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ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

CCT - 7 2010

S.C. SUPREME COURT

MORRIS ANTONIO SULLIVAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589

ATTORNEY FOR PETITIONER

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
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KAREN RATIGAN
Assistant Attorney General

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ATTORNEYS FOR RESPONDENT

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The Trial Counsel was ineffective for not presenting a defense consistent with the Probative finding that caused the matter to be reversed and remanded, and had the lawful entitlements been made applicable in connection with the weapon offense, there is a reasonable probability that the jury would have acquitted for other reasons. [Reasons] consistent with the Probative findings that caused a second trial.

The Counsel's ineffectiveness abridged an entitled jury instruction concerning the weapon offense, that caused the jury to compromise Defendant's due process subscribed in the statutes of law made clear by findings that resulted in the new trial.

Counsel's oversight in connection with weapon offense was a colossal error that made Court instructions foreign to jury an absent the option to consider whether or not defendant was entitled by law to arm himself in the face of unprovoked danger.

Page 3 Sec. 11 (B)

The Court's instructions induced the Jury to compromise the verdict and probative evidence in the record makes clear that the instructions given did not make clear the entitlement of law associated with the weapon charge and the elements that can be considered to determine, if it was legally right for Defendant to arm himself to repel unprovoked, unwarranted and possible imminent danger.

Options presented in the Jury instructions by the Court did not wholesomely allow the Jury to consider that Defendant's weapon offense in connection with the murder charge merited acquittal under lawful defense principles.

The Court could have narrowed the lane of Jury compromise by making clear the distinctive elements that determined lawful and unlawful weapon possession and the circumstances that constitute lawful and unlawful arming of self. There is a reasonable probability that the Jury would have deliberated differently had the Court better articulated the distinctions of law and the applicable defenses contained in instructions for the jury to use as a guide when weighing the probative value of Facts contained in the evidence presented to be deliberated upon.

Page (3) of PCR 11, (C)

The miscarriage of Justice is the continuous visiting of a clear issue that Defendant has sought relief on, only to be abridged the entitled application of the law that would resolve an ongoing concern due to derelict oversight.

Where it is evident that Probative value is favorable to defendant, the Fundamental fairness of the law eludes applicant and infringes on his liberty interest to be relieved of sundry confinements that impedes upon entitled pursuits of freedoms and prosperous growth in a lawful society.

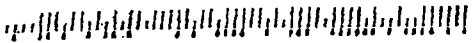
This miscarriage at large still, due to the absent of entitled Juris Prudence concerning the nexus of a weapon offense and the charge of murder and the circumstances that makes a Defendant lawful or unlawfully armed.

MORRIS A. SULLIVAN # 256260

KERSHAW CORRECTIONAL INSTITUTION

4848 GOLDMINE HWY - MB# 25

KERSHAW, S.C. 29067



STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Morris Antonio Sullivan,)
 S.C.D.C. No. 256260,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2009-CP-23-0711

RETURN

In response to the post-conviction relief (PCR) application filed January 28, 2009, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the September 1998 term of General Sessions for murder (1998-GS-23-4313, count 1) and possession of a weapon during commission of a violent crime (1998-GS-23-4313, count 2)¹ and at the December 2005 term for possession of a pistol under 21 years of age (2005-GS-23-9999). Steven W. Sumner, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty of voluntary manslaughter and both weapons charges. On January 20, 2006, the Honorable D. Garrison Hill

¹ These indictments were originally brought to trial in February 1998. After the jury found the Applicant guilty, he filed a PCR application. The Honorable John W. Kittredge granted post-conviction relief and ordered a new trial in an order dated October 2, 2002. The State unsuccessfully attempted to appeal this decision and the charges were remanded for a new trial.

sentenced the Applicant to concurrent terms of eighteen (18) years for voluntary manslaughter, five (5) years for possession of a weapon during commission of a violent crime, and one (1) year for possession of a pistol under 21 years of age.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders² brief. The Court of Appeals dismissed the appeal. State v. Sullivan, Op. No. 2008-UP-478 (S.C. Ct. App. filed August 11, 2008).

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
2. Courts failure during instructions.
3. Miscarriage of justice.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant

² Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume 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. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General


JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

April 17, 2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
 MORRIS ANTONIO SULLIVAN, 256260)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

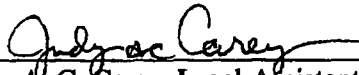
2009-CP-23-0711

AFFIDAVIT OF SERVICE BY MAIL

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

**Morris Antonio Sullivan, 256260
 Kershaw Correctional Institution
 4848 Goldmine Highway
 Kershaw SC 29067**

DATED this 17th day of April, 2009.



 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

MORRIS SULLIVAN,)
)
 PLAINTIFF,)
)
 -VS-)
)
 THE STATE OF SOUTH CAROLINA,)
)
 DEFENDANT.)
_____)

2009-CP-23-0711

NOVEMBER 12, 2009

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

CAROLINE HORLBECK
ATTORNEY FOR PLAINTIFF

KAREN RATIGAN
ATTORNEY FOR DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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1 (WHEREUPON, Court convened with all parties present
2 and the following proceedings were had.)

