



STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

RECEIVED

APR 23 2012

S.C. Supreme Court

WERNER SCOTT HADDON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR EXTENSION TO FILE  
PETITION FOR WRIT OF CERTIORARI  
AND APPENDIX

3

The undersigned counsel would respectfully request a **final thirty-day extension, until May 23, 2012**, in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by two prior orders of this Court.

2. Counsel filed the petition for rehearing in the case of State v. Benjamin P. Green in the Supreme Court on April 19, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Isiah T. Smith v. State in the Supreme Court on April 18, 2012. Counsel filed the petition for writ of certiorari and

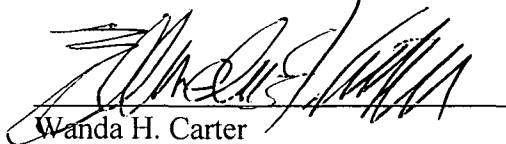
accompanying appendix in the case of Hazel Stoudemire v. State in the Supreme Court on April 13, 2012. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Demetrick McQueen in the Court of Appeals on April 12, 2012. Counsel had an oral argument in the case of State v. Kevin J. Williams, Sr. in the Court of Appeals on April 10, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Albert C. Smith, II v. State in the Supreme Court on April 9, 2012. Counsel filed the petition for rehearing in the case of State v. Lewis D. Williams in the Court of Appeals on March 30, 2012. Counsel had an oral argument in the case of Brian Gebhard v. State in the Court of Appeals on March 29, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Lenson Clyburn, Jr. v. State in the Supreme Court on March 26, 2012. Counsel filed petitions for writ of certiorari and accompanying appendices in the cases of Glenn Pernel v. State, Sylvester Toomer v. State and William Gladney Harden v. State in the Supreme Court on March 23, 2012. Counsel had an oral argument in the case of State v. Lewis Williams in the Court of Appeals on March 12, 2012. In February 2012, Counsel had oral arguments in the cases of State v. Otis Lamar Bland and State v. James Babb in the Court of Appeals, as well as an oral argument in the case of Benjamin Green v. State in the Supreme Court. Additionally in February, 2012, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Sherinette Wannamaker v. State, Henry Belton v. State, Tony Drayton v. State, William Hickman v. State and John E. Prigmore v. State. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Lawrence Brown in the Court of Appeals in February, 2012 as well.

3. This request is made in good faith, and not for purposes of delay. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

4. As indicated by her consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final thirty-day extension, until May 23, 2012**, in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



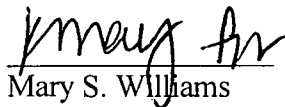
Wanda H. Carter  
Deputy Chief Appellate Defender



Robert M. Dudek  
Chief Appellate Defender

April 23, 2012

I DO NOT OPPOSE:

  
Mary S. Williams

# The Supreme Court of South Carolina

Werner Scott Haddon,                      Petitioner,

v.

State of South Carolina,                      Respondent.

The Honorable Diane Schafer Goodstein  
Orangeburg County  
Trial Court Case No. 2010-CP-38-01054

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## ORDER

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

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

March 23, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter  
Assistant Attorney General Mary S. Williams

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Certiorari to Orangeburg County

MAR 22 2012

Diane Schafer Goodstein, Circuit Court Judge

S.C. Supreme Court

WERNER SCOTT HADDON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR EXTENSION TO FILE  
PETITION FOR WRIT OF CERTIORARI  
AND APPENDIX

2

The undersigned counsel would respectfully request a thirty-day extension in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

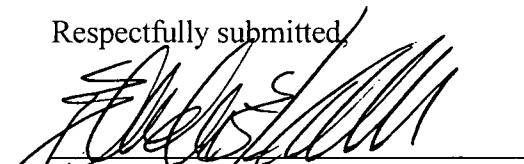
1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.
2. Counsel is working on and plans to file the petitions for writ of certiorari and accompanying appendices in the cases of Sylvester Toomer v. State and Lenson Clyburn, Jr. v. State in the Supreme Court on March 28, 2012. Additionally, Counsel is preparing for an oral argument in the case of Brian Gebhard v. State in the Court of Appeals on March 29, 2012. Counsel had an oral argument in the case of State v. Lewis Williams in the Court of Appeals on March 12, 2012. Counsel had an oral argument in the case of State v. Otis Lamar Bland in the Court of Appeals on February 29, 2012.

Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Sherinette Wannamaker v. State in the Supreme Court, and the initial brief of appellant and designation of matter in the case of State v. Lawrence Brown in the Court of Appeals on February 27, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Henry Belton v. State in the Supreme Court on February 24, 2012. Counsel had an oral argument in the case of Benjamin Green v. State in the Supreme Court on Thursday, February 23, 2012. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Tony Drayton v. State and William Hickman v. State with the Supreme Court on February 16, 2012. Counsel had an oral argument in the case of State v. James Babb in the Court of Appeals on February 14, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of John E. Prigmore v. State with the Supreme Court on February 6, 2012. In January, 2012, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of James Blanding v. State, Trenton Bennett v. State, Bobby Gibson v. State and Jorge Rodriguez v. State.

3. This request is made in good faith, and not for purposes of delay.

WHEREFORE, the undersigned counsel would respectfully request a thirty-day extension in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

March 22, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge  
\_\_\_\_\_

WERNER SCOTT HADDON,

PETITIONER,

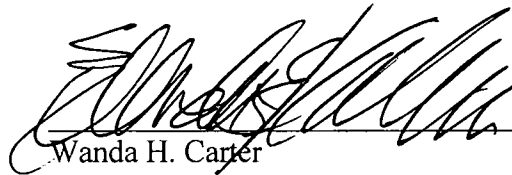
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

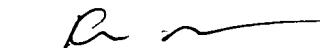
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Mary S. Williams, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 22<sup>nd</sup> day of March, 2012.

  
\_\_\_\_\_  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 22<sup>nd</sup> day of March, 2012.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 2, 2013 .

# The Supreme Court of South Carolina

Werner Scott Haddon,                      Petitioner,

v.

State of South Carolina,                      Respondent.

The Honorable Diane Schafer Goodstein  
Orangeburg County  
Trial Court Case No. 2010-CP-38-01054

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## ORDER

---

The request for an extension until March 22, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



\_\_\_\_\_  
Clerk

Columbia, South Carolina

February 22, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter  
Assistant Attorney General Mary S. Williams



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

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

February 21, 2012

RECEIVED

FEB 21 2012

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

S.C. Supreme Court

Re: Werner Scott Haddon v. State of South Carolina

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in the above-referenced case are due to be served and filed today. Because of my present workload, I respectfully request a thirty-day extension of this deadline. No prior extensions have been requested in this case.

By copy of this letter, I am informing Mary S. Williams, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Wanda H. Carter  
Deputy Chief Appellate Defender

WHC/kam

cc: Mary S. Williams



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

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

December 28, 2011

RECEIVED

DEC 28 2011

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

S.C. Supreme Court

Dear Mr. Shearouse:

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

Werner Scott Haddon v. State of South Carolina

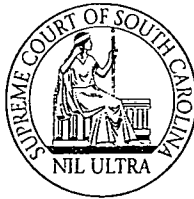
12/22/2011

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

Thank you for your assistance in this matter.

Sincerely,

Loriene French  
Legal Services Coordinator



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 18, 2011

Werner Scott Haddon #332800  
Lieber Correctional Institution  
P. O. Box 205  
Ridgeville, SC 29472

Re: Haddon, Werner Scott v. The State

Dear Mr. Haddon:

This responds to your letter dated November 14, 2011 regarding the withdrawal of your appeal. Since you are represented by counsel in this matter, no action will be taken on your pro se letter. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

Any concerns you have about this matter should be raised to the Division of Appellate Defense. The address for that Office is P.O. Box 11589, Columbia, SC 29211, and their phone number is 803-734-1343.

