

The Supreme Court of South Carolina

Eduardo Martinez,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Kristi Lea Harrington
Charleston County
Trial Court Case No. 2008-CP-10-04561

ORDER

The request for an extension until May 23, 2012 to serve and file the Brief of Petitioner and additional appendices 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 Kathrine H. Hudgins
Assistant Attorney General Ashleigh R. Wilson



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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

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

April 23, 2012

RECEIVED

APR 23 2012

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

S.C. Supreme Court

C

Re: Eduardo Martinez v. The State

Dear Mr. Shearouse:

The brief of petitioner and additional copies of the 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 brief of petitioner and additional copies of the appendix.

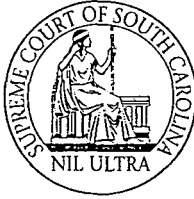
By copy of this letter, I am informing Matthew J. Freidman, Esquire, of the Attorney General's Office, of my request.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/lec

cc: Matthew J. Freidman, Esquire



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

March 22, 2012

Appellate Defender Kathrine H. Hudgins
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: Martinez, Eduardo v. The State

Dear Counsel:

Enclosed is the Order granting your Petition for Writ of Certiorari in the above entitled matter.

It will be necessary for you to furnish this office with an additional thirteen (13) **bound** copies of the appendix within thirty (30) days from the date of this letter.

Brief of Petitioner should be served and filed on or before April 23, 2012. The brief is not properly filed until we have proof of service.

Brief of Respondent should be served and filed within thirty (30) days after petitioner's brief is filed. We must have proof of service. Any reply brief should be served and filed within ten (10) days after filing of respondent's brief.

Very truly yours,

Daniel E. Shearouse
DS

CLERK

DES/jj

cc: Assistant Attorney General Matthew J. Friedman

The Supreme Court of South Carolina

Eduardo Martinez,

Petitioner,

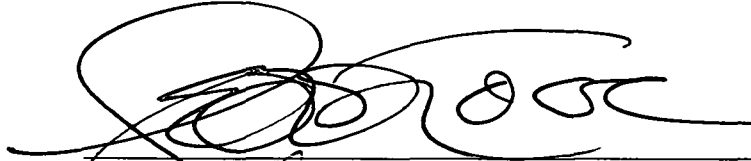
v.


State of South Carolina,


Respondent.


ORDER


This matter is before the Court on a petition for a writ of certiorari. The petition for a writ of certiorari is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.


C.J.


J.


J.


J.


J.

Columbia, South Carolina

March 22, 2012



HENRY MCMASTER
ATTORNEY GENERAL

October 7, 2010

RECEIVED

CCT - 7 2010

S.C. SUPREME COURT

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

RE: Eduardo Martinez v. State of South Carolina
2008-CP-10-4561

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above matter for filing in your office. By copy of this letter we are serving opposing counsel with this return today.

With highest regards,

Matthew J. Friedman
Assistant Attorney General

MJF/maf
Enclosures

cc: M. Celia Robinson, Esquire

The Supreme Court of South Carolina

Eduardo Martinez,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Kristi Lea Harrington
Charleston County
Trial Court Case No. 2008-CP-10-04561

ORDER

For good cause shown, the request for an extension until October 7, 2010 to serve and file the Return to the Petition for Writ of Certiorari is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

September 8, 2010

cc: Appellate Defender M. Celia Robinson
Assistant Attorney General Matthew J. Friedman



HENRY MCMASTER
ATTORNEY GENERAL

September 7, 2010

RECEIVED

SEP - 7 2010

S.C. SUPREME COURT

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

Re: Eduardo Martinez v. State of South Carolina
2008-CP-10-4561

2

Dear Mr. Shearouse:

The Return to Petition for a Writ of Certiorari in the above appeal is due to be served and filed today. However, I would respectfully request a 30-day extension in which to serve and file this Return.