3 THE COURT: All right, Ms. Ratigan.

4 MS. RATIGAN: May it please the Court, Your
5 Honor. The next case is that of Morris Sullivan versus
6 the State of South Carolina. The docket number is 2009-
7 CP-23-0711. This has a bit of an unusual procedure on
8 this, Your Honor. These are actually 1998 charges.
9 However, Mr. Sullivan, after that original trial, was
10 granted a PCR in 2002. So it went back for retrial in
11 2006. But those 1998 indictments were for murder and
12 possession of a weapon during the commission of a violent
13 crime. He then picked up an additional indictment for
14 possession of a pistol by an individual under twenty-one
15 years of age. The retrial was in January of 2006. He
16 was represented by Mr. Sumner. The jury found him guilty
17 of voluntary manslaughter, possession of a weapon during
18 the commission of a violent crime and possession of a
19 pistol under the age of twenty-one. Judge Hill levied
20 concurrent sentences of eighteen years for manslaughter,
21 five years for possession of a weapon during the
22 commission of a violent crime and one year for the
23 possession of a pistol charge. Mr. Sullivan did file an
24 appeal. It was perfected in the nature of an Anders
25 brief at the South Carolina Court of Appeals and the

1 appeal was dismissed in August of 2008. So the State's
2 ready to proceed.

3 THE COURT: Ms. Horlbeck.

4 MS. HORLBECK: Your Honor, we would call -- I'm
5 sorry. We would call Steve Sumner to the stand.

6 THE COURT: All right. Mr. Sumner, if you'd
7 come around and be sworn.

8 MADAM CLERK: Place your left hand on the Bible,
9 please. Raise your right hand. You do solemnly swear to
10 tell the truth, the whole truth, and nothing but the
11 truth, so help you God?

12 MR. SUMNER: I do.

13 MADAM CLERK: Thank you. You may be seated.

14 MR. SUMNER: Thank you.

15 MADAM CLERK: State your full name for the
16 record, please.

17 MR. SUMNER: Steven Wayne Sumner.

18 MADAM CLERK: Thank you.

19 STEVEN WAYNE SUMNER,

20 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. HORLBECK:

23 Q. Mr. Sumner, you were not the original attorney on
24 this case; is that correct?

1 A. That is correct.

2 Q. All right. You were actually the second attorney?

3 A. To my knowledge, yes.

4 Q. And you represented Mr. Sullivan in the retrial of
5 this case in 2006; is that correct?

6 A. That is right.

7 Q. All right. And just by way of background, he was
8 convicted of voluntary manslaughter and possession of
9 weapon during a violent crime and possession of a pistol
10 under the age of twenty-one?

11 A. Yes, ma'am.

12 Q. Okay. And this was a situation where Mr. Sullivan
13 was threatened by the victim after Mr. Sullivan invited
14 the victim to his home. Is that correct?

15 A. Well, I don't know if I would say he was threatened
16 by the victim. I think it involved a victim that was in
17 Mr. Sullivan's home and the altercation occurred in Mr.
18 Sullivan's home.

19 Q. Okay. Was your defense that the victim threatened
20 Mr. Sullivan?

21 A. The defense was primarily self-defense.

22 Q. Okay.

23 A. I think also defense of habitation. I believe
24 elements of that and necessity.

25 Q. And the basis for your self-defense -- for pursuing

1 self-defense is that the victim threatened Mr. Sullivan;

2 correct?

3 A. Yes.

4 Q. In Mr. Sullivan's own home?

5 A. Yes.

6 Q. Okay. Also in the, in the trial that you handled
7 there was no evidence that -- or no evidence was admitted
8 that Mr. Sullivan was responsible in anyway for the
9 victim's conduct or aggression?

10 A. There was a statement -- to the best of my
11 recollection there was a statement that Mr. Sullivan
12 gave, I believe, to Chief Morton. I believe that
13 statement was published and received in the State's case
14 in chief and I cannot recall the exact substance of the
15 statement now.

16 Q. But was there any evidence of Mr. Sullivan's conduct
17 that would negate a self-defense charge? Like was he in
18 any way responsible for bringing all the issue, is what
19 I'm trying to get at?

20 A. There was testimony I recall from a number of
21 witnesses, Judge, who were in the home and I believe that
22 that gave rise to a self-defense charge.

23 Q. Okay. All right. But there was certainly no
24 evidence to negate the self defense charge. Like
25 evidence of misconduct leading to the issues between the

1 victim and Mr. Sullivan. Is that correct?

2 A. That's not correct.

3 Q. That's not correct? Okay. Then if evidence like
4 that came in, how in the world did you get a self-defense
5 charge in the trial?

6 A. Because my recollection is that I argued for it. And
7 I believe I put on the record, I think, that if there was
8 any -- I believe what I argued was, if there's any
9 evidence from which a jury could infer self-defense, then
10 the court has to charge it.

11 Q. Do you know what page that evidence -- do you know --
12 can you point to the transcript and tell the court what
13 -- at what point that evidence came in?

14 A. I'm sorry. If you'd repeat that question.

15 Q. Well; do you have a copy of the transcript?

16 A. I don't.

17 Q. Okay.

18 A. If you could -- yeah. That would be great.

19 Q. You've had a chance to review it; correct?

20 A. I've reviewed it briefly.

21 Q. Okay.

22 A. But I mean ...

23 Q. Where in the transcript is there evidence ---

24 A. Well, I mean evidence or argument? I'm confused.

25 Q. Well, I'm saying evidence that Mr. Sullivan was at

1 fault in bringing about the dispute?