Very truly yours,



CLERK

DES/jj

cc: Appellate Defense  
Assistant Attorney General Mary S. Williams

Werner Scott Haddon 332800  
Leiber CI, Stono A 55  
PO Box 205  
Ridgeville, SC 29472-0205

November 14, 2011

Daniel E. Shearouse, Clerk of Courts  
The Supreme Court of South Carolina  
PO Box 11330  
Columbia, SC 29211-11330

Re: Haddon v. State; 2010-CP-38-1054

Dear Mr. Shearouse:

Enclosed please find a NOTICE OF WITHDRAWAL OF APPEAL and AFFIDAVIT OF SERVICE of same on opposing counsel. Please file these originals and provide me with confirmation of the Court's dismissal of the case.

Very truly yours,

*W. Scott Haddon*

W. Scott Haddon

enc: Notice of Withdrawal  
Affidavit of Service

NOTICE OF WITHDRAWAL OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA

(In The Supreme Court)

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

Judge Diane S. Goodstein, Presiding Judge First Judicial Circuit

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Case No: 2010-CP-38-1054

Werner Scott Haddon,-----Petitioner,

v.

State of South Carolina,-----Respondent.

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NOTICE OF WITHDRAWAL OF APPEAL

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Werner Scott Haddon withdraws the Appeal of the Order of Dismissal issued by the Honorable Diane S. Goodstein and filed on September 27, 2011.

*W. Scott Haddon*

Werner Scott Haddon 332800  
Leiber CI, Stono A 55  
PO Box 205  
Ridgeville, SC 29472-0205

Other Counsel of Record:

Robert Corney  
Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211

RECEIVED

NOV 17 2011

S.C. SUPREME COURT

AFFIDAVIT OF SERVICE IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA

(In the Supreme Court)

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

Judge Diane S. Goodstein, Presiding Judge First Judicial Circuit

Case No: 2010-CP-38-1054

Werner Scott Haddon,-----Petitioner,

v.

State of South Carolina,-----Respondent.

AFFIDAVIT OF SERVICE

I, Werner Scott Haddon, do hereby certify that a copy of WITHDRAWAL OF APPEAL was served on the respondent, Dan Luginbill, Esq. and on his attorney, Robert Corney, Esq. by mailing a true copy of this, in the United States mail, with prepaid first class postage, with the return address clearly indicated, to the following addresses on November 14, 2011:

Robert Corney, Esq.  
Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211

Daniel Luginbill, Esq.  
2878 Main Highway  
Bamberg, SC 29003

*W. Scott Haddon*

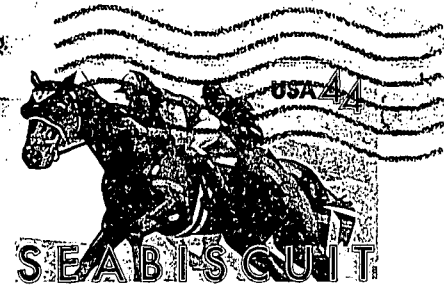
W. Scott Haddon  
November 14, 2011

RECEIVED  
NOV 17 2011  
S.C. SUPREME COURT

W. Scott Haddon 332300  
Leiker CI, Stone 455  
PO Box 205  
Ridgeville, SC 29472-0205

CHARLESTON SC 294

15 NOV 2011 PM 2 T



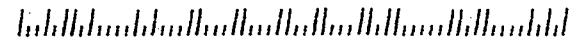
*Legal  
Mail*

**RECEIVED**

NOV 15 2011  
MAIL ROOM  
LIEBER C.I

Daniel E. Shearouse, Clerk of Courts  
The Supreme Court of South Carolina  
PO Box 11330  
Columbia, SC 29211-11330

29211/11330





# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

October 18, 2011

RECEIVED

OCT 18 2011

S.C. Supreme Court

Ms. Brenda Sigwald  
Circuit Court Reporter  
P O Box 206  
Jackson, SC 29831

Dear Ms. Sigwald:

Please provide us with the following transcript:

Werner Scott Haddon v. State of South Carolina    Case #:                    10-CP-38-01054

County: Orangeburg                                    Date of Trial: June 9, 2011