This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/maf

cc: M. Celia Robinson, Esquire



HENRY MCMMASTER
ATTORNEY GENERAL

August 5, 2010

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

RECEIVED

AUG - 5 2010

S.C. SUPREME COURT

Re: Eduardo Martinez v. State of South Carolina
2008-CP-10-4561

Dear Mr. Shearouse:

The Return to Petition for a Writ of Certiorari in the above appeal is due to be served and filed today. However, I would respectfully request a 30-day extension in which to serve and file this Return.

This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/maf

cc: M. Celia Robinson, Esquire

The Supreme Court of South Carolina

Eduardo Martinez,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Kristi Lea Harrington
Charleston County
Trial Court Case No. 2008-CP-10-04561

ORDER

For good cause shown, the request for an extension until June 21, 2010 to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Aranda J. Shealy*
Clerk

Chief Deputy
Columbia, South Carolina

May 24, 2010

cc: Appellate Defender M. Celia Robinson
Assistant Attorney General Matthew J. Friedman

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

MAY 21 2010

S.C. SUPREME COURT

EDUARDO MARTINEZ,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

(3)

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

Counsel for Eduardo Martinez petitions the Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix in this case. In support of this petition, counsel shows:

1. The petition for writ of certiorari and accompanying appendix are due to be filed with the Court today. The Court has granted counsel two previous extensions.
2. Counsel for Mr. Martinez respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time.
3. Counsel filed the petition for rehearing in State v. Johnell Porter on April 20, 2010. Counsel filed the brief of petitioner in Marlon Smith v. State on April 21, 2010. Counsel filed the return to petition for writ of certiorari and accompanying appendix in Frank Greene v. State on

April 23, 2014. Counsel filed the petition for writ of certiorari and accompanying appendix in Jamal El v. State on April 30, 2010. Counsel filed the petitions for writ of certiorari and accompanying appendices in Brandon Jenkins v. State and Lewis Laviolette on May 5, 2010. Counsel filed the petitions for writ of certiorari and accompanying appendices in James Williams v. State and Maurie Kirk v. State on May 11, 2010. Counsel filed the petition for rehearing in State v. Luther Garner on May 13, 2010. Counsel filed the petition for writ of certiorari and accompanying appendix in Wanda Haithcock v. State on May 14, 2010. Counsel had oral argument in the South Carolina Court of Appeals in State v. Shirley Geer on May 19, 2010.

4. Counsel has not had time to complete the petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. As indicated by signature below, Matthew T. Freidman, of the South Carolina Attorney General's Office, does not oppose this request.

6. Counsel believes that extraordinary circumstances warrant this extension request made pursuant to the Supreme Court's recent order of March 18, 2009, concerning Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings.

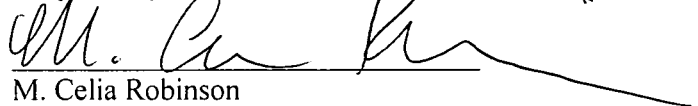
The Office of Appellate Defense agrees that extensions should be kept to a minimum for several reasons, not least of which the need for finality is felt by the victims, the defendants and their families. But regrettably, we only have 8 attorneys to handle approximately 1,000 appeals per year. The Spangenberg Report on Appellate Defense (February 2008) concluded, among other things, that Appellate Defense had too few attorneys handling too many cases.

Chief Counsel of Appellate Defense has brought the Supreme Court's order on extensions to the attention of the Commission on Indigent Defense and recommended that the office be permitted

to fill the vacant attorney position and to explore the possibility of ceasing to handle certain PCR cases until the Division is adequately funded and fully staffed. The Commission has taken these recommendations under advisement. In the meantime, Chief Counsel has advised staff that we must bring Appellate Defense into compliance with the Court's order with the limited resources at hand.

Counsel respectfully requests a thirty day extension, in which to file the petition for writ of certiorari and accompanying appendix in this case based upon the above exigent circumstances.

