because he had no involvement in the incident. He testified counsel did not hire a private investigator. He further testified he sent counsel two (2) letters requesting to discuss his case and requesting Rule 5 materials, but counsel never responded. Applicant testified counsel never reviewed discovery with him. He testified he filed a complaint against counsel as a result.

Applicant testified he gave counsel the names of witnesses to contact, including witnesses who saw Applicant's mother buy clothes and a witness who would testify the gun was found in his car and was bought from the same people selling clothes. The Court took judicial notice of the testimony of the following witnesses who were present at the PCR hearing: (1) Clifford Hartwell, Applicant's brother, would testify his mother, Thomasina Goss, and Sharon Goss bought the alleged stolen clothes from guys in front of the family home, and (2) Sharon Goss, Applicant's cousin, would testify he bought the gun and clothing from the guys in front of the family home and that the gun was found in his car.¹

Applicant also asserted he had alibi witnesses who would have testified Applicant was at his son's baby shower on Dorchester Road on June 14, 2007 between 7:00 PM and 9:00 PM. Specifically, Applicant named Angelique Gaskins, the mother of his child, Lucretia Douglas, a friend, Bernard Godfrey, an uncle, and Felicia Henderson, a friend. The Court took judicial

¹ The trial transcript reflects the spelling of Applicant's cousin as Sharon Goss. (Tr. 464:24.) However, to clarify the sex of Applicant's cousin as a male, the Court notes the phonetic spelling of the name is Sharone.

notice of the potential alibi witnesses' alleged testimony. Applicant testified he informed counsel of these witnesses during jury selection, and these witnesses were present at trial ready to testify, but counsel never called these witnesses. Counsel only called his mother as a witness, knowing his mother's testimony could be impeached due to her prior criminal record. He asserted he tried to discuss the alibi defense with counsel, but counsel shut him down and told him not to say anything about the crime. Applicant testified counsel discussed his right to testify at trial and informed him it was not a good idea due to his prior convictions. Applicant testified it was his decision not to testify.

Trial counsel testified he had known the Goss family several years. He asserted the State's case against Applicant was circumstantial consisting of three (3) pieces of evidence: (1) Applicant's partial palm print from the exterior front door of the store, (2) a gun with the victim's DNA on it recovered from a car at the Goss's residence, and (3) a large quantity of clothing with tags attached found at the Goss residence. Counsel testified Applicant went to trial with his co-defendant, and the State had a good case against the co-defendant. He asserted he had no legal basis to move to sever the Applicant's trial.

Counsel testified he did not recall how many times he met with Applicant, but it was more than one (1) time. He testified Applicant had another set of charges for armed robbery, kidnapping, and burglary from eighteen (18) months earlier. He contended Applicant got out of jail on those charges, but then went back to jail when he was arrested on these charges. Counsel testified Applicant had nineteen (19) pending indictments at the time of trial. He testified when meeting with the Applicant he told Applicant he would discuss his potential defenses after determining the State's case, but the two had a volatile disagreement and counsel never got to that point. He testified the Applicant sent a letter to Chief Justice Toal, regarding his right to a

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[Signature]

speedy trial, who subsequently instructed counsel and the solicitor to respond to her regarding Applicant's complaint. Counsel testified letters were submitted to Chief Justice Toal, and the complaint was dismissed.² Counsel recalled a hearing on Applicant's Motion to be Relieved, but stated the two parties "made-up" and his representation of Applicant continued. Counsel testified he had trouble communicating with Applicant throughout his representation. He further testified Applicant became argumentative and angry when he tried to explain matters with him, because he was adamant in his desire for a trial. He further testified he had an ethical obligation to disclose any plea offers to the Applicant, but that in doing so, the Applicant became more agitated.

Counsel testified he did not know about an alibi defense or about Applicant's cousin Sharon purchasing a gun until after trial. Counsel asserted even if he had known about a potential alibi defense at the time of the trial, he would not have presented it unless it was an airtight defense. He opined the risk of such a defense would be too great, because if it failed, he risked the jury not listening to the rest of his argument regarding the case. He testified it would have been helpful to have a time stamped photo placing Applicant at the baby shower on the date and time of the crime. Based on his knowledge of the Goss family, counsel stated a few of the potential alibi witnesses have a record but he could not testify as to whether their records would have discounted their testimony. Counsel testified he thought they could beat the circumstantial evidence without an alibi witness, and he testified he tried a good case even without the alibi defense. He testified he explained the print on the door, explained that the car in which the gun was found did not belong to Applicant, and explained the clothing through Applicant's mother's testimony. He testified he thought the jury came to the wrong result. He testified Sharon's

² Applicant was in the Charleston County Detention Center for approximately twenty (20) months prior to the call of his case. However, a bond was set on his case.

