

RECEIVED
SEP 19 2012
S.C. SUPREME COURT

Law Offices of Jim Brown, P.A.

1600 Burnside Street, Suite 100 • P.O. Box 592

Beaufort, SC 29901-0592

Phone: (843) 470-0003 Fax: (843) 470-0004

jimbrownlaw@hargray.com

www.attorneyjimbrown.com

September 19, 2012

VIA FACSIMILE: (803) 734-1499

South Carolina Supreme Court

The Honorable Daniel E. Shearouse

Clerk of Court

P.O. Box 11330

Columbia, South Carolina 29211

Re: Marion Bowman v. State; 06-CP-18-569

Dear Judge Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. This case is currently pending a ruling on a Rule 59 Motion. Thank you and please contact this office with any questions or concerns.

Sincerely,



Jim Brown

- cc: The Honorable James E. Lockemy, SC Court of Appeals
- Mr. Jack Sinclair, III, Esq.
- Mr. S. Creighton Waters, Assistant Attorney General
- Marion Bowman

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July 19, 2012

VIA FACSIMILE: (803) 734-1499

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

RECEIVED

JUL 19 2012

Re: Marion Bowman v. State; 06-CP-18-56 **S.C. SUPREME COURT**

Dear Judge Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. This case is currently pending a ruling on a Rule 59 Motion. Thank you and please contact this office with any questions or concerns.

Sincerely,


Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

Law Offices of Jim Brown, P.A.

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May 22, 2012

VIA FACSIMILE: (803) 734-1499

South Carolina Supreme Court

The Honorable Daniel E. Shearouse

Clerk of Court

P.O. Box 11330

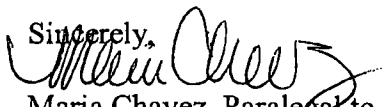
Columbia, South Carolina 29211

Re: Marion Bowman v. State; 06-CP-18-569

Dear Judge Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. This case is currently pending a ruling on a Rule 59 Motion. Thank you and please contact this office with any questions or concerns.

Sincerely,



Maria Chavez, Paralegal to
Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclaire, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

RECEIVED

MAY 22 2012

S.C. SUPREME COURT

Law Offices of Jim Brown, P.A.

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Beaufort, SC 29901-0592

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March 16, 2012

VIA FACSIMILE: (803) 734-1499

South Carolina Supreme Court

The Honorable Daniel E. Shearouse

Clerk of Court

P.O. Box 11330

Columbia, South Carolina 29211

RECEIVED

MAR 16 2012

S.C. SUPREME COURT

Re: Marion Bowman v. State; 06-CP-18-569

Dear Judge Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. This case is currently pending a ruling on a Rule 59 Motion. Thank you and please contact this office with any questions or concerns.

Sincerely,



Maria Chavez, Paralegal to
Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

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January 25, 2012

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JAN 25 2012

S.C. SUPREME COURT

VIA FACSIMILE: (803) 734-1499

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

Re: Marion Bowman v. State; 06-CP-18-569

Dear Judge Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. Mr. Brown filed the Applicant's Objections to the Court's Intention to Adopt the States Proposed Order on September 7, 2011. Thank you and please contact this office with any questions or concerns.

Sincerely,



Maria Chavez, Paralegal to
Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

RECEIVED

JAN 25 2012

S.C. SUPREME COURT

Law Offices of Jim Brown, P.A.

1600 Burnside Street, Suite 100 • P.O. Box 592

Beaufort, SC 29901-0592

Phone: (843) 470-0003 Fax: (843) 470-0004

jimbrownlaw@hargray.com

www.attorneyjimbrown.com

RECEIVED

NOV 16 2011

S.C. SUPREME COURT

November 16, 2011

VIA FACSIMILE: (803) 734-1499

South Carolina Supreme Court

The Honorable Daniel E. Shearouse

Clerk of Court

P.O. Box 11330

Columbia, South Carolina 29211

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NOV 16 2011

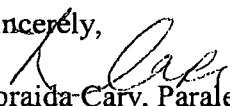
S.C. SUPREME COURT

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. Mr. Brown filed the Applicant's Objections to the Court's Intention to Adopt the States Proposed Order on September 7, 2011. Thank you and please contact this office with any questions or concerns.