Respectfully submitted,



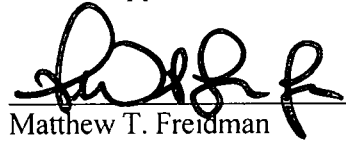
M. Celia Robinson
Appellate Defender



Robert M. Dudek
Acting Chief Appellate Defender

May 21, 2010

I do not oppose:



Matthew T. Freidman

The Supreme Court of South Carolina

Eduardo Martinez, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Kristi Lea Harrington
Charleston County
Trial Court Case No. 2008-CP-10-04561

ORDER

For good cause shown, the request for an extension until May 21, 2010 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 22, 2010

cc: Appellate Defender M. Celia Robinson
Assistant Attorney General Matthew J. Friedman

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

ORIGINAL

RECEIVED

APR 21 2010

S.C. SUPREME COURT

EDUARDO MARTINEZ,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

(2)

Counsel for Eduardo Martinez petitions the Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix in this case. In support of this petition, counsel shows:

1. The petition for writ of certiorari and accompanying appendix are due to be filed with the Court today. The Court has granted counsel one previous extension.
2. Counsel for Mr. Martinez respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time.
3. Counsel filed the reply to petition for writ of certiorari in John T. Robinson v. State and the initial brief of respondent and designation of matter in State v. Jimmy Skelton on March 22, 2010.

Counsel filed the initial brief of appellant and designation of matter in State v. Frederick Jeter on March 24, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Gerald Fripp on March 26, 2010. Counsel filed the petitions for writ of certiorari and accompanying appendices in Billy Johnson v. State, Luis Avila v. State, and Gregory Woods v. State along with the Initial Brief of Appellant in Richard Hemphill v. State on March 31, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Marion Abner on April 6, 2010. The petitions for writ of certiorari and accompanying appendices were filed in Quantis Pinckney v. State and James Dozier v. State on April 7, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Donovan Murray on April 15, 2010. The petition for rehearing for State v. Joe Campbell was filed on April 16, 2010. Counsel filed the petition for rehearing in State v. Johnell Porter on April 20, 2010.

4. Counsel has not had time to complete the petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

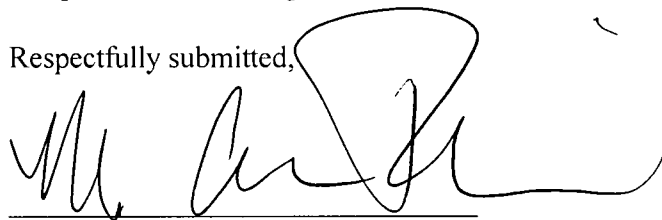
5. Counsel believes that extraordinary circumstances warrant this extension request made pursuant to the Supreme Court's recent order of March 18, 2009, concerning Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings.

The Office of Appellate Defense agrees that extensions should be kept to a minimum for several reasons, not least of which the need for finality is felt by the victims, the defendants and their families. But regrettably, we only have 8 attorneys to handle approximately 1,000 appeals per year. The Spangenberg Report on Appellate Defense (February 2008) concluded, among other things, that Appellate Defense had too few attorneys handling too many cases.

Chief Counsel of Appellate Defense has brought the Supreme Court's order on extensions to the attention of the Commission on Indigent Defense and recommended that the office be permitted to fill the vacant attorney position and to explore the possibility of ceasing to handle certain PCR cases until the Division is adequately funded and fully staffed. The Commission has taken these recommendations under advisement. In the meantime, Chief Counsel has advised staff that we must bring Appellate Defense into compliance with the Court's order with the limited resources at hand.

