

# PRICE LAW

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November 6, 2018

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NOV 09 2018

S.C. SUPREME COURT

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

**Re: Walter Terran Gaines, #240407 v. State of South Carolina**  
**Case No.: 2015-CP-23-06217**


Dear Mr. Shearouse:

Enclosed you will find the following in connection with the above referenced matter:

1. Filed copy of a Notice of Appeal; and
2. Filed copy of my Certificate of Service.

As always, I remain,

Yours very truly,



James H. Price, III

JHP/sac  
Enclosures

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

NOV 09 2018

Court of Common Pleas, Greenville County  
Honorable Letitia H. Verdin

**S.C. SUPREME COURT**

Circuit Court Case No. 2015-CP-23-06217  
Appellate Case No. \_\_\_\_\_

NOV 09 2018  
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COURT CLERK  
SOUTH CAROLINA

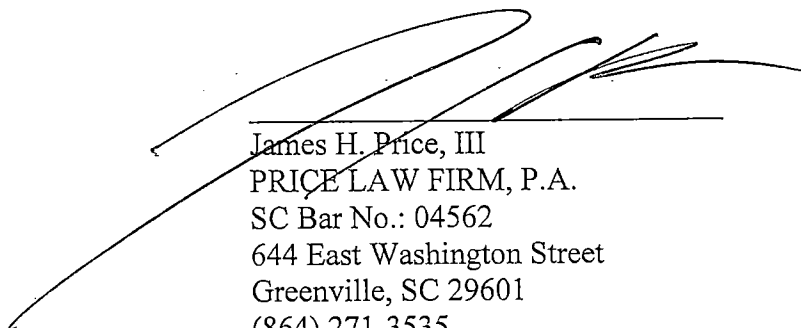
Walter Terran Gaines, #240407, .....Appellant/Petitioner

v.

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

**NOTICE OF APPEAL  
(PCR CASE)**

Appellant hereby appeals the judgment of the Court of Common Pleas dismissing his action for post-conviction relief, ORDER OF DISMISSAL, signed by the Honorable Letitia H. Verdin, entered of record on October 23, 2018, and received by Appellant's counsel, James H. Price, III, on October 26, 2018. A copy of said Order is attached hereto and made a part hereof.



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STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Walter Terran Gaines, #240407,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
IN THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-23-06217

**ORDER OF DISMISSAL**

FILED  
2016 OCT 20 PM 4:29  
CLERK OF COURT  
GREENVILLE, SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed on October 14, 2015 by Walter Terran Gaines (Applicant). Respondent made its Return on or about October 18, 2016. An evidentiary hearing into the matter was convened on June 18, 2018, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by James H. Price, III, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Trial Counsel John P. Abdalla, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and mental health evaluation from the South Carolina Department of Mental Health. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

## PROCEDURAL AND FACTUAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. Applicant was indicted at the February 2006 term of the Greenville County Grand Jury for armed robbery (2006-GS-23-1368) and murder (2006-GS-23-1369). He was represented by John P. Abdalla, Esquire. After the State called the case to trial, Applicant was found guilty. On May 22, 2008, the Honorable G. Edward Welmaker sentenced him to concurrent terms of thirty (30) years for armed robbery and life imprisonment for murder.<sup>1</sup>

Though counsel filed a notice of appeal, the matter was dismissed by the South Carolina Court of Appeals "due to the failure of [Applicant] to timely serve the notice of appeal on opposing counsel." The Court of Appeals dismissed the case by order dated September 23, 2008 and the remittitur was issued on October 9, 2008.

Applicant filed an application for post-conviction relief (PCR) on April 2, 2009 (2009-CP-23-2787). Applicant raised the following issues:

1. "Perjury."
2. Ineffective assistance of counsel;
  - a. Convinced the Applicant not to present a defense case.
  - b. Failed to properly perfect appeal.
3. "Proof issues."
4. Prosecutorial misconduct.
5. "Hearsay and the Confrontation Rights."

An evidentiary hearing was convened at the Greenville County Courthouse on May 27, 2010. Petitioner was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Attorney General's Office represented Respondent. The Honorable Robin

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<sup>1</sup> The State not prossed charges of willful injury to courthouse or jail (2006-GS-23-8640) and escape (2006-GS-23-8641).

B. Stilwell issued an order dated July 27, 2010 in which he granted a belated direct appeal and denied and dismissed all other issues.

