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SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

August 9, 2018

The Honorable Roger L. Couch
S.C. Circuit Court
PO Box 2614
Spartanburg, SC 29304

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AUG 09 2018

S.C. SUPREME COURT

Re: Christopher L. Hampton v. State; Appellate Case No. 2017-002374

Dear Judge Couch:

Attached is an Order dated August 2, 2017, from the South Carolina Supreme Court remanding the above titled case for a Reconstruction PCR Hearing to be held in your court on behalf of Petitioner Christopher L. Hampton. Petitioner was granted a belated PCR Austin appeal from which no transcript is available. The procedural history of the case is outlined in the reconstruction petition request filed in the case (a copy of which is enclosed), and enclosed also is a copy of the Order issued in the case. In addition, a copy of the original Order of Dismissal which you signed and filed is enclosed as well.

Please contact me at your earliest convenience as to any dates on which a reconstruction hearing could be heard based on upcoming scheduling openings.

Thanking you in advance for your attention to this matter, I remain

Sincerely,

Wanda H. Carter

Deputy Chief Appellate Defender

WHC/smf

Enclosure: Order dated August 2, 2018

cc: Honorable Daniel E. Shearouse
Jordan Cox, Esquire
William Jeffrey McGurk, Esquire
Christopher L. Hampton #314697

The Supreme Court of South Carolina

Christopher L. Hampton, Petitioner,

v.


State of South Carolina, Respondent.

Appellate Case No. 2017-002374

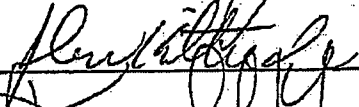
ORDER

This matter is before the Court by way of a notice of appeal from an order of the circuit court finding petitioner is entitled to a belated review of the order issued in petitioner's first post-conviction relief (PCR) action pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). However, counsel for petitioner states the record of petitioner's first PCR hearing is not available. Accordingly, counsel petitioner asks this Court to hold this appeal in abeyance and remand the case to the circuit court for reconstruction of the record of the hearing. The State has not filed a return to the motion.


We hereby hold this appeal in abeyance and remand the matter to the Honorable Roger L. Couch to reconstruct the record of the evidentiary hearing on petitioner's first PCR application. See *Koon v. State*, 358 S.C. 359, 595 S.E.2d 456 (2004), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *China v. Parrott*, 251 S.C. 329, 162 S.E.2d 276 (1968); *State v. Ladson*, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007). Counsel for petitioner is ordered to contact counsel for respondent and Judge Couch within ten days of the date of this order to schedule such hearings as Judge Couch deems appropriate. Counsel for petitioner shall provide an update to the Clerk of this Court no later than fifteen days from the date of this order, and every fifteen days thereafter, with copies of the updates provided to counsel for respondent. If Judge Couch determines reconstruction is not possible, he shall immediately notify this Court and the parties of that determination. If the record is reconstructed, counsel for petitioner shall notify this Court and the matter will proceed upon petitioner's receipt of the transcript from the reconstruction hearing.



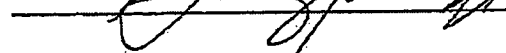
C.J.



J.



J.



J.

Few, J., not participating

Columbia, South Carolina
August 02, 2018

cc:
Jordan Adraine Cox, Esquire
Wanda H. Carter, Esquire
M. Hope Blackley

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APPELLATE DEFENSE

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Larry B. Hyman, Circuit Court Judge

CHRISTOPHER HAMPTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002374

PETITION FOR ORDER
TO RECONSTRUCT THE RECORD OF
PETITIONER'S FIRST PCR HEARING

Pursuant to Rule 240, SCACR, the undersigned counsel requests that the above titled appeal be held in abeyance until this Court rules on the Petition for Order to Reconstruct the Record of Petitioner's First PCR Hearing held on September 17, 2007, as such is needed to perfect a subsequent PCR Order signed by Judge Larry B. Hyman on October 4, 2017, granting petitioner's request for a belated PCR appeal per Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Note that no prior extensions have been requested in this appeal. In support of the petition, counsel for petitioner would submit the following information.

1.) Petitioner pled guilty to murder on April 3, 2006, at the Spartanburg County General Sessions Court before Judge John C. Few and was sentenced to life imprisonment. Petitioner's pro se notice of appeal was improperly served and as a result, an Order dismissing the appeal was issued on June 26, 2013, and filed on July 19, 2013, by the South Carolina Supreme Court.