Counsel respectfully requests a thirty day extension, in which to file petition for writ of certiorari and accompanying appendix in this case based upon the above exigent circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson
Appellate Defender

April 21, 2010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

EDUARDO MARTINEZ,

PETITIONER,

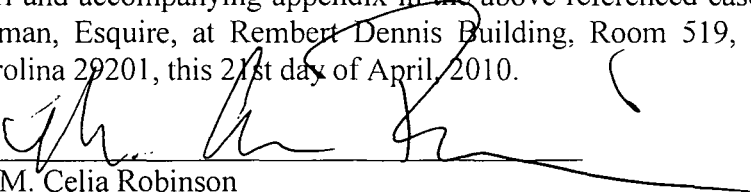
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

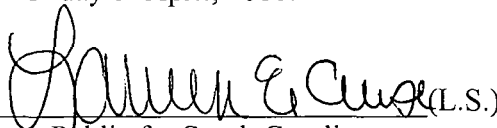
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the petition for writ of certiorari and accompanying appendix in the above referenced case has been served upon Matthew T. Freidman, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 21st day of April, 2010.


M. Celia Robinson
Appellate Defender

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me
this 21st day of April, 2010.


Notary Public for South Carolina
My Commission Expires: August 23, 2014 .



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

 ORIGINAL

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

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

RECEIVED

March 22, 2010

MAR 22 2010

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

S.C. SUPREME COURT

Re: Eduardo Martinez v. The State

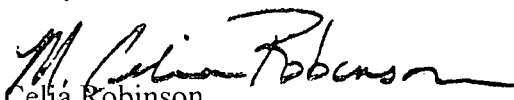
C

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 Freidman, Esquire, of the Attorney General's Office, of my request.

Sincerely,


M. Celia Robinson
Appellate Defender

MCR/lec

cc: Matthew Freidman, Esquire



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, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

RECEIVED

JAN 21 2010

S.C. SUPREME COURT

January 21, 2010

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.

Eduardo Martinez v. State of South Carolina

1/21/2010

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

Thank you for your assistance in this matter.

Sincerely,

Sharon A. Graham
Administrative Coordinator



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, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

January 14, 2010

RECEIVED

JAN 14 2010

S.C. SUPREME COURT

Ms. Gayle Burns, R. M. R.
Circuit Court Reporter
161 Barnhill Drive
Ladson, SC 29456-4114

Dear Ms. Burns:

Our office has been requested to perfect the appeal arising out of:

Eduardo Martinez v. State of South Carolina Case #: 08-CP-10-04561

County: Charleston Date of Trial: November 20, 2009

Presiding Judge: Kristi Lea Harrington

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript 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. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

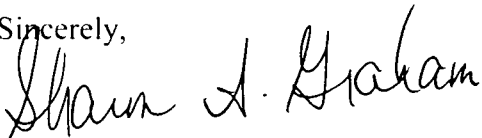
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. Gayle Burns, R. M. R.
January 14, 2010
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

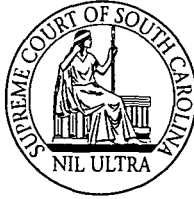
Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Sharon A. Graham". The signature is written in black ink and is positioned above the printed name.

Sharon A. Graham
Administrative Coordinator

xc: 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 30, 2009

Barrett Ray Brewer, Esquire
Clawson & Staubes, LLC
126 Seven Farms Dr., Ste. 200
Charleston, SC 29492

Re: Martinez, Eduardo v. The State

Dear Mr. Brewer:

Please find enclosed your check number 135057 in the amount of \$100. There is no filing fee for a PCR appeal.

Very truly yours,

Daniel E. Shearouse
CLERK

DES/jj

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

CLAWSON & STAUBES, L.L.C.
ATTORNEYS AT LAW
(843) 577-2026
126 SEVEN FARMS DRIVE, SUITE 200
CHARLESTON, SC 29492-7595

Regions Bank SOUTH CAROLINA

135057

67-181/532

DATE	CHECK	AMOUNT
12/16/09	135057	****\$100.00

*** ONE HUNDRED & 00/100 DOLLARS

PAY

TO THE
ORDER
OF

SC Court of Appeals

CLAWSON & STAUBES, L.L.C. - ATTORNEYS AT LAW
GENERAL OPERATING ACCOUNT

Elizabeth M. Clawson

REGUARD SECUR
REGUARD SECUR
M

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE. RED IMAGE WILL APPEAR WITH HEAT.