Sincerely,


Zoraida Cary, Paralegal to
Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

Law Offices of Jim Brown, P.A.

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Phone: (843) 470-0003 Fax: (843) 470-0004

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AUG 16 2011

S.C. SUPREME COURT

August 16, 2011

VIA FACSIMILE: (803) 734-1499

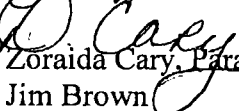
South Carolina Supreme Court
The Honorable Daniel E. Shearouse
Clerk of Court
P.O. Box 11330
Columbia, South Carolina 29211

Re: Marion Bowman v. State; 06-CP-18-569

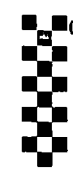
Dear Mr. Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. Mr Brown is currently in the process of preparing his objections to the States proposed Order. Please contact my office with any questions or concerns.

Sincerely,


Zoraida Cary, Paralegal to
Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman



Law Offices of Jim Brown, P.A.

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June 14, 2011

VIA FACSIMILE: (803) 734-1499

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

RECEIVED

JUN 14 2011

S.C. SUPREME COURT

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. We are awaiting the completion of a proposed order. Please contact my office with any questions or concerns.

Sincerely,

Zofarda Cary
Zofarda Cary, Paralegal to
Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

Law Offices of Jim Brown, P.A.

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April 5, 2011

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APR 05 2011

S.C. SUPREME COURT

VIA FACSIMILE: (803) 734-1499

South Carolina Supreme Court

The Honorable Daniel E. Shearouse

Clerk of Court

P.O. Box 11330

Columbia, South Carolina 29211

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. We are pending ruling from the court. Please contact my office with any questions or concerns.

Sincerely,


Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

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Beaufort, SC 29901-0592

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jimbrownlaw@hargray.com

www.attorneyjimbrown.com

February 1, 2011

VIA FACSIMILE: (803) 734-1499

South Carolina Supreme Court

The Honorable Daniel E. Shearouse

Clerk of Court

P.O. Box 11330

Columbia, South Carolina 29211

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JAN 31 2011

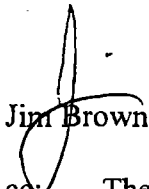
Re: Marion Bowman v. State; 06-CP-18-569

SC SUPREME COURT

Dear Mr. Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. We are pending ruling from the court. Please contact my office with any questions or concerns.

Sincerely,


Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

Law Offices of Jim Brown, P.A.

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OCT 20 2010

S.C. SUPREME COURT

October 20, 2010

VIA FACSIMILE: (803) 734-1499

South Carolina Supreme Court

The Honorable Daniel E. Shearouse

Clerk of Court

P.O. Box 11330

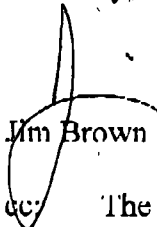
Columbia, South Carolina 29211

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

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Sincerely,



Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

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Beaufort, SC 29901-0592

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jimbrownlaw@hargray.com

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August 23, 2010

VIA FACSIMILE: (803) 734-1499

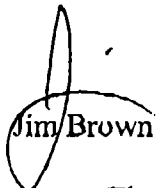
South Carolina Supreme Court
The Honorable Daniel E. Shearouse
Clerk of Court
P.O. Box 11330
Columbia, South Carolina 29211

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. We are pending ruling from the court. Please contact my office with any questions or concerns.

Sincerely,



Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

RECEIVED

AUG 26 2010

S.C. SUPREME COURT

Law Offices of Jim Brown, P.A.

1600 Burnside Street, Suite 100 • P.O. Box 592

Beaufort, SC 29901-0592

Phone: (843) 470-0003 Fax: (843) 470-0004

jimbrownlaw@hargray.com

www.attorneyjimbrown.com

July 22, 2010

VIA FACSIMILE: (803) 734-1499

South Carolina Supreme Court

The Honorable Daniel F. Shearouse

Clerk of Court

P.O. Box 11330

Columbia, South Carolina 29211

RECEIVED

JUL 22 2010

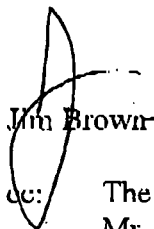
S.C. SUPREME COURT

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. We are pending ruling from the court. Please contact my office with any questions or concerns.