Applicant filed a notice of appeal. Katherine H. Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal by filing a petition for writ of certiorari and brief of appellant pursuant to White v. State<sup>2</sup>. In an order file October 10, 2013, the South Carolina Court of Appeals granted certiorari on the issue that Applicant did not knowingly and intelligently waive his right to a direct appeal. In an unpublished opinion the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Gaines, 2014-UP-194 (S.C. Ct. App. filed May 14, 2014). The remittitur was returned to the circuit court on June 12, 2014.

### **ALLEGATIONS**

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

1. "Denied Due Process and Protection of the Law Vol: 14<sup>th</sup> Amendment."
2. "Subject matter & Lack of Jurisdiction."
3. "Newly Discovered Evidence."
4. "S.C. Constitution requires a person to be indicted by Grand Jury."
5. "Lack to stand Trial due to mental issues that was never brought up."  
(sic)

Applicant filed an amended Application on September 8, 2016 alleging he was being held in custody unlawfully for the following reasons:

In May, 2005, I was hospitalized and diagnosed with the following:

- a. Auditory hallucinations
- b. Residual depression with psychotic features
- c. Post-traumatic stress disorder
- d. Polysubstance dependence
- e. Mixed personality disorder

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<sup>2</sup> White v. State. 263 S.C. 110, 208 S.E.2d 35 (1974)

The incident for which I was convicted occurred five (5) months later. I was arrested and charges with murder.

I was in the Greenville Detention Center from the date of my arrest until my trial. During this time, I was in the medical unit being given psychotropic medication. I did not have a full understanding of what was going on.

My attorney should have had me examined to determine if I was competent at the time of the incident and later at trial. He did not do so although he was aware of my mental problems.

I am currently being given psychotropic drugs by SCDC. This is the reason that I did not raise this issue in my earlier PCR - I am being given drugs every day.

In addition, I raise the following grounds:

1. I was denied due process in violation of the 14th Amendment to United States Constitution;
2. Lack of subject matter jurisdiction;
3. Newly discovered evidence.

### **SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING**

#### **Applicant's Testimony**

Applicant testified he filed a second PCR application in 2015 and he was currently represented by James H. Price, III, Esquire. He testified in May of 2005 he was hospitalized and that he suffered from bipolar disorder and schizophrenia. Applicant testified during this time he was admitted into the Patrick B. Harris Psychiatric Hospital. He testified during November of 2005 he began have hallucinations again. Applicant testified he was arrested in December of 2005 and at that time he was having issues with his mental state. He testified he stayed in the detention center after being arrested until the time of his trial. Applicant testified Trial Counsel came to see him and he told Trial Counsel about his mental state. He testified Trial Counsel told him he could not use the "mental health thing" in court because the State would use it against him. Applicant testified during Trial Counsel's representation he never saw a psychiatrist and the

first time he saw one was a month leading up to his evidentiary hearing. He testified the record in his case reflected he had a bad mental state when he gave statements to the police after being charged. Applicant testified the statement he gave that was entered into evidence hurt his case. He testified he had previously filed a PCR application and that he was denied due process with there also being a lack of subject matter jurisdiction in his case. Applicant testified he had newly discovered evidence which was his mental state.

On cross-examination, Applicant testified he was currently on medication. He testified he was evaluated by the South Carolina Department of Mental Health prior to his evidentiary hearing. Applicant testified he told Trial Counsel about his mental state. He testified after talking to his counselor in prison they told him it was not a bad thing to let people know about his mental state.

On re-direct, Applicant testified he had not had any evaluations done prior to the one conducted right before the evidentiary hearing.

#### Trial Counsel's Testimony

Trial Counsel testified he met with Applicant during his representation and also Applicant's entire family. He testified he had no recollection of any mental issues Applicant had. Trial Counsel testified Applicant gave a statement to police and there was no DNA evidence in the case. He testified there were only eyewitnesses in the case who said they saw Applicant in the area of the crime. Trial Counsel testified he did not object to the Miranda warnings given to Applicant but that he did object to the Applicant's statement. He testified he did not do a Jackson v. Denno hearing. Trial Counsel testified Applicant's statement hurt him at trial.

On cross-examination, Trial Counsel testified during the course of his representation, Applicant appeared to comprehend everything they discussed about his case. He testified

Applicant seemed to understand the charges he was facing. Trial Counsel testified Applicant seemed to understand the evidence that the State was prepared to present against him if he proceeded to trial. He testified Applicant was able to assist him in his investigation and preparation of a defense. Trial Counsel testified none of Applicant's statements or answers to his questions raised any concerns about Applicant's mental capacity. He testified he did not recall if Applicant or his family ever expressed any concerns about Applicant's mental health or capacity to him. Trial Counsel testified in his opinion, he believed Applicant was competent to participate in his defense and understand the proceedings at trial.