⑈ 135057⑈ ⑆ 053201814⑆ 39 0399 8819⑈



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839

January 6, 2009

Barrett R. Brewer, Esq.
Clawson & Staubes, LLC
126 Seven Farms Dr., Ste 200
Charleston, SC 29492-8144

Re: Eduardo Martinez v. State of SC
2008-CP-10-04561

RECEIVED

DEC 22 2009

S.C. SUPREME COURT

Dear Mr. Brewer:

Enclosed is an order of the Court of Appeals transferring the above referenced Notice of Appeal to the South Carolina Supreme Court. Your check #135057 in the amount of \$100.00 is transferred to the Supreme Court with the Notice of Appeal.

According to Rule 243 of the South Carolina Appellate Court Rules, final decisions entered under the Post-Conviction Relief Act are to be reviewed by the Supreme Court. Therefore, all Notices of Appeal regarding Post-Conviction actions must be filed in the Supreme Court.

I hope the above information will assist you in the future when filing Notices of Appeal from post conviction relief actions.

Very truly yours,

V. Claire Allen, Deputy

CLERK

JFB/ma

The South Carolina Court of Appeals

Eduardo Martinez, #326852,

Appellant,

v.

State of South Carolina,

Respondent.

Circuit Court Judge Kristi Lea Harrington
Charleston County
Case No. 2008-CP-10-04561

RECEIVED

DEC 22 2009

S.C. SUPREME COURT

ORDER

The Notice of Appeal in the above captioned matter is transferred to the South Carolina Supreme Court under the filing provisions of Rule 243 of the South Carolina Appellate Court Rules. Also transferred is check #135057 in the amount of \$100.00.

IT IS SO ORDERED.

KAYE G. HEARN, CHIEF JUDGE
For The Court

BY V. Claire Allan, Deputy
CLERK

Columbia, South Carolina
December 21, 2009

cc: Barrett D. Brewer, Esquire
Chief Appellate Defender Joseph L. Savitz, III
Assistant Attorney General Matthew Friedman
The Honorable Daniel Shearouse

CLAWSON & STAUBES, LLC
ATTORNEYS AT LAW

BARRETT R. BREWER
bbrewer@clawsonandstaubes.com

December 15, 2009

In Reply Please Reference
Our File No.: 2005-0085 brb

The Honorable Kenneth A. Richstead
Clerk of Court of Appeals
PO Box 11629
Columbia, SC 292112-1629

RECEIVED

DEC 18 2009

Re: Eduardo Martinez, #326852 v. State of South Carolina
Case No. 2008-CP-10-4561

SC Court of Appeals

Dear Mr. Richstead:

Enclosed please find the original and a copy of the Notice of Appeal, along with the Certificate of Mailing, regarding the above-referenced case. I am also enclosing a check in the amount of \$100.00 for the filing fee. After filing, please return the clocked in copy to me in the enclosed envelope.

Thank you for your assistance in this matter.

With kindest regards, I remain

Very truly yours,

CLAWSON & STAUBES, LLC


Barrett R. Brewer

BRB/dm
Enclosures

cc: Mr. Matthew Friedman, Esquire (w/encl.)
The Honorable Kristi Lea Harrington(w/encl.)
Mr. Eduardo Martinez (w/encl.)

RECEIVED

DEC 22 2009

S.C. SUPREME COURT

Charleston Office:
126 Seven Farms Dr., Suite 200
Charleston, SC 29492-8144
(o) 843.577.2026
(f) 843.722.2867

Charlotte Office:
756 Tyvola Rd., Suite 130
Charlotte, NC 28217-3535
(o) 704.940.9128
(f) 704.522.9033

clawsonandstaubes.com

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

DEC 18 2009

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Circuit Court
Kristi Lea Harrington, Circuit Court Judge