5
5 of 12
AKG

testimony would have been detrimental if he had known about it, but he probably would have elicited the information from Thomasina Goss's testimony rather than calling Sharon as a witness, although it still could have implicated Applicant. He testified he was not positive Sharon's testimony would have made a difference because he is a family member, and juries are always skeptical of the veracity of a family member's testimony. He asserted Applicant's mother, nor Applicant, never mentioned Sharon purchasing the gun. Counsel testified he does not think he would have done anything differently, and he asserted he would not have hired an investigator even if he knew about the potential alibi defense.

Counsel testified he knew about the witnesses who could testify about Thomasina Goss buying clothes, but he made a strategic decision to only call Ms. Goss as a witness. He admitted Ms. Goss had a prior record, but she was persuasive and credible and he felt confident in her testimony. Counsel testified he used her testimony to explain the clothes in the Goss residence and argued the tags on the clothing were not unique to the store that was robbed. He also argued the victim did not give an inventory to the police of what was stolen, as well as the fact there was clothing in the Goss residence that did not originate from the victim's store. Counsel testified he spent a lot of time with Ms. Goss and trusted what she told him. He asserted she knew everyone in the neighborhood, but she could not identify the people who sold her the clothes.

Counsel testified he did not hire an investigator. He asserted he lost money on the case. He testified he received around One Thousand and 00/100 (\$1,000.00) Dollars and was limited to taking discovery and determining a valid defense. Counsel asserted had he known about a potential alibi, he still would not have hired an investigator due to the lack of funds. Counsel testified he did not recall telling Applicant not to tell him anything about the case. He testified he advised Applicant of his theory of the case. He testified they had some problems

6
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communicating, because the Applicant did not want to hear what counsel had to say. He asserted he took a plea offer of twelve (12) years to Applicant, and Applicant was upset that counsel was talking about a plea. Counsel testified he reviewed the discovery with Applicant, but he did not give Applicant a copy of the discovery because he was incarcerated. He testified it is his general practice not to give a client a copy of discovery if they are incarcerated, but he reviews every page of the discovery with the client. Counsel testified he was prepared for trial.

Ineffective Assistance of Counsel

The Applicant alleges he received 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, 442, 334 S.E.2d 813, 814 (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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate 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 prevailing professional norms.”

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Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

This Court finds Applicant's testimony is not credible while also finding trial counsel's testimony is credible. This Court finds counsel is a trial practitioner who has approximately eighteen (18) years of experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, discovery, Applicant's constitutional rights, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant failed to meet his burden of proof. This Court finds counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, reviewed the discovery with Applicant, and was thoroughly competent in his representation. This Court finds counsel's representation did not fall below an objective standard of reasonableness.

This Court finds counsel made a valid strategic decision to only call Applicant's mother as a witness at trial. "There is a strong presumption that counsel rendered adequate assistance

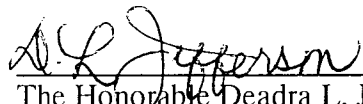
and exercised reasonable professional judgment in making all significant decisions in a case.” Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Where trial counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Counsel's strategy will be reviewed under “an objective standard of reasonableness.” Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002).

Here, counsel testified he thought Applicant’s mother’s testimony was convincing. This Court finds any further testimony regarding Ms. Goss buying clothes would have been cumulative to her testimony. This Court finds neither Applicant nor Applicant’s mother informed counsel that Applicant’s cousin purchased a gun from the same people from whom Ms. Goss allegedly purchased the clothing. They enjoyed a close relationship and bond that had developed over many years. Counsel knew the Goss family for several years and trusted Thomasina Goss. The Court finds Ms.Goss’s failure to inform counsel that her nephew purchased the gun implausible, particularly if she witnessed the purchase and testified to everything but the fact her nephew purchased the gun. Moreover, Ms. Goss was not called to testify at the PCR hearing that she witnessed her nephew purchase the gun. Further, the Court finds counsel’s testimony credible that had he known Sharon allegedly purchased the gun, he would have elicited the information through Ms. Goss’s testimony rather than calling Sharon as a witness. The Court finds this would have been a reasonable and valid strategy given a jury’s skepticism of the veracity of a family member’s testimony. Thus, counsel was not ineffective for failing to call Sharon Goss or the other named witnesses at trial.

In addition, this Court finds neither Applicant nor Applicant’s mother informed counsel of a potential alibi defense. This Court finds counsel’s testimony credible that he had trouble


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AND IT IS SO ORDERED this 23rd day of November 2011.



The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.



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