2 A. I believe there was testimony -- and again, I'm going
3 to the best of my recollection and I would certainly
4 defer to the transcript. I believe there was testimony
5 that the deceased had come into Mr. Sullivan's home and
6 that they had gone into Mr. Sullivan's bedroom. I
7 believe it was his bedroom. And nobody else had gone
8 back with them. And that there was testimony that nobody
9 -- that the person that gave the testimony said I don't
10 know what occurred in the bedroom. So I believe there
11 was, I guess, a question of whether or not Mr. Sullivan
12 potentially had participated in bringing on the
13 difficulty.

14 Q. Okay.

15 A. And there was also room to argue that he did not
16 bring on the difficulty.

17 Q. Okay. All right.

18 A. So I think that that was -- maybe I should have said
19 that earlier. There was time when they were alone.

20 Q. Okay.

21 A. Mr. Sullivan and the deceased. And my recollection
22 is there were four or five witnesses that said, you know,
23 what occurred back there we don't know.

24 Q. Okay.

25 A. So it could have been difficulty brought on by Mr.

1 Sullivan and then again he could have been totally free
2 of bringing on any difficulty.

3 Q. But was there any direct evidence that Mr. Sullivan
4 was responsible for -- or had any part of bringing on the
5 difficulty?

6 A. I don't think so.

7 Q. All right.

8 A. I don't believe there was.

9 Q. All right. Was there evidence that Mr. Sullivan
10 retreated even though he didn't necessarily need to?

11 A. There was evidence that he retreated, yes.

12 Q. Okay. All right. The basis for this is clearly the
13 charge that was delivered by Judge Hill at the end of the
14 trial.

15 A. Okay.

16 Q. And as part of your preparation for the retrial, did
17 you have the opportunity to review the opinion issued by
18 the Supreme Court in State versus Morris A. Sullivan,
19 Opinion Number 25294?

20 A. I did.

21 Q. Okay. All right. And -- we'll just have this marked
22 as the Plaintiff's 1, just for identification purposes
23 only.

24 (WHEREUPON, Plaintiff Exhibit Number 1 was marked for
25 identification.)

1 Q. All right. Mr. Sumner?

2 A. Yes.

3 Q. How about look at -- take a look at Plaintiff's 1 and
4 tell me if that was the Opinion that you looked at when
5 you prepared for the retrial?

6 A. I believe it is. Yes.

7 Q. Okay. All right. And if you look at page four of
8 the seven page Opinion.

9 A. Sure.

10 Q. Does the Court cite the case of State versus Burris?

11 A. The Court does. Yes.

12 Q. Okay. And what specifically did they say about --
13 what -- which part of the Burris opinion did the Court
14 cite or refer to?

15 A. A person can be acting lawfully even if he is
16 unlawful possession of a weapon if he was entitled to arm
17 himself in self-defense at the time of the shooting.

18 Q. Okay. Was that specific jury charge delivered to the
19 jury by Judge Hill?

20 A. After looking back at the transcript this morning, I
21 believe that that -- those particular words were not
22 charged to the jury.

23 Q. Okay. Did you have any opportunity to submit jury
24 requests?

25 A. I did.

1 Q. All right. And did the -- did the State also submit
2 proposed jury requests?

3 A. I don't remember.

4 Q. Okay.

5 A. To my recollection, Ms. Horlbeck, I think that we met
6 in chambers, in Judge Hill's chambers, and he had his
7 charge book. And I believe, to the best of my memory,
8 that he was listening and I would request verbally, you
9 know, defense of necessity and he would, he would write
10 that down and, you know, sticky tab his charge book. And
11 I believe that was the way it was done, Judge. It could
12 have been on the record, I'm just not sure. It either
13 occurred on the record here or it occurred in his
14 chambers.

15 Q. Okay. Did you -- and I know you're going on
16 recollection. Do you recall asking the Judge charge the
17 jury on the State versus Burris part?

18 A. Yes.

19 Q. You did ask that?

20 A. I did.

21 Q. Okay. I'm going to have this marked as Plaintiff's

22 2.

23 (WHEREUPON, Plaintiff Exhibit Number 2 was marked for
24 identification.)

25 Q. Mr. Sumner, ---

1 A. Yes, ma'am.

2 Q. -- I'm handing you Plaintiff's 2 and ask that you
3 take a look at that and tell the court what that is.

4 A. These appear to me to be proposed jury charges.

5 Q. Okay.

6 A. A series of proposed jury charges from the State.

7 Q. Okay. And are they all proposed jury charges from
8 the State?

9 A. No.

10 Q. Okay. Are they ---

11 A. No, they're not. Forgive me. The first three -- I
12 misspoke.

13 Q. That's all right.

14 A. Spoke too quickly. It appears that the first three
15 were submitted by Ms. Monts with the Solicitor's Office.
16 It appears that -- I'm going to just put them in order,
17 Ms. Horlbeck.

18 Q. Sure.

19 A. Let me see here. Four, three, two, one. And I stand
20 corrected about not submitting written jury charges.
21 Judge Welmaker, I apologize for that. It appears that I
22 did.

23 Q. Okay.

24 A. And they are marked numbers one through five.

25 Q. And could you tell the Court what jury requests you

1 submitted to the Court?

2 A. Yes. But I'm going to, if you don't mind, I'm going
3 to just abbreviate them. I know Judge Welmaker's
4 familiar with them.