RECEIVED

DEC 22 2009

S.C. SUPREME COURT

Case No. 2008-CP-10-4561

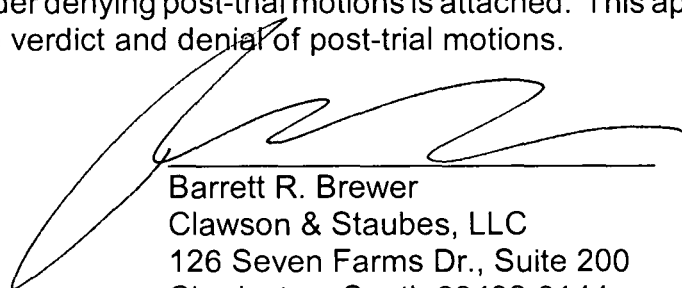
State of South Carolina Respondent

v.

Eduardo Martinez, #326852. Appellant

NOTICE OF APPEAL

The Appellant hereby appeals the judgment of the Honorable Kristi Lea Harrington dated November 20, 2009 and denial of post-trial motions relating to said judgment. Appellant's counsel received written notice of entry of the judgment on or after December 3, 2009. A copy of the verdict, judgment and Order denying post-trial motions is attached. This appeal is timely made within 30 days of the verdict and denial of post-trial motions.



Barrett R. Brewer
Clawson & Staubes, LLC
126 Seven Farms Dr., Suite 200
Charleston, South 29492-8144
(843) 577-2026

Attorneys for Appellant

Charleston, South Carolina
December 15, 2009

Other Counsel of Record:

Mr. Matthew Friedman
Assistant Attorney General
Office of the Attorney General
Robert C. Dennis Building
P.O. Box 11549
Columbia, SC 29211-1549

Attorney for Respondent

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DEC 18 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Circuit Court
Kristi Lea Harrington, Circuit Court Judge

Case No. 2008-CP-10-4561

State of South Carolina Respondent

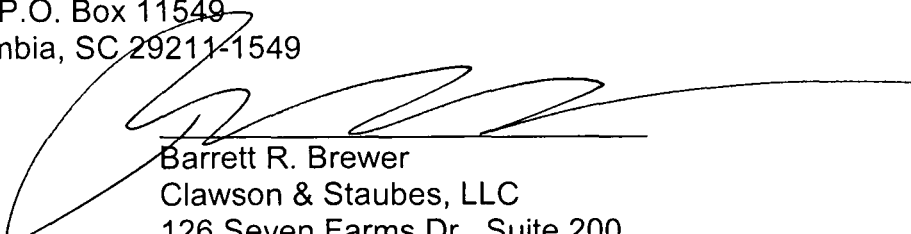
v.

Eduardo Martinez, #326852. Appellant

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2009, I have mailed, regular first class mail, postage prepaid, a copy of Appellant's Notice of Appeal to:

Mr. Matthew Friedman
Assistant Attorney General
Office of the Attorney General
Robert C. Dennis Building
P.O. Box 11549
Columbia, SC 29211-1549



Barrett R. Brewer
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(843) 577-2026

Attorneys for Appellant

Charleston, South Carolina
December 15, 2009

08-1138

www3.charlestoncounty.org

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



81



BREWER, BARRETT R
126 SEVEN FARMS DR STE 200
DANIEL ISLAND SC 29492-8144

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC.
ORDER - ORDER-APPLICATION FOR PCR RELIEF IS DENIED

THIS JUDGMENT WAS ENTERED ON THE 25TH DAY OF NOVEMBER , 2009 AND A COPY MAILED
FIRST-CLASS THIS 1ST DAY OF DECEMBER , 2009 TO ALL COUNSEL OF RECORD AND/OR
ALL PERSONS ENTITLED TO RECEIVE NOTICE.
YOU MAY VIEW AND DOWNLOAD THIS DOCUMENT AT WWW3.CHARLESTONCOUNTY.ORG

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BREWER, BARRETT R
126 SEVEN FARMS DR STE 200
DANIEL ISLAND SC 29492-8144

2008-CP-10-004561
MARTINEZ, EDUARDO #326852
VS.
SOUTH CAROLINA STATE OF

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STATE OF SOUTH CAROLINA

County of Charleston

Eduardo Martinez

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS

Case # 2008 -CP- 10 - 4561

FILED
2009 NOV 25 AM 8:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

ORDER

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

1. The application for post-conviction relief is hereby: denied granted under advisement; a formal order will be filed (see below - No.6)

2. Motion(s) was/were heard in this case and the court orders:
 The motion to dismiss and/or for summary judgment is hereby granted denied under advisement, based upon the statute of limitations and/or the successive nature of the application or other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:
 Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.
 The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed with prejudice without prejudice.