Presiding Judge: Diane Schafer Goodstein

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

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

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

Sincerely,

  
Lorlene French  
Legal Services Coordinator

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

*Belinda Davis-Branch*

TELEPHONE 803-533-1006

*Attorney-At-Law*  
1111 DOYLE STREET  
ORANGEBURG, SOUTH CAROLINA 29115

FACIMILE 803-533-0026

September 27, 2011

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

**Re: Werner Scott Haddon v. State of South Carolina**  
**Case No.: 2010-CP-38-1054**

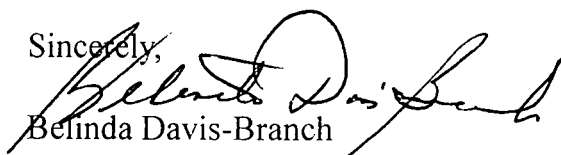
Please find enclosed a Notice of Intent to Appeal, Certificate of Service and a copy of the Order of Dismissal in the above referenced case.

I am sending a copy of this letter and the attached documents to the Office of Appellate Defense.

Should you have any questions or comments, please do not hesitate to contact me.

With kindest regards.

Sincerely,

  
Belinda Davis-Branch  
BDB/cdl

cc: Robert Corney, Assistant Attorney General  
cc: Office of Appellate Defense.

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA

(In The Supreme Court)

---

APPEAL FROM ORANGEBURG COUNTY

Court of Common Pleas

Judge Diane S. Goodstein, Presiding Judge First Judicial Circuit

---

Case No: 2010-CP-38-1054

Werner Scott Haddon,-----Petitioner,

v.

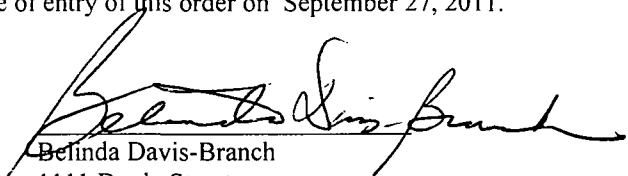
State of South Carolina,-----Respondent.

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NOTICE OF APPEAL

---

Werner Scott Haddon., through undersigned, appeals the Order of Dismissal issued by the Honorable Diane S. Goodstein dated September 14, 2011, which was filed on September 27, 2011. Petitioner, through counsel, received written notice of entry of this order on September 27, 2011.



Belinda Davis-Branch  
1111 Doyle Street  
Orangeburg, South Carolina 29115  
Attorney for Petitioner

Other Counsel of Record:

Robert Corney  
Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
Post Conviction Relief

Honorable Diane S. Goodstein, Circuit Court Judge

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Case No: 2010-CP-38-1054

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Werner Scott Haddon,-----Petitioner,

v.

State of South Carolina,-----Respondent.

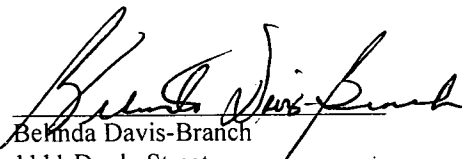
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CERTIFICATE OF SERVICE

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I, Belinda Davis-Branch, Attorney for Petitioner, hereby certify that I placed in the United States Mail this 27, day of September 2011, a copy of Notice of Intent to Appeal with final Order attached, with postage prepaid and the return address clearly shown on said envelope, to Robert Corney, of the Attorney General's Office, at:

Office of the Attorney General  
ATT: Robert Corney, Assistant  
Attorney General  
P.O. Box 11549  
Columbia, SC 29211

  
Belinda Davis-Branch  
1111 Doyle Street  
Orangeburg, South Carolina 29115  
Attorney for Petitioner

*Belinda Davis-Branch*

TELEPHONE 803-533-1006

*Attorney-At-Law*

FACIMILE 803-533-0026

1111 DOYLE STREET

ORANGEBURG, SOUTH CAROLINA 29115

September 27, 2011

**RECEIVED**

SEP 28 2011

**S.C. SUPREME COURT**

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

**Re: Werner Scott Haddon v. State of South Carolina**  
**Case No.: 2010-CP-38-1054**

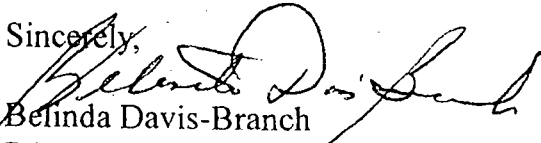
Please find enclosed a Notice of Intent to Appeal, Certificate of Service and a copy of the Order of Dismissal in the above referenced case.