5 Q. That's fine. Please do.

6 A. The first one would be self-defense. And, Judge, if
7 you need me to read these, I will.

8 THE COURT: I don't.

9 A. The first one is self-defense. The second one would
10 be, I'm just going to read this, ladies and gentlemen of
11 the jury, I charge you that under the law of self-
12 defense, one who is attacked on his own premises is
13 immune from the duty of retreat so there would be no duty
14 to retreat in self-defense. Number three, ladies and
15 gentlemen of the jury, I charge you that a person is
16 entitled to defend himself from eminent attack on his own
17 premises, basically. Number four would be the defense of
18 necessity and the elements contained thereunder. And
19 number five would be that words accompanied by hostile
20 acts may establish self-defense.

21 Q. All right. And could you also look through the
22 State's proposed jury charges and tell the Court what
23 charges the State requested.

24 A. Okay. Basically words alone are not legal
25 provocation for deadly force, malice may be inferred or

1 implied but cannot be presumed, and the definition of
2 serious bodily injury from Black's Law.

3 Q. After having referred to the jury charges, does it
4 appear to you that either side, either the State or
5 defense, requested the State versus Burris charge?

6 A. I did not in writing. I have seen it in the
7 transcript.

8 Q. Okay. If you could look through the transcript and
9 point ---

10 A. Yeah.

11 Q. -- at maybe where ---

12 A. Would you mind if I ask -- I believe that Ms. Ratigan
13 had indicated to me what page it was on. And Ms.
14 Horlbeck, if you don't mind ...

15 Q. Sure.

16 A. It was ...

17 Q. Check on page three eighty-seven, Mr. Sumner.

18 A. Okay. Thank you. Three eighty-seven. Hold on one
19 minute. Yes. Three eighty-seven, Judge, page three
20 eighty-seven of the previous trial transcript of the
21 second retrial, second trial, forgive me, first retrial.
22 Page three eighty-seven, lines fourteen through lines
23 twenty and this is me in front of Judge Hill. The Burris
24 decision, when I quoted that yesterday, the Burris
25 decision, a person can be acting lawfully even if he is

1 in unlawful possession of a weapon. Of course, we know
2 that is a charge actually going to the jury in this case
3 if he was entitled to arm himself in self-defense at the
4 time of the shooting. That's on all fours in this case,
5 that statement right there. And I'll draw the Court's
6 attention to it. So I -- you know, when I say of course
7 we know that is a charge that is actually going to the
8 jury in this case, I would have felt like it would have
9 been charged and that would be a request.

10 Q. Okay. But it wasn't charged; was it?

11 A. You know, when I looked through the transcript, I did
12 not see those specific words. I did not.

13 Q. Did -- when the, when the Judge did not charge that,
14 did you make an objection or point it out to the Court
15 and say, please, you know, we're asking that you charge
16 this, Judge?

17 A. Not if it's not contained in the transcript, I
18 didn't.

19 Q. Okay.

20 A. And I don't recall, I don't recall, Ms. Horlbeck,
21 objecting to the charge at the conclusion of it.

22 Q. Okay. All right. Now you also requested a voluntary
23 manslaughter charge?

24 A. I don't recall -- if I did, I'm going to defer to you
25 on that.

1 Q. Okay. I believe you did and I wanted just for you to
2 briefly explain the basis for requesting that charge.
3 Explain why you thought there was heat of passion, why
4 you thought there was legal provocation.

5 A. Well, my recollection is that I had extensive
6 discussion with Mr. Sullivan about that matter, whether
7 or not to request a voluntary manslaughter charge or not
8 and leave the jury only murder or basically self-defense
9 and involuntary manslaughter. My recollection -- I know
10 that I had numerous discussions with Mr. Sullivan. We --
11 there were a lot of preparation went into the case. And
12 my recollection is that he agreed that I felt like it
13 would be a more prudent and I guess safe way to proceed
14 because if he was -- if we left the jury no choice other
15 than murder, or basically a -- an acquittal or a semi-
16 acquittal that it could go as it had gone the first time
17 which would have been a conviction for murder.

18 Q. Okay.

19 A. So I probably strategically felt like that, number
20 one. And if I could just add something further?

21 Q. Sure. Go ahead.

22 A. I believe that the Judge would have charged that
23 whether I requested it or not.

24 Q. All right. Okay. I've got one last -- one last, I
25 guess, set of questions to ask you on one topic.

1 A. Sure.

2 Q. The Judge also charged the jury that they were
3 entitled to consider the inference of malice charge.

4 Okay. And have you had the opportunity to review State
5 versus Belcher which is a real recent law that was handed
6 down, certainly after you did the retrial on Mr.
7 Sullivan's case?

8 A. No, ma'am. I have not reviewed that.

9 Q. Okay. Are you aware that State versus Belcher says
10 that a jury shall not be charged that malice may be
11 inferred from the use of a deadly weapon if there's
12 evidence presented that would, that would reduce,
13 mitigate, excuse, or justify homicide caused by use of a
14 deadly weapon?

15 A. I am not familiar with that, but I'll certainly ---

16 Q. Okay.

17 A. I know that you're correctly reciting that.

18 Q. Okay. All right. And I understand State versus
19 Burris was handed down after the Sullivan charge, but are
20 you aware, and you may not be, are you aware that State
21 versus Belcher is -- have -- was based on State verus
22 Elmore? Are you aware of that line of cases?

23 A. No.

24 Q. Okay. All right. That's all I have. Answer any

1 questions that the Attorney General has for you.