5. Other:

6. The court further orders:
 The Attorney General Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within 14 days.
 Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____ days.
 The court does not request proposed orders.

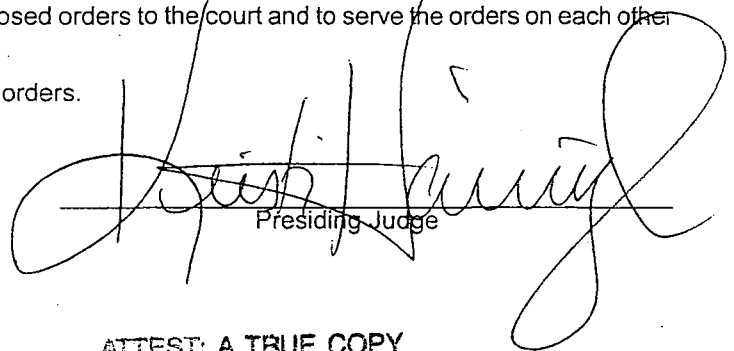
IT IS SO ORDERED.

Date: 11 / 20 / 09
Charleston S.C.

Court Reporter Gayle Burns

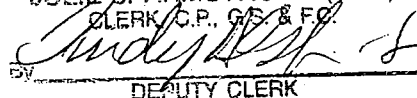
Attorney for Plaintiff Berrett Brewer

Attorney for Defendant Matthew Friedman



Presiding Judge

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., C.S. & F.C.

BY 
DEPUTY CLERK

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
Eduardo Martinez, #326852,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2008-CP-10-4561

ORDER OF DISMISSAL

FILED
2009 DEC 14 AM 9:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 7, 2008. The Respondent made its Return on March 23, 2009. An evidentiary hearing into the matter was convened on November 20, 2009 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Barrett Brewer, 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 plea counsel, Jacqueline Grau, Esquire, also testified at the hearing. Carla Collins served as Applicant's interpreter during the PCR hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, Respondent's Return thereto, Request to Appoint Interpreter dated January 18, 2008, Order to Appoint Interpreter dated January 24, 2008, Order to Appoint Interpreters dated February 22, 2008, a letter from Assistant Solicitor Julia Cardillo to counsel dated January 2, 2008 making an offer of fifteen (15) years, and a letter from counsel to Applicant dated January 3, 2008 explaining the offer.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the January 2007 term of the Charleston County Grand Jury for trafficking in cocaine (2007-GS-10-0066) and possession with intent to distribute (PWID) cocaine within proximity of a school (2007-GS-10-0065). Jacqueline G. Grau, Esquire, represented the Applicant. On March 3, 2008, the Applicant pled guilty to the proximity charged and to the lesser-included offense of trafficking in cocaine (28-100 grams, 1st offense). Pursuant to a negotiated plea agreement, the Honorable R. Markley Dennis, Jr. sentenced him to confinement for eighteen (18) years for trafficking cocaine and eight (8) years for the proximity charge. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel in that counsel
 - a. Failed to investigate.
 - b. Failed to interview certain witnesses.
 - c. Coerced Applicant into pleading guilty.
 - d. At the hearing, Applicant asserted that counsel failed to hire an interpreter prior to the plea and failed to adequately explain the prior plea offers to Applicant.