I am sending a copy of this letter and the attached documents to the Office of Appellate Defense.

Should you have any questions or comments, please do not hesitate to contact me.

With kindest regards.

Sincerely,

  
Belinda Davis-Branch

BDB/cdl

cc: Robert Corney, Assistant Attorney General  
cc: Office of Appellate Defense.

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA

(In The Supreme Court)

**RECEIVED**

SEP 28 2011

S.C. SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY

Court of Common Pleas

Judge Diane S. Goodstein, Presiding Judge First Judicial Circuit

Case No: 2010-CP-38-1054

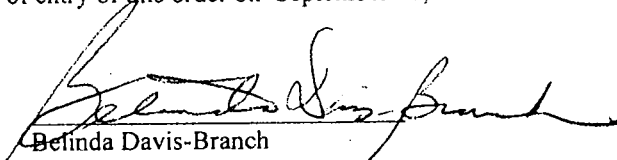
Werner Scott Haddon,-----Petitioner,

v.

State of South Carolina,-----Respondent.

NOTICE OF APPEAL

Werner Scott Haddon., through undersigned, appeals the Order of Dismissal issued by the Honorable Diane S. Goodstein dated September 14, 2011, which was filed on September 27, 2011. Petitioner, through counsel, received written notice of entry of this order on September 27, 2011.



Belinda Davis-Branch  
1111 Doyle Street  
Orangeburg, South Carolina 29115  
Attorney for Petitioner

Other Counsel of Record:

Robert Corney  
Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
Post Conviction Relief

Honorable Diane S. Goodstein, Circuit Court Judge

Case No: 2010-CP-38-1054

Werner Scott Haddon,-----Petitioner,

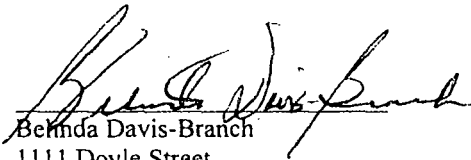
v.

State of South Carolina,-----Respondent.

CERTIFICATE OF SERVICE

I, Belinda Davis-Branch, Attorney for Petitioner, hereby certify that I placed in the United States Mail this 27, day of September 2011, a copy of Notice of Intent to Appeal with final Order attached, with postage prepaid and the return address clearly shown on said envelope, to Robert Corney, of the Attorney General's Office, at:

Office of the Attorney General  
ATT: Robert Corney, Assistant  
Attorney General  
P.O. Box 11549  
Columbia, SC 29211

  
Belinda Davis-Branch  
1111 Doyle Street  
Orangeburg, South Carolina 29115  
Attorney for Petitioner

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG )

Werner Scott Haddon, 332800 )

CASE NO.

Plaintiff )

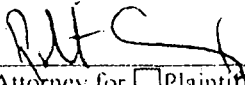
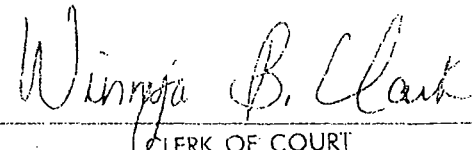
2010-CP-38-1054

v. )

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

State Of South Carolina )

Defendant. )

Plaintiff's Attorney: Belinda Davis-Branch, Bar No. Address: 1111 Doyle Street Orangeburg SC 29115 phone: fax: e-mail: other:	Defendant's Attorney: Robert Corney, 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)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<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	September 8, 2011 Date submitted
<b>SECTION III: Motion Fee</b>	
<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, SCRPC) <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:	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	DATED: TRUE COPY  CLERK OF COURT ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIRST JUDICIAL CIRCUIT )