Sincerely,


Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

RECEIVED

MAY 11 2010

S.C. SUPREME COURT

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Beaufort, SC 29901-0592

Phone: (843) 470-0003 Fax: (843) 470-0004

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MAY 11 2010

S.C. SUPREME COURT

May 10, 2010

VIA FACSIMILE: (803) 734-1499

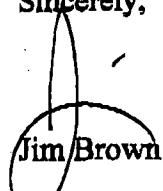
South Carolina Supreme Court
The Honorable Daniel E. Shearouse
Clerk of Court
P.O. Box 11330
Columbia, South Carolina 29211

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

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Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

RECEIVED

MAY 11 2010

S.C. SUPREME COURT

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Beaufort, SC 29901-0592

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jimbrownlaw@hargray.com

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April 5, 2010

VIA FACSIMILE: (803) 734-1499

South Carolina Supreme Court

The Honorable Daniel E. Shearouse

Clerk of Court

P.O. Box 11330

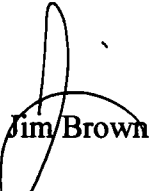
Columbia, South Carolina 29211

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

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Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

RECEIVED

APR 08 2010

S.C. SUPREME COURT

Law Offices of Jim Brown, P.A.

1600 Burnside Street, Suite 100 • P.O. Box 592

Beaufort, SC 29901-0592

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jimbrownlaw@hargray.comwww.attorneyjimbrown.com**RECEIVED**
APR 06 2010
S.C. SUPREME COURT

April 5, 2010

VIA FACSIMILE: (803) 734-1499

South Carolina Supreme Court

The Honorable Daniel E. Shearouse

Clerk of Court

P.O. Box 11330

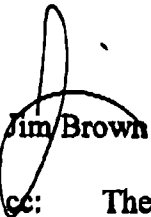
Columbia, South Carolina 29211

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. We are pending ruling from the court. Please contact my office with any questions or concerns.

Sincerely,


Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

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Beaufort, SC 29901-0592

Phone: (843) 470-0003 Fax: (843) 470-0004

jimbrownlaw@hargray.com

www.attorneyjimbrown.com

March 8, 2010

VIA FACSIMILE: (803) 734-1499

South Carolina Supreme Court

The Honorable Daniel E. Shearouse

Clerk of Court

P.O. Box 11330

Columbia, South Carolina 29211

RECEIVED

MAR 08 2010


S.C. SUPREME COURT

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

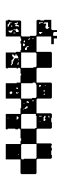
I am writing to provide your office with a status report regarding the above-referenced case. We are pending ruling from the court. Please contact my office with any questions or concerns.

Sincerely,



Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman



Law Offices of Jim Brown, P.A.

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Beaufort, SC 29901-0592

Phone: (843) 470-0003 Fax: (843) 470-0004

jimbrownlaw@hargray.com

www.attorneyjimbrown.com

February 1, 2010

VIA FACSIMILE: (803) 734-1499

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

RECEIVED

FEB 01 2010


S.C. SUPREME COURT

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. The briefing stage has been completed and we are now pending ruling from the court. Please contact my office with any questions or concerns.

Sincerely,



Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

Law Offices of Jim Brown, P.A.

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Beaufort, SC 29901-0592

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jimbrownlaw@hargray.com

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November 20, 2009

VIA FACSIMILE: (803) 734-1499

South Carolina Supreme Court

The Honorable Daniel E. Shearouse

Clerk of Court

P.O. Box 11330

Columbia, South Carolina 29211

RECEIVED

NOV 20 2009

S.C. SUPREME COURT

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. The briefing stage has been completed and we are now pending ruling from the court. Please contact my office with any questions or concerns.

Sincerely,


Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

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jimbrownlaw@hargray.com

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September 3, 2009

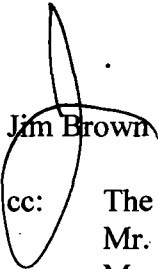
South Carolina Supreme Court
The Honorable Daniel E. Shearouse
Clerk of Court
P.O. Box 11330
Columbia, South Carolina 29211

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. This matter is in the briefing stage with a response brief due September 16, 2009. Please contact my office with any questions or concerns.