2.) On September 15, 2006, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. In response to this PCR action, a PCR hearing was convened on September 17, 2007, at the Spartanburg County Courthouse before Judge Roger L. Couch. On November 2, 2007, Judge Couch signed an Order of Dismissal, which was filed on November 5, 2007, denying petitioner's allegations of ineffective assistance of counsel in the case, but granting him a belated direct appeal under White v. State, 263 S.C. 110, 208 S.E.2d (1974). However, because PCR counsel failed to appeal Judge Couch's Order of Dismissal, petitioner did not enjoy the benefit of an appeal of his first PCR action or his belated direct appeal that was granted to him.

3.) Thereafter, petitioner filed a subsequent PCR action (2014-CP-42-1197) requesting a belated PCR appeal of his first PCR action pursuant to Austin v. State, supra, which also included the grant of a belated direct appeal per White v. State, supra. A PCR hearing was held for case number 2014-CP-42-1197 on November 9, 2015, at the Spartanburg County Courthouse before Judge Larry B. Hyman. On October 4, 2017, Judge Hyman issued an Order granting petitioner's request for an Austin review, which in effect included a belated direct appeal as well.

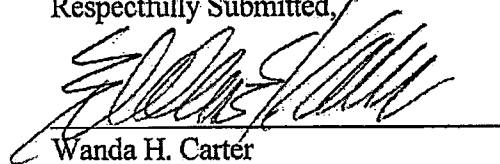
4.) A transcript of petitioner's trial court proceeding has been transcribed, but a transcript of petitioner's first PCR hearing held on September 17, 2007, has not been

transcribed. In order to perfect petitioner's belated Austin appeal, a transcript of petitioner's first PCR hearing is needed for appellate review, but it is unlikely that the record from that hearing is available since it has been five years since that hearing. Out of an abundance of caution, counsel has submitted a request for the record of petitioner's first PCR hearing. Nonetheless, in light of these circumstances, counsel would request an Order to Reconstruct the first PCR hearing held on September 17, 2007.

5.) When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. See Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002), and China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968). See also Deaton v. Leath, 279 S.C. 82, 302 S.E.2d 335 (1985), where the Court granted the appellant's motion to set aside their convictions and remand for a new trial where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal.

WHEREFORE, the undersigned counsel requests that this Court grant this Petition for an Order to Reconstruct the Record of Petitioner's First PCR Hearing in order for petitioner's Austin PCR appeal to be perfected.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

June 12, 2018

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Larry B. Hyman, Circuit Court Judge

CHRISTOPHER HAMPTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

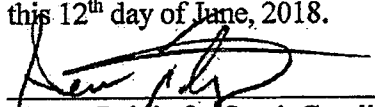
The undersigned attorney hereby certifies the Petition for Order to Reconstruct the Record of Petitioner's First PCR Hearing in the above referenced case has been served upon Jordan Cox, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 12th day of June, 2018.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 12th day of June, 2018.



Notary Public for South Carolina

(L.S.)

My Commission Expires: October 30, 2022.

AK# 300077

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2006-CP-42-3049

Christopher Hampton, # 314697;

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

I. PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 15, 2006. An evidentiary hearing into the matter was convened on September 17, 2007, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by W. Jeffrey McGurk, Esquire. The Respondent was represented by S. Prentiss Counts of the South Carolina Attorney General's Office. This Court had before it the application, the respondent's return, the guilty plea transcript, the records of the Spartanburg County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

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At the hearing, the Applicant moved for a continuance to review discovery, specifically report produced by Detective Stedman. The Court denied this motion but allowed the Applicant time to review this document.

At the hearing, the State consented to allow the Applicant to pursue a direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was

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indicted at the August 2005 term of the Spartanburg County Grand Jury for Murder (05-GS-42-3629) and Criminal Sexual Conduct with a Minor, Second Degree (05-GS-42-3630). The Applicant was represented by Michael Bartosh, Esquire. On April 3, 2006, the Applicant pled guilty to Murder. CSC with Minor, 2nd was *not prosect.* Applicant was sentenced by the Honorable John C. Few to confinement for Life.

A Motion to File Notice of Appeal Out of Time was filed on the Applicant's behalf on May 10, 2006 stating that trial counsel had passed away two (2) days after trial and had not filed Notice of Appeal. The Court of Appeals denied this motion by Order of Dismissal dated May 17, 2006. The remittitur was issued June 1, 2006.

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

Applicant's Testimony

At the PCR evidentiary hearing the Applicant testified that counsel was ineffective for failing to move to suppress his statement. He stated that his statement was involuntarily given. The Applicant described the circumstances around giving his confession in great detail.