2010-CP-38-1054

Werner Scott Haddon, # 332800. )

Applicant. )

v. )

State of South Carolina. )

Respondent. )

ORDER OF DISMISSAL

**RECEIVED**

SEP 28 2011

S.C. SUPREME COURT

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 21, 2010. The Respondent made its Return on February 4, 2011. An evidentiary hearing into the matter was convened on June 9, 2011, at the Dorchester County Courthouse. The Applicant was present at the hearing and was represented by Belinda Davis-Branch, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Dan Luginbill, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Orangeburg County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted for Assault and Battery of a High and Aggravated Nature ("ABHAN") (2008-GS-38-0837), two (2) counts of Kidnapping (2008-GS-

ATTEST, TRUE COPY

*Winnia B. Clark*

CLERK OF COURT  
ORANGEBURG COUNTY, SOUTH CAROLINA

*WJB 10/7/11*

38-0838 & 0839), two (2) counts of Assault with Intent to Kill ("AWIK") (2008-GS-38-0840 & 0842), and Burglary - 1<sup>st</sup> Degree (2008-GS-38-0841). Daniel Lugenbill, Esquire, represented him. On January 12, 2009, the Applicant pled guilty but mentally ill. He was sentenced by the Honorable James C. Williams, Jr. to ten (10) years for ABHAN (2008-GS-38-0837), to thirty (30) years for each count of Kidnapping (2008-GS-38-0838 & 0839), to forty (40) years for Burglary - First Degree (2008-GS-38-0841). All sentences were to be served concurrently. The remaining charges were *nolle prossed* pursuant to the plea. Applicant did not appeal his conviction and sentence.

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

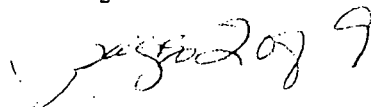
1. Ineffective assistance of counsel.
  - a. "Failure to achieve a change of venue."
  - b. "Failure to achieve a plea agreement."
  - c. "Misleading advice to plead guilty but mentally ill."
  - d. "The judge considered information outside of the record."

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

#### Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of



counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 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). In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976). The allegations made in the application and at the hearing all boil down to a claim of ineffective assistance of counsel, and therefore must all be tested based on the Strickland v. Washington standard.

*Failure to Achieve a Change of Venue*

Applicant alleges first that counsel was ineffective for failing to achieve a change of venue for Applicant to enter his plea. Applicant testified that early on in counsel's representation, both he and counsel believed that a change of venue was important. Applicant went on to say that later in their discussions, counsel explained to Applicant that a change of venue was no longer important as Applicant planned to enter a guilty plea and therefore partiality of a jury pool would not matter. Applicant contends a change of venue should still have been sought as Judge Williams, the plea judge, was affected by partiality in this case and even took into consideration some items not part of the record at the plea, such as Applicant's prior criminal record, during his sentencing.

Counsel testified that he did consider changing venue for Applicant's plea, but chose not to do so because the change in venue would transfer the case to Calhoun County, a county in which counsel believed the demographic would be no more advantageous to Applicant and in which the same judges presided as in Orangeburg county. Counsel stated that he was not aware of any media coverage concerning Applicant's case that would affect the impartiality of potential jurors or judges, warranting a change of venue. Counsel then stated that it is his belief that once a defendant decides to enter a plea rather than proceed to trial, the possibility of a tainted jury pool is irrelevant and that there is no case law that he knows of to support a change of venue based on media coverage tainting a plea judge. Additionally, counsel went on to say that he did not believe such a motion would be successful, and even if it were, he did not believe there would be an "appreciable difference" in having a different a judge hear Applicant's case.