2 A. Sure.

3 **STEVE SUMNER,**

4 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

5 **DIRECT EXAMINATION**

6 **BY MS. RATIGAN:**

7 Q. A couple of quick questions. So you argued the
8 Burris decision in support of getting that involuntary
9 manslaughter charge. Would that be fair to say?

10 A. Yes.

11 Q. And I think that we can all agree that the kind of
12 match words in Burris, that exact quote weren't charged
13 to the jury, but in your opinion was the essence of that
14 quote charged to the jury?

15 A. Yes. I felt that between the involuntary
16 manslaughter charge, between habitation, between self-
17 defense, and between necessity that the jury -- that it
18 was very well covered with the jury that his conduct
19 could have been found to be lawful regarding the
20 possession of the weapon.

21 Q. I have nothing further, Your Honor.

22 **THE COURT:** Any redirect?

23 **MS. HORLBECK:** No redirect. I would like to
24 move my exhibits into evidence at this point.

25 **MS. RATIGAN:** No objection.

1 THE COURT: Without objection Exhibits 1 and 2
2 are into evidence.

3 (WHEREUPON, Plaintiff Exhibit Numbers 1 and 2 were
4 admitted into evidence.)

5 MS. HORLBECK: That's all.

6 THE COURT: Okay.

7 MS. HORLBECK: We would call Mr. Morris Sullivan
8 to the stand.

9 MR. SUMNER: I'm going to hand these to you.

10 REPORTER: Thank you.

11 MR. SUMNER: Sure. Do you want the transcripts,
12 Caroline? Okay.

13 MADAM CLERK: If you would step up here to the
14 Bible, please. Place your left hand on the Bible and
15 raise your right hand. You do solemnly swear to tell the
16 truth, the whole truth, and nothing but the truth, so
17 help you God?

18 MR. SULLIVAN: I do.

19 MADAM CLERK: Thank you. You may be seated.
20 And state your full name for the record, please.

21 MR. SULLIVAN: Morris Antonio Sullivan.

22 MADAM CLERK: Thank you.

23 MORRIS SULLIVAN,

24 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MS. HORLBECK:

2 Q. Mr. Sullivan, are you currently serving a sentence
3 for voluntary manslaughter, possession of a weapon during
4 a violent crime, and possession of a pistol under -- by a
5 person under age twenty-one?

6 A. Yes, ma'am.

7 Q. Okay. And who represented you on the retrial of your
8 case?

9 A. Mr. Steve Sumner.

10 Q. Okay. Did you and Mr. Sumner discuss a -- did you
11 and he discuss issuing or asking the -- asking the Court
12 to order or -- I'm sorry. Did you and Mr. Sumner discuss
13 asking the Court to charge the jury on voluntary
14 manslaughter?

15 A. Really not. I ain't ask for it.

16 Q. All right. Why didn't, why didn't you want that
17 charge?

18 A. Because it doesn't fit what I done.

19 Q. Okay. And if it didn't fit what you did then did you
20 want the jury to consider it?

21 A. Nah. I just ---

22 Q. What charge, what charges did you want the jury to
23 consider and make a decision on?

24 A. Self-defense.

25 Q. Okay. But what -- did you want the jury charge on

1 manslaughter, involuntary manslaughter, and murder?

2 A. No. It could have just been murder or self-defense.

3 Q. Okay. So you wanted the jury to either just convict
4 you or totally let you go. Nothing in the middle?

5 A. Nothing in the middle.

6 Q. Okay. You didn't want them to consider anything in
7 the middle. Right?

8 A. Right.

9 Q. Did you, did you tell Mr. Sumner that?

10 A. We went over a lot of things.

11 Q. Okay.

12 A. Yeah. I'm quite sure I did.

13 Q. But did you, did you tell him that?

14 A. Yeah. I probably did. Yeah.

15 Q. And what was his response?

16 A. He, like he say, it probably could have been a
17 strategic move on his part.

18 Q. Okay.

19 A. But, I mean, I didn't want it.

20 Q. All right. At the end of the day, Mr. Sumner did ask
21 the Judge to charge the jury on voluntary and involuntary
22 manslaughter?

23 A. Yes, ma'am.

24 Q. Against your wishes?

25 A. (No verbal response.)

1 Q. Against your wishes?

2 A. Yes, ma'am.

3 Q. Okay. All right. And the -- in the first trial of
4 your case that was overturned; correct?

5 A. Yes, ma'am.

6 Q. All right. And you're aware of the reason it was
7 overturned; correct?

8 A. Yes, ma'am.

9 Q. Okay. And was the first trial overturned because the
10 Judge neglected to give certain charges to the jury?

11 A. Yes, ma'am.

12 Q. Okay. And do you think that the -- tell the Court a
13 little bit about -- well, tell the Court why you're here
14 today. What you think Mr. Sumner did wrong with respect
15 to your jury charges.

16 A. Okay. In 2001 my case got overturned ---

17 Q. Okay.

18 A. -- due to the fact that I could be in unlawful
19 possession of a pistol and under the age of twenty-one,
20 due to self-defense, defense of habitat, and defense of
21 necessity.

22 Q. Okay.

23 A. And Mr. Warder, he was my first lawyer, he objected,
24 and it poured over to my appeal that got overturned.

25 Q. Okay.

1 A. Okay. I went to PCR to show and prove that it had a
2 major effect on my remaining charges because if I never
3 heed his instruction, I could never prove the first
4 element of self-defense.