#### **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 had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). 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.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. This Court finds as follows on the following grounds presented by Applicant at the evidentiary hearing:

**Ineffective Assistance of Counsel**

*Failure to Request Competency Evaluation*

Applicant asserts Trial Counsel was ineffective for failing to request a competency evaluation. In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of this trial or plea. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). As to this ground, this Court finds that Trial Counsel was not ineffective in failing to request a competency

evaluation. This Court finds Trial Counsel's testimony that he experienced no problems communicating with Applicant as credible. Further, Trial Counsel testified Applicant seemed to understand the charges he was facing and understood the evidence that the State had against him. Additionally, Trial Counsel testified in his opinion, he believed Applicant was competent to participate in his defense and understand the proceedings at trial. Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id. at 233, 417 S.E.2d at 596. Moreover, before this court and made a part of the record, was Applicant's mental health evaluation from the South Carolina Department of Mental Health conducted on May 1, 2018 by Dr. Matthew E. Gaskins. In his report Dr. Gaskins rendered an opinion that Applicant had a sufficient factual and rational understanding of his current charges and had the capacity to assist his defense attorney in the preparation of a defense. Dr. Gaskins ultimately concluded Applicant had capacity to stand trial. After a review of this evaluation and the evidence presented this Court finds Applicant has failed to demonstrate Trial Counsel was ineffective. Applicant has failed to establish that he currently or previously lacked sufficient competency to stand trial. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Trial Counsel failed to request a competency evaluation. The allegation is denied and dismissed.

### *Subject Matter Jurisdiction*

Applicant testified in a cursory manner that the trial court lacked subject matter jurisdiction to hear his case. This court finds no merit to this allegation. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. Wilkes, 353 S.C. at 464-465, 578 S.E.2d at 719 (citing Brown, 343 S.C. 342, 540 S.E.2d 846). In this case, Applicant was indicted by the Greenville County grand jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contained all the necessary elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Applicant here cannot show any irregularity, because the indictments in question are sufficient on their face. Therefore, this court finds this allegation has no merit. This allegation is denied and dismissed with prejudice.

### **CONCLUSION**

Based on all the foregoing, this Court finds and concludes that 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.

This Court notifies the 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), SCRCRCP 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 THAT:**

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 South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19 day of Oct., 2018.



LETITIA H. VERDIN  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

Court of Common Pleas, Greenville County  
Honorable Letitia H. Verdin

Circuit Court Case No. 2015-CP-23-06217  
Appellate Case No. \_\_\_\_\_

19 NOV 5 AM 9:43  
Paul Wickensimer - OCC.BVL.SC

Walter Terran Gaines, #240407, .....Appellant/Petitioner

v.

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

**CERTIFICATE OF SERVICE**

I certify on November, 6, 2018, I served Appellant's Notice of Appeal and attached Order on the Respondent, and others if indicated, by placing a copy in the U.S. Mail, first class, postage prepaid, addressed as follows:

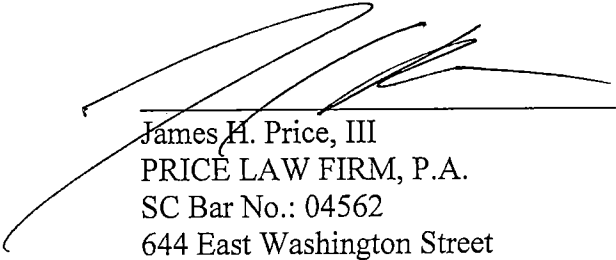
DeShawn H. Mitchell. Asst. Atty. Gen.  
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P.O. Box 11549  
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Counsel for Respondent

Also to:

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SCCID Appellate Division  
P.O. Box 11589  
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Paul B. Wickensimer  
Clerk of Court  
305 E. North Street  
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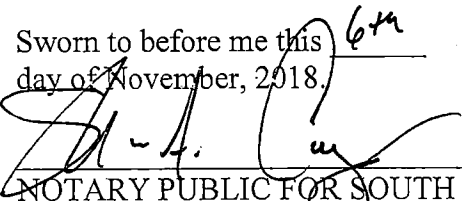
Honorable Daniel E. Shearouse, Clerk  
Supreme Court of South Carolina  
P.O. Box 11330  
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Attorney for Appellant/Petitioner

Sworn to before me this 6th  
day of November, 2018.



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NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 04.19.2027.

# PRICE LAW

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