Sincerely,



Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclaire, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman

RECEIVED

SEP 03 2009

S.C. SUPREME COURT

RECEIVED

JUL 17 2009

S.C. SUPREME COURT

July 14, 2009

Law Offices of Jim Brown, P.A.

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

Re: Marion Bowman v. State; 06-CP-18-569

Dear Mr. Shearouse:

I am writing to provide your office with a status report regarding the above-referenced case. This matter is in the briefing stage following completion of the PCR merits hearing. Please contact my office with any questions or concerns.

Sincerely,



Jim Brown

cc: The Honorable James E. Lockemy, SC Court of Appeals
Mr. Jack Sinclair, III, Esq.
Mr. S. Creighton Waters, Assistant Attorney General
Marion Bowman



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

October 22, 2010

REMITTITUR

The Honorable Cheryl L. Graham
Clerk of Court, Dorchester County
101 Ridge Street
St. George, SC 29477

Re: The State v. Bowman, Marion, Jr.
2001-GS-18-00348 and 00349

Dear Ms. Graham:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

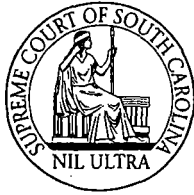
Very truly yours,

CLERK

DES/dmh

Enclosure

cc: Senior Appellate Defender Joseph L. Savitz, III
Senior Assistant Attorney General S. Creighton Waters



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

October 6, 2010

Senior Appellate Defender Joseph L. Savitz, III
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Bowman, Marion, Jr.

Dear Counsel:

Enclosed is the order issued in the above entitled matter.

The remittitur will be sent to the lower court as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

CLERK

DES/dmh

Enclosure

cc: Mr. Marion Bowman, #6006
Senior Assistant Attorney General S. Creighton Waters

The Supreme Court of South Carolina

The State,

Respondent,

v.

Marion Bowman, Jr.,

Appellant.

ORDER

Appellant filed a notice of appeal from an order of the circuit court denying his motion for a new trial based on after-discovered evidence. Counsel for appellant was granted an extension of time through September 17, 2010, to serve and file appellant's initial brief. The appeal was dismissed on September 23, 2010, based on appellant's failure to serve and file an initial brief.

Counsel for appellant has now filed a motion in which he asks this Court to acknowledge that appellant's initial brief was not filed because appellant intended to drop the appeal. Counsel explains that at the time appellant's initial brief was due, ongoing discussions had been held between counsel and appellant regarding dismissing the appeal. A document entitled "Appeal Waiver" was obtained from appellant on September 21, 2010, stating

that after having been "fully informed" by counsel, he wished to withdraw his appeal. However, because the document was not an affidavit, counsel sought to obtain an affidavit from appellant.¹ On September 28, 2010, appellant signed an affidavit stating he was aware he was entitled to an appeal and the assistance of appointed counsel, he was aware that by dropping his appeal he was forever waiving the issues that could be waived, and the risks of dropping his appeal had been explained to him. Appellant further averred that it was his desire to drop the appeal and that decision was made on his own with a full understanding of the possible consequences of his action.

Counsel asks that this Court either reinstate the appeal and then dismiss it based on appellant's affidavit, or in the alternative, issue an order dismissing the appeal at appellant's request. The State has submitted a return in which it states that as long as the appeal is ultimately dismissed, it leaves the matter to the discretion of this Court and has no concern with the appeal being dismissed based on appellant's voluntary decision to dismiss.

We hereby reinstate the appeal from the order denying appellant's motion for a new trial based on after-discovered evidence because at the time appellant's initial brief was due, counsel was attempting to confirm that

¹ Counsel for appellant contacted the Clerk of Court's Office on September 22, 2010, and stated he may file a request to withdraw the appeal.

appellant wished to withdraw his appeal. However, we dismiss the appeal again based on the affidavit of appellant indicating he has knowingly and voluntarily decided to withdraw the appeal after being fully informed of the consequences of his decision. Rule 260(c), SCACR.

IT IS SO ORDERED.