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 PCR hearing. This Court has further had the opportunity to 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 that he was not able to communicate with counsel in English. He asserted that he asked for an interpreter, but she never hired one prior to the plea hearing. Applicant testified that he received counsel's letter dated January 3, 2008, but he did not understand the letter. He understood that there was an offer for fifteen (15) years, but he did not know if it was for one charge or two charges. Applicant testified that counsel did not speak Spanish. He asserted that he understood some of what she said but not enough for effective assistance. Applicant testified that his interpreter at the plea hearing explained the prior plea offer of fifteen (15) years to him. He asserted that he would have accepted the prior offer if he had understood it. He testified that he was pressured by counsel to plead guilty because the case had been going on for so long and she had not been paid. Applicant testified that he told the court he was satisfied with counsel because he thought the judge was asking if counsel was a good person. He testified that the plea judge did not ask him if counsel did a good job.

Plea counsel testified that she met with Applicant 10-20 times. She testified that she communicated with Applicant in English and some Spanish. She testified that Applicant understood their discussions. She asserted that Applicant speaks more English than he was letting on. Counsel testified that Applicant never asked for an interpreter. She asserted that she did not need an interpreter during his meetings with the Applicant. She testified that Applicant understood the offer for fifteen (15) years, but he was upset about getting that much time so he rejected the offer. Counsel asserted that she did not pressure Applicant into accepting the plea offer and she would never tell a client she was not getting paid. She testified that she was prepared for trial. She testified that she and Applicant had substantial discussions about the consequences of the plea, and she believed Applicant understood the terms of the negotiated

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sentence.

Ineffective Assistance of Counsel / Coerced Plea

The Applicant alleges that 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, 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, 334 S.E.2d 813.

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. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

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 professional norms.” Id. at 625 (citing Strickland, 466 U.S. 668). 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 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and

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that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that Applicant's testimony is not credible while also finding that counsel's testimony is credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. This Court finds that the record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he understood the nature of the charges, the possible punishments, and his constitutional rights. Applicant admitted that he was guilty of these offenses. Applicant told the plea court that he was satisfied with counsel and that no one had threatened him or promised him anything to accept the plea offer. This Court finds

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that Applicant understood the terms of the negotiated sentence. The record reflects that Applicant answered some of the plea judge's questions in English and he did not use the interpreter for the entire plea hearing.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney 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, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel was not ineffective for failing to hiring an interpreter prior to the plea hearing. Counsel testified that she was able to adequately communicate with Applicant using English and some Spanish. Counsel properly communicated all plea offers to Applicant, and Applicant rejected all prior plea offers. The record reflects that Applicant was able to speak and understand some English. Moreover, counsel obtained a favorable negotiated sentence on Applicant's behalf, and Applicant accepted the offer for eighteen (18) years and received the benefit of the bargain. This Court finds that counsel did not pressure Applicant into pleading guilty and it was Applicant's decision to accept the plea offer.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence

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that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are 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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

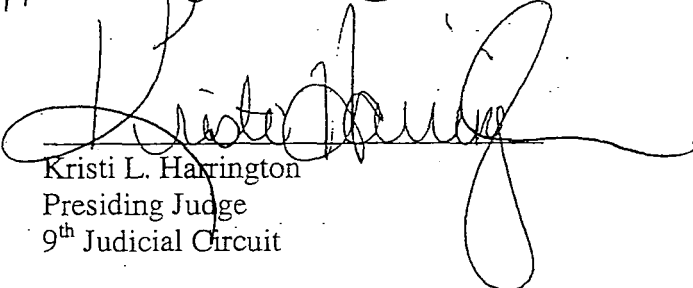
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

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12/11/09

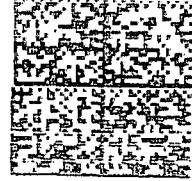
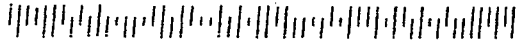
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 11th day of December, 2009.


Kristi L. Harrington
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.



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(BRB/vc)

*Eduardo
Martinez*

The Honorable Kenneth A. Richstead

Clerk of Court of Appeals

PO Box 11629

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