5 Q. Okay.

6 A. That's what I thought bring on the difficulty because
7 I was under the age of twenty-one at the time and I had a
8 pistol. Okay. Then I got retried. So my second trial I
9 told Mr. Sumner straight up, I mean, everybody's
10 testimony is going to be the same. That's how it's going
11 to be. We went over that. And I told him just make sure
12 that my jury instructions be in connection with the
13 pistol possession charge during the commission of a
14 violent crime and under the age of twenty-one. Both of
15 them, I've got a defense for them now.

16 Q. Okay.

17 A. Because it then -- by him not ever mentioning it, the
18 jury never knowed that I had a right to be in the
19 possession of a weapon even though I was under age.

20 Q. Okay.

21 A. So the same thing the Supreme Court granted me, I'm
22 reliving it right now.

23 Q. You wanted, you wanted a jury charge that you had a
24 right, that you had the right to arm yourself and that
25 arming yourself would be lawful if it was in self-

1 defense?

2 A. Yeah.

3 Q. All right. And was the jury ever given that charge?

4 A. Nah. They was not given that.

5 Q. Did Mr. Sumner -- to your recollection did Mr. Sumner

6 object when the Court did not give that charge?

7 A. No. He did not.

8 Q. Okay. So when he failed to object, obviously that

9 matter was not reserved for appeal; correct?

10 A. True.

11 Q. And was not raised by appellant counsel or could not

12 be raised by appellant counsel?

13 A. Yeah. Right.

14 Q. Okay. All right. To your knowledge was the jury

15 instructed that there was an inference of malice or it

16 was entitled to consider an inference of malice?

17 A. I really don't ---

18 Q. Do you know?

19 A. No. I really don't know.

20 Q. Okay. I don't have any -- well, let me back up. Is

21 there anything else you think Mr. Sumner did incorrectly

22 or failed to do that you wanted him to do?

23 A. I mean, all I wanted was what the Supreme Court

24 granted me. And by him not doing that, I mean, the same

25 issue stands today. I mean, I've been living this for

1 like eleven, going on twelve years now. I fought hard
2 for this instruction that Supreme Court gave me back in
3 2001. He didn't implement it right during the
4 instruction when we had my second trial.

5 Q. All right.

6 A. And by him not implementing that, it prejudices me
7 because it has a major effect on my remaining charges.

8 Q. Okay. All right. Please answer any questions that
9 the Attorney General may have.

10 MS. RATIGAN: I don't have any questions for Mr.
11 Sullivan, Your Honor.

12 THE COURT: Thank you, sir. You may step down,
13 Mr. Sullivan.

14 MS. HORLBECK: And if I may be heard just
15 briefly, Your Honor.

16 THE COURT: Yes, ma'am. Hang on just a minute.

17 MS. HORLBECK: Sure, uh-huh (affirmative).

18 THE COURT: Yes, ma'am.

19 MS. HORLBECK: Just briefly. Your Honor, our
20 position is that the essence of the charge was not given
21 to the jury. And that's our point on -- that we just
22 want to make with respect to the unlawful possession of a
23 weapon, whether he's entitled to arm himself in self-
24 defense. And with respect to the inference of malice
25 issue, I understand that the Belcher issue -- that the

1 Belcher case was just handed down. However, the Belcher
2 case cited the Elmore case. And the Elmore -- State v.
3 Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983), although it
4 was overruled on other grounds, it clearly says if one
5 intentionally kills another with a deadly weapon, the
6 implication of malice may arise if facts are proven
7 beyond a reasonable doubt. Our position is that that
8 opened up a door for counsel to have argued that the jury
9 should not be charged on inference of malice. We could
10 very well be sitting here today, instead of State versus
11 Belcher, we could have State versus Sullivan. So we --
12 even though that law has been handed down after the
13 Sullivan case was retried, we're asking that he be given
14 consideration under that as well. And I'll be glad to
15 hand these cases if your Honor wants to see them although
16 I'm sure you know about them already. That's all we
17 have.

18 THE COURT: Okay. Anything in reply or any
19 evidence that you wish to put up?

20 MS. RATIGAN: No. Ms. Horlbeck has called, I
21 think, all the available witnesses in this case. We rest
22 on Mr. Sumner's testimony, the trial transcript, and we
23 believe that all of Mr. Sullivan's issues can be rebutted
24 by the trial transcript and strategic decision. And
25 clearly in terms of the inference of malice issue, Mr.

1 Sumner cannot be expected to be clairvoyant. The law as
2 charged at the time was accurate. Clearly, he can't see
3 into the future and see that the Supreme Court was going
4 to issue a new rule in Belcher just a few weeks ago. And
5 it -- and again, just something that was brought out on
6 cross examination of Mr. Sumner -- well, the magic words
7 of Burris, that quote wasn't specifically charged to the
8 jury. Clearly the essence of that charge, when you
9 combine the self-defense, the necessity, the involuntary
10 manslaughter, when you look at all that as a whole, the
11 clear intent of the -- of that quote from Burris is
12 conveyed to the jury. Therefore, we would argue Mr.
13 Sullivan has not met his burden of proof and his
14 application should be denied.

15 MS. HORLBECK: And we agree. We're not, we're
16 not asking that Mr. Sumner be clairvoyant. But we, you
17 know, we are arguing that he should be expected to know
18 the -- not only the existing law but some of the cases
19 which led up to the laws. And certainly be aware of any
20 loopholes that exist so that he can argue those and
21 assert arguments before the Court such as that the
22 inference of malice should not be argued in this case.