C. J.
FOR THE COURT

Columbia, South Carolina

October 6, 2010



HENRY McMASTER
ATTORNEY GENERAL

October 1, 2010

RECEIVED

OCT - 1 2010

S.C. SUPREME COURT

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

Re: State of South Carolina v. Marion Bowman
Appeal from Dorchester County (Motion for New Trial)

Dear Mr. Shearouse:

I am in receipt of the Motion to Reinstate or Dismiss Direct Appeal Based on Client's Drop Affidavit, in the above-referenced case. Please accept this letter in lieu of a formal response. As long as the appeal is ultimately still dismissed, the State would leave the matter to the Court's discretion and of course would have no concern with it being based on the Appellant's voluntary decision to dismiss.

Thank you for your attention to this matter, and of course contact me with any questions or concerns.

Sincerely,

S. Creighton Waters
Senior Assistant Attorney General

SCW/epj

cc: Robert M. Dudek, Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County
Diane Schafer Godstein, Circuit Court Judge

THE STATE,

V.

MARION BOWMAN,

APPELLANT

MOTION TO REINSTATE OR
DISMISS DIRECT APPEAL BASED
ON CLIENT'S DROP AFFIDAVIT

Undersigned counsel, Chief Appellate Defender Robert M. Dudek, moves to reinstate this direct appeal or dismiss it based on the attached drop affidavit of appellant Marion Bowman as explained below:

- (1) Appellant was convicted of murder and third-degree arson in the death of Kandee Martin. The state sought the death penalty and appellant was sentenced to death after a jury trial before the Honorable Diane Schafer Goodstein.
- (2) Appellant's convictions and death sentence were affirmed in State v. Marion Bowman, Jr., 366 S.C. 485, 623 S.E.2d 378 (November 28, 2005). Undersigned counsel represented appellant on appeal before this Court. Rehearing was denied on January 6, 2006.

ORIGINAL

RECEIVED

SEP 30 2010

S.C. SUPREME COURT

RESPONDENT,

(3) Counsel then filed a petition for writ of certiorari in the United States Supreme Court on appellant's behalf. The writ was denied in Marion Bowman, Jr. v. South Carolina, 547 U.S. 1195 (filed June 12, 2006).

(4) Appellant then filed a motion for a new trial based on after-discovered evidence of state's trial witness Travis Felder, and the failure of the prosecution to correct his false testimony. Appellant also had a post-conviction action pending before the Honorable James F. Lockemy. A hearing was held on the motion for a new trial on October 13, 2009 before Judge Goodstein. Appellant was represented by Boyd Young and James Brown. Assistant Attorney General Creighton Waters represented the state. Judge Goodstein issued an order denying the motion for a new trial on December 28, 2009.

(5) After a notice of intent to appeal was filed, and the transcript of the motion hearing arrived, Senior Appellate Defender Joseph L. Savitz, III was assigned the case. Counsel Savitz obtained an extension through September 17, 2010 to file the initial brief.

(6) Discussions regarding dismissing the appeal were held between counsel Savitz, counsel Young, and appellant. Counsel Savitz did not seek an extension based on his understanding that appellant was going to drop the present appeal.

(7) Trial counsel Boyd Young then presented counsel Savitz with a copy of the attached Exhibit A, "APPEAL WAIVER" document withdrawing the appeal dated September 21, 2010, and witnessed by counsel Young.

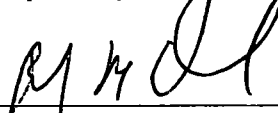
(8) Because the appeal waiver document was not an affidavit, counsel Young was asked to have appellant execute an affidavit stating he wished to drop his appeal, and stating he understood the consequences of that decision.

(9) On September 23, 2010, this Court issued an order of dismissal based on the failure of appellant to file the initial brief. The order stated the remittitur would be sent after fifteen days.

(10) Appellant, on September 28, 2010, signed a proper affidavit again expressing his desire to dismiss his direct appeal. A copy of that affidavit is attached as Exhibit B.

WHEREFORE, undersigned counsel respectfully requests that this Court reinstate appellant's direct appeal, and then issue a standard order dismissing the appeal based on the attached drop affidavit of appellant Marion Bowman. In the alternative counsel respectfully requests that this Court issue an order dismissing the appeal at appellant's