I find that Applicant has failed to show counsel was ineffective in this regard. Counsel's testimony reveals that he assessed the situation in full and, in the exercise of his professional judgment, did not see the need for a change of venue. It has been well established that our courts should be wary of second-guessing defense counsel's trial strategies, especially where counsel can articulate a valid reason for employing such a strategy. (*See Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 530 (1992).) For that reason, I find that counsel was not ineffective in failing to make a motion for change of venue. Further, I find that even if counsel had made a motion for change of venue, Applicant has failed to prove the motion would have been granted, or that he would have been prejudiced by the denial of such a motion. "A motion for a change of venue is addressed to the sound discretion of the trial judge and will not be disturbed absent an abuse of discretion." *State v. Caldwell*, 300 S.C. 494, 388 S.E.2d 816 (1990). Therefore, Applicant has

wholly failed to carry his burden in this regard in proving counsel was ineffective based on the Strickland v. Washington standard.

*Failure to Achieve a Plea Agreement*

Applicant's second contention is counsel was ineffective for allowing him to enter an "open plea" without recommendation or negotiation from the state as to what the sentence should or would be. Applicant testified he resisted entering an open plea without negotiation from the beginning, but that counsel had advised him after speaking with the solicitor that the entirety of any sentence Applicant received could be suspended.

Counsel testified the solicitor took a "hard-line" on this case from the very beginning, making advantageous plea negotiations very difficult. He went on to state that the facts leading to the charges were never in doubt, and because of that, the solicitor never made any plea offers to the Applicant and refused to make a recommendation as to sentencing. Counsel went on to say the State wasn't going to object to any sentence given over twenty-five years either.

I find Applicant has failed to prove counsel was ineffective in this regard as well. I find counsel's testimony to be credible as to attempting to seek an advantageous plea offer and find that Applicant has failed to prove any deficiency in counsel's performance where the solicitor makes the decision not to enter into plea negotiations or recommendations, despite counsel's attempts to elicit an advantageous plea offer for Applicant. Therefore, Applicant has failed to carry his burden in this regard.

*Misleading Advice to Induce Guilty But Mentally Ill Plea*

As stated above, an Applicant in PCR that pleads guilty on counsel's advice may only collaterally attack the voluntary and knowing nature of his guilty plea by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the

defendant would not have pled guilty and would have insisted on going to trial. Roscoe, supra. Therefore, this allegation is essentially a claim of ineffective assistance of counsel that rendered a guilty plea involuntary.

At the PCR hearing, Applicant testified he believed counsel should have known how entering a "guilty but mentally ill" plea would have played out. Applicant testified that counsel told him that Dr. Donna Schwartz-Watts, a mental health doctor who testified at Applicant's plea, would take over care of Applicant at a mental health center, where Applicant would be subjected to better conditions than at a Department of Corrections institution, and this induced Applicant to enter his plea. Counsel then testified that he had extensive discussions with Applicant prior to the entry of this plea, during which counsel made it abundantly clear that he was making no promises of exactly what the outcome would be of entering a guilty but mentally ill plea, where he would be incarcerated, or the conditions of his incarceration. Counsel stated that he only told Applicant that Dr. Schwartz-Watts would be part of the evaluating team and made no promises as to what her role would be after the entry of his plea. He then went on to state that, although a full insanity plea would have been more beneficial to Applicant, there was no finding of insanity made by the evaluating doctors, so that was not an option Applicant could pursue.

I find counsel's testimony to be credible. Conversely, I find Applicant's testimony to not be credible. Based on the testimony presented at the PCR, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective in his representation based on Applicant's entry of this plea. Further, I find that Applicant's plea of guilty but mentally ill was entered knowingly and voluntarily after being fully and adequately advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases.

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For the reasons discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed in its entirety.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

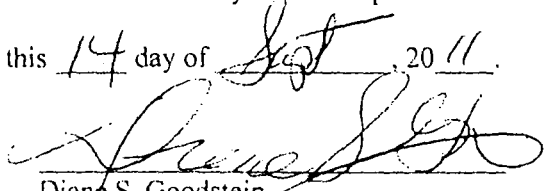
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a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


attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14 day of Sept, 2011.

  
 \_\_\_\_\_  
 Diane S. Goodstein  
 Presiding Judge  
 First Judicial Circuit

  
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 South Carolina.

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