23 THE COURT: The same argument that you've used
24 in the past before Belcher, Ms. Horlbeck?

25 MS. HORLBECK: This is an argument -- no. I

1 don't think I've ever had a case like this at a trial.

2 THE COURT: Okay.

3 MS. HORLBECK: And, you know, I'm not -- please
4 don't misunderstand me. I know it's hard to go back and
5 recreate the wheel. And I'm certainly not perfect in my
6 trials. But in this case, you know, I do get to sit in
7 the fortunate seat of being able to review and I am able
8 to look at the whole thing. And since I'm able to do
9 that, I have to do what's in the best interest of my
10 client and make these arguments.

11 THE COURT: Yes, ma'am. I understand that. And
12 you believe if we'd had this hearing in August that you'd
13 be making that same argument about Belcher?

14 MS. HORLBECK: Well, August won't be ...

15 THE COURT: I won't ask you to answer that.
16 Okay. I'll have to ---

17 MS. HORLBECK: I don't know. I may not have,
18 you're right. I may not have made that, you know, that
19 same argument.

20 THE COURT: I'll have to, I'll have to review
21 the transcript, obviously.

22 MS. HORLBECK: But I'd like to think that I
23 would.

24 THE COURT: And read that Judge -- the Judge's
25 charge and see the ---

1 MS. HORLBECK: Thank you, Your Honor.

2 THE COURT: Obviously, the issue is somewhat
3 narrow and thank you for that.

4 MS. HORLBECK: It is.

5 THE COURT: We -- I just need to review the
6 transcript and particularly the charges and see if Burris
7 was complied with in my judgment. Thank you both for
8 your cogent arguments.

9 MS. HORLBECK: Thank you, Your Honor.

10 MS. RATIGAN: Thank you, Your Honor.

11

12

13 END OF REQUESTED TRANSCRIPT OF RECORD

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing
6 is a true, accurate, and complete transcript of record of
7 all the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal,
9 in the Circuit Court for Greenville County, South
10 Carolina, on the 12th day of November, 2009.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

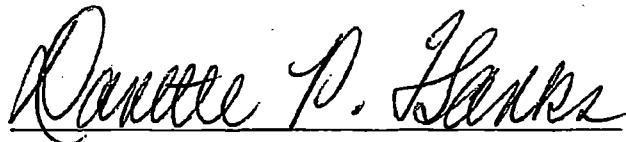
13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 May 25, 2010

16

17

18



19

Circuit Court Reporter

20

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Morris Antonio Sullivan,)
 S.C.D.C. No. 256260,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2009-CP-23-0711

ORDER OF DISMISSAL

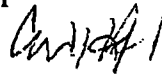
FILED
 2009 DEC 31 P 12:19
 CLERK OF COURT
 GREENVILLE COUNTY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 28, 2009. The Respondent made its return on April 17, 2009. An evidentiary hearing into the matter was convened on November 12, 2009 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Steven W. Sumner, Esquire. The Court had before it a copy of the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the September 1998 term of the Greenville County Grand Jury for murder (1998-

1


GS-23-4313, count 1) and possession of a weapon during commission of a violent crime (1998-GS-23-4313, count 2)¹ and at the December 2005 term for possession of a pistol under 21 years of age (2005-GS-23-9999). He was represented by Steven W. Sumner, Esquire.

After the State called the case to trial, the Applicant was found guilty of voluntary manslaughter and both weapons charges. On January 20, 2006, the Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of eighteen (18) years for voluntary manslaughter, five (5) years for possession of a weapon during commission of a violent crime, and one (1) year for possession of a pistol under 21 years of age.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders² brief. The Court of Appeals dismissed the appeal. State v. Sullivan, Op. No. 2008-UP-478 (S.C. Ct. App. filed August 11, 2008).

ALLEGATIONS

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

1. Ineffective assistance of trial counsel.
2. Courts failure during instructions.
3. Miscarriage of justice.

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

¹ These indictments were originally brought to trial in February 1999. After the jury found the Applicant guilty, he filed a PCR application. The Honorable John W. Kittredge granted post-conviction relief and ordered a new trial in an order dated October 2, 2002. The State unsuccessfully attempted to appeal this decision and the charges were remanded for a new trial.

² Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

opportunity to observe each witness who testified at the hearing, and to closely pass upon their 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).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

Trial counsel testified the victim was killed after he and the Applicant got into an altercation in the Applicant’s home. Trial counsel testified he told the trial judge that he wanted a charge from the case of State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999). Trial counsel explained the Burriss charge was that a person could be acting lawfully even if he is in unlawful

possession of a weapon. Trial counsel testified he argued Burriss in support of his request for a charge on involuntary manslaughter. Trial counsel testified that, while the specific words of the Burriss charge were not given to the jury, the essence of it was conveyed in the jury charges for involuntary manslaughter, self-defense, and the defenses of habitation and necessity. Trial counsel stated he and the Applicant discussed whether to seek a voluntary manslaughter ^{INSTRUCTION} discussion. Trial counsel stated it was a strategic decision to ask for the charge and that the Applicant agreed. Trial counsel stated he did not ask for a charge that one cannot infer malice from the use of a deadly weapon.