The Applicant was picked up by Detective Stedman and Detective Lamb from the Edgefield Federal Penitentiary. Shortly after departure, the Detectives pulled over to the side of the road and served the Criminal Sexual Conduct warrant on him. They did not serve the Murder warrant at that time. At that time, he refused to sign the pre-interrogation waiver and asked for an attorney. They continued to their destination and the Detectives informed him that a press conference had been set for that afternoon. The Applicant stated that the Detectives told him there would be "beatings" and that he was in "their" custody now. They stopped at the Clinton Detention Facility to allow the Applicant to use the restroom. Once arriving in Spartanburg, the Detectives took the Applicant to

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the narcotics building. There he ate a cheeseburger. He was not left alone and asked for an attorney. The Detectives continued talking to the Applicant and showed various evidence from the crime scene. The Applicant finally involuntarily gave in to the pressure and said, "let's go." The Applicant proceeded to take the Detectives to where he had buried the body. Later that night he signed a statement indicating he was guilty of the murder. He stated that he did not mention that the victim had a box-cutter in his statement because the Detectives told him to make up a story. They stated that Solicitor Gowdy had told them that the Applicant had the paintbrush and could to paint it however he liked.

The Applicant testified that counsel was ineffective for failing to move for a change in venue. He stated that the entire case happened in Spartanburg County and that he was prejudiced by having to proceed forward in that county.

The Applicant testified that counsel was ineffective for failing to explain to him that if he proceeded to trial, he had the opportunity to be found guilty of a lesser included offense. He stated that counsel did not define malice for him and he was unaware that he had any other choices at besides guilty or murder or not guilty of murder.

The Applicant testified that counsel was ineffective for failing to present further mitigating circumstances to the sentencing judge. He should have informed the Judge that he had a three (3) year old daughter, that he had been working, and that he had a non-violent criminal history.

The Applicant testified that counsel was ineffective for failing to show him discovery from the State. He was never shown the videotape of his confession, his written statement, Detective Stedman's report, or his mental health evaluation.

The Applicant testified that counsel was ineffective for failing to adequately meet with the Applicant prior to his guilty plea. He stated that counsel only met with him twice for a little over an

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hour before he pled guilty.

The Applicant testified that counsel was ineffective for failing to pursue a theory of self-defense. He stated that he sent counsel letters stating that the victim had a box-cutter and he only hit her in the head with a hot iron out of self defense. The reason he hid the body was because he was scared. The reason he lied to law enforcement and did not tell them she had a box-cutter was because he was scared. The reason he did not tell the *Herald Journal* about the box-cutter in their interview was because he was scared. The reason he returned after he had been released from jail on unrelated charges and dug up the body and decapitated her to dispose of her head in a dumpster was because he was scared.

The Applicant testified that counsel was ineffective for failing to object as Solicitor Gowdy read a letter from a family member of the victim asking for the maximum sentence. He stated that the State was not to recommend the maximum sentence at the plea. By reading Rebecca's statement, the Solicitor was allowed to indirectly ask the Court for the maximum sentence.

The Applicant testified that the reason he lied to the plea judge was because he just wanted to get it over with.

Detective Stedman's Testimony

Detective Jay Stedman testified regarding the details surrounding the Applicant's confession. He and Detective Lamb picked the Applicant up from Edgefield Federal Penitentiary on August 15, 2005 in an unmarked SUV. They took the unmarked SUV so they would have more room. Less than a mile from the penitentiary, they pulled over and served the Criminal Sexual Conduct warrant on the Applicant. At that time, the Applicant refused to sign the pre-interrogation waiver. Detective Stedman recalls casual conversation for most of the ride back. The Applicant was never threatened or coerced. He never asked for an attorney. No one ever threatened him with beatings.

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The Detectives did discuss certain facts of the case among themselves on the drive and they probably mentioned the press conference to the Applicant.

The Detectives stopped in Clinton and arranged with the County Jail to allow the Applicant to use their restroom. When they arrived in Spartanburg, they took the Applicant to the Narcotics building because they assumed the press would already be at the station. They put him in an interrogation room and re-read his Miranda rights. They gave the Applicant a cheeseburger and cigarettes. The Detectives showed the Applicant pictures of evidence and discussed the different lies he had told law enforcement previously. They told the Applicant that the victim's blood had been found in his apartment. The Applicant got up and stated, "let's go." He took them to the body. Later he gave a full, video-taped confession to law enforcement after signing a pre-interrogation form.

The Detective testified that the Applicant was never threatened or coerced. He never asked for an attorney. He was never denied food or water or access to a restroom. The Applicant was read his Miranda rights multiple times. The Applicant voluntarily showed the Detectives where the body was buried. The Applicant voluntarily gave a statement to law enforcement.

III. APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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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 v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Statements During a Guilty Plea

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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Trial Judge Colloquy Cures Counsel Statements

Even where counsel fails to advise, or even misadvises, a defendant regarding a critical aspect of his charges the error is cured where the trial court during a guilty plea properly advises the defendant about the matter in question. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). See also Knox v. State, 340 S.C. 81, 86, 530 S.E.2d 887, 889 (2000), *overruled on other grounds by State v. Gentry*, 2005 WL 524813 (S.C.).

Venue

It is the defendant's burden to demonstrate actual juror prejudice as a result of pretrial publicity. Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004).

Time Spent with Applicant

The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U.S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

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Direct Appeal Issue

At the hearing, the Applicant alleged that he was denied effective assistance of counsel when trial counsel failed to inform him of his right to appeal his guilty plea. The State consented to allow the Applicant to file his belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

This Court agrees that the allegation that the Applicant was denied a direct appeal is meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California.¹ White, Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).²

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the Applicant is entitled to a belated review of his conviction(s). The Applicant's lack of a direct appeal can be remedied by a petition for belated review pursuant to White v. State.

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¹ 386 U.S. 738, 87 S.Ct. 1396 (1967).

² "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review." [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

Other Allegations of Ineffective Assistance of Counsel

This Court finds the Applicant's testimony to be not credible on all issues. This Court finds Detective Stedman's testimony to be credible.

This Court finds that no credible evidence was presented to prove that the Applicant's statement was involuntarily given. This Court finds that the Applicant's statement was freely and voluntarily given. Nevertheless, this Court finds that the Court informed the Applicant that by pleading guilty, he would be giving up his right to challenge the voluntariness of the statement (Tt. Pg. 17, lines 20- Pg. 28, line 10). He informed the plea judge that he had discussed this with counsel and wished to waive that right. This Court notes that the Applicant told the plea judge that he had no complaints regarding law enforcement (Tt. p. 8, lines 5-9). The Applicant failed to present a valid reason why he should be allowed to depart from the truth of his statements during his guilty plea. This Court finds the Applicant freely and voluntarily waived his right to challenge his statement and denies and dismisses this allegation.

This Court finds that the Applicant has failed to prove he was prejudiced by counsel's failure to file a motion to change venue. The Applicant bears the burden of proving that pre-trial publicity would affect the jurors impartiality. Here, the Applicant waived his right to a jury trial, thus waiving his right to question the impartiality of the potential jury pool (Tt. p. 7, lines 4-14). The Applicant failed to present a valid reason why he should be allowed to depart from the truth of his statements during his guilty plea. The Applicant provided no evidence whatsoever that he was prejudiced in any way because this motion was not made. This Court denies and dismisses this allegation.

This Court finds that counsel was not ineffective for failing to explain to the Applicant that he could ask for a lesser included offense at trial. This Court finds that the Applicant is not credible. Furthermore, this Court finds that the plea judge informed the Applicant that he was waiving his

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right to claim that he was guilty of a lesser included offense. (Tt p. 18, lines 14-18). The Applicant responded that he wanted to waive that right. The Applicant failed to present a valid reason why he should be allowed to depart from the truth of his statements during his guilty plea. This Court finds that the Applicant was informed of his right to pursue a lesser included offense and freely, intelligently, and voluntarily waived that right.

This Court finds that counsel was not ineffective for failing to define malice for the Applicant. This Court finds that the Applicant is not credible. This Court notes that counsel informed the plea judge that he discussed the elements the State would have to prove to find him guilty of murder (Tt. p. 3, line 22 - p. 4, line 2). This Court also notes that the plea judge asked the Applicant if he understood the theory of malice aforethought and he stated that he did. (Tt. p. 19, lines 18-20). The plea judge also asked if he had discussed malice aforethought with counsel and he answered that he had (Tt. p. 19, lines 21-22). The Applicant failed to present a valid reason why he should be allowed to depart from the truth of his statements during his guilty plea. This Court denies and dismisses this allegation.

This Court finds that counsel was not ineffective for failing to inform the plea judge of other mitigating circumstances during sentencing. This Court finds that counsel adequately presented mitigation to the plea judge. This included, but was not limited to, his age, his family background, his educational background, his work background, his ultimate cooperation with law enforcement and his remorse for what he did (Tt. p. 40, line 2 - p. 44, line 1). Furthermore, the Applicant has failed to prove that he was prejudiced in any way by the omission of his daughter and his non-violent criminal history. This Court finds the Applicant has failed to carry his burden and denies and dismisses this allegation.

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This Court finds that counsel was not ineffective for failing to share discovery with the Applicant. This Court finds that the Applicant was not credible. Furthermore, the Applicant has presented no evidence that he was prejudiced in anyway from failing to review videotape of his confession, his written statement, Detective Stedman's report, or his mental health evaluation. This Court notes that the Applicant was allowed to review his statement during the guilty plea proceedings (Tr. p. 16, lines 16-19). This Court finds the Applicant has failed to carry his burden of proof and denies and dismisses this allegation.

This Court finds that counsel was not ineffective for failing to meet with the Applicant for a sufficient amount of time before the guilty plea. This Court finds that the Applicant was not credible. This Court notes that the Applicant informed the Court that he had enough time to discuss his decision to plead guilty (Tr. p. 9, lines 24 - p. 10, lines 1). He also told the Court that he was completely satisfied with counsel, he had done everything he wanted him to do (Tr. p. 7, lines 21 - p. 8, line 1). The Applicant failed to present a valid reason why he should be allowed to depart from the truth of his statements during his guilty plea. Furthermore, the Applicant has failed point to any specific matters counsel failed to discover which would have caused him to proceed with a jury trial instead of pleading guilty, aside from his other allegations of ineffective assistance of counsel. This Court finds this allegation is wholly without merit and denies and dismisses

This Court finds that counsel was not ineffective for failing to pursue the theory of self defense at trial. This Court notes that the Applicant waived any defenses he had during his guilty plea (Tr. p. 18, lines 14 - 19). This Court finds that the Applicant was not credible. Furthermore, the Applicant failed indicate any elements of self-defense in his video-taped statement to police or his subsequent interview with the *Herald Journal*. During his guilty plea, the Applicant told the judge that his statement was accurate (Tr. p. 17, lines 13 - 17). He also agreed with the Solicitor's

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recitation of the facts (Tr. p. 15, line 11). The Applicant failed to present a valid reason why he should be allowed to depart from the truth of his statements during his guilty plea. The mere existence of letters written to counsel with an alternate version of events does not carry the burden to prove that counsel was ineffective for failing to pursue self-defense. This Court finds that the Applicant knowingly and intelligently waived his right to pursue self-defense and denies and dismisses this allegation.

This Court finds that counsel was not ineffective for failing to object as the Solicitor read a letter written by a family member of the victim. The record clearly indicates that the letter was not written by the Solicitor and did not convey his wishes. The plea judge would have easily understood this. The Court finds that this allegation is wholly without merit and denies and dismisses this allegation.

Furthermore, this Court finds that the Applicant's plea was freely and voluntarily given. He testified that his answers were his own, were truthful, and that no one had told him how to answer the questions (Tr. p. 11, lines 12 - 24). The Applicant failed to present a valid reason why he should be allowed to depart from the truth of his statements during his guilty plea. This Court finds that the Applicant has failed to prove prejudice from any alleged ineffective assistance of counsel received. The Applicant failed to show, with reasonable probability, that but for counsel's alleged ineffectiveness, he would not have pled guilty. This Court finds that the Applicant failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Strickland v. Washington; Cherry v. State. The Court finds that the Applicant cannot satisfy either requirement of the Strickland test

As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this order, the Court finds that the



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Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that the Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are denied and dismissed with prejudice.

V. CONCLUSION

Based on all the foregoing, this Court finds and concludes that all allegations in this application for post conviction relief, with the exception of his belated appeal, must be denied and dismissed with prejudice. All other allegations or claims that were raised or could have been raised in this application are hereby dismissed with prejudice.

This Court further concludes that the Applicant is entitled to a belated direct appeal of his criminal conviction. White v. State; Davis v. State.


This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, he must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

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IT IS THEREFORE ORDERED:

1. This application for post conviction relief is denied and dismissed with prejudice.
2. Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicants' convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review
3. The Applicant is remanded to the custody of the South Carolina Department of Corrections to serve the remainder of his sentence.

AND IT IS SO ORDERED this 2nd day of November, 2007.



ROGER L. COUCH
Presiding Judge
Seventh Judicial Circuit

 South Carolina.

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