The Applicant stated he did not want voluntary manslaughter charged to the jury. The Applicant stated the "probably" told trial counsel that he only wanted jury instructions on murder and self-defense.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have insisted on a jury charge from State v. Burriss. This Court notes trial counsel cited Burriss in arguing for a charge that a person could be acting lawfully even if he is in unlawful possession of a weapon. (Trial transcript, pp.387-88). This Court notes this language was not charged word-for-word to the jury but that the essence of the charge was conveyed – specifically in the jury charges for involuntary manslaughter, self-defense, necessity, and defense of habitation. (Trial transcript, pp.445-68). This Court also notes that trial counsel argued this concept to the jury in closing argument. (Trial transcript, pp.419-22). This Court finds the Applicant failed to meet his burden of proving trial counsel should have insisted on a more specific Burriss charge.

This Court finds the Applicant failed to meet his burden of proving trial counsel should not have asked for a jury charge on voluntary manslaughter. This Court finds trial counsel discussed the matter with the Applicant and the Applicant agreed to request the voluntary manslaughter jury charge. Trial counsel testified it was a strategic decision to seek this charge and that, based on the evidence, the trial judge likely would have charged it anyway. This Court agrees. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). This Court also finds the facts and evidence in this case – that an altercation escalated through words and conduct into a shooting – supported a charge of voluntary manslaughter. See State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001) (holding the law to be charged must be determined from the evidence presented at trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have asked for a jury charge that one cannot infer malice from the use of a deadly weapon. This Court notes that, in support of this argument, the Applicant cited the recent case of State v. Belcher, Op. No. 26729 (S.C. Sup. Ct. filed Oct. 12, 2009). Belcher, however, was decided more than three (3) years after the trial in this case. This Court notes that trial counsel is not expected to be clairvoyant about changes in the law. See State v. Gilmore, 314 S.C. 453, 445 S.E.2d 454 (1994).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he

was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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 trial 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 this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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

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AWH L

AND IT IS SO ORDERED this 18 day of Dec, 2009.



G. Edward Welmaker
Resident Judge
Thirteenth Judicial Circuit

546

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Morris Antonio Sullivan, 256260

Plaintiff

v.

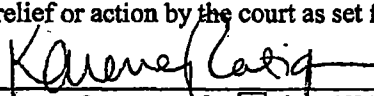
State Of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2009-CP-23-0711

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Caroline M. Horlbeck, Esquire, Bar No. Address: 101 Whitsett Street Greenville SC 29601 phone: (864) 235-2900 fax: (864) 467-1916 e-mail: other:	Defendant's Attorney: Karen C. Ratigan, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	December 14, 2009 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	_____ JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE SUPREME COURT

Morris A. Sullivan,)
)
Appellant,)

C.A. No. 2009-CP-23-711

-vs-)

CERTIFICATE OF SERVICE

State of South Carolina,)
)
Respondent.)

This is to certify that I am an employee in the law office of Lawrence W. Crane, attorneys for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

✓ Ms. Lorie French
S.C. Office of Appellate Defense
1205 Pendleton St., Suite 306
Columbia, SC 29201

Karen Ratigan, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Caroline M. Horlbeck
Caroline M. Horlbeck

Greenville, South Carolina

Feb. 4, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF A PISTOL UNDER 21 YEARS OF AGE

At a Court of General Sessions, convened on DECEMBER 13, 2005 the Grand Jurors of Greenville County present upon their oath:

That MORRIS ANTONIO SULLIVAN did in Greenville County, on or about the 16th day of January, 1998, while at [REDACTED] Fountain Inn, South Carolina, willfully and unlawfully have in his possession and under his control a pistol, the said defendant being under the age of twenty-one (21). This is in violation of § 16-23-30 of the South Carolina Code of Laws (1976) as amended.

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

Joyce K. Meats
SOLICITOR

549

WITNESSES

Ladnier JS

FOUNTAIN INN POLICE DEPARTMENT

1/16/1998

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

B/M

ACTION OF GRAND JURY

TRUE BILL

A. Daniel Jenkins, Jr.
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

GUILTY

Jon A. Singer Jr.
Foreperson of Petit Jury

1/20/06
Date:

DOCKET NO. 2005-GS-23-

JLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

DECEMBER TERM 2005

1/20/06

GUILTY

THE STATE

vs.

MORRIS ANTONIO SULLIVAN

Indictment for

2364

POSSESSION OF A PISTOL UNDER 21 YEARS
OF AGE

VIOLATION § 16-23-30

139

551

WITNESSES

SGT. C. A. MCCALL

FOUNTAIN INN PD

1/16/98

REF. F 590064
ARREST WARRANT NO. F 590063
98-003180, 98-003179

ACTION OF GRAND JURY

TRUE BILL

Marion A. Turner

FOREMAN GRAND JURY

Foreman of Grand Jury

VERDICT

*Guilty Count 1 and
Count 2*

Nancy B. Cole Feb 11, 1999
Foreman of Petit Jury Date:

98-GS-23 004313
DOCKET NO.

BSD

The State of South Carolina,

County of GREENVILLE

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 1998

H. Sullivan 99

THE STATE

vs.

MORRIS ANTONIO SULLIVAN

0116

0549

Indictment for

COUNT ONE - MURDER
COUNT TWO - POSSESSION OF A WEAPON
DURING THE COMMISSION OF OR THE
ATTEMPT TO COMMIT A VIOLENT CRIME

VIOLATION § 16-3-10
§ 16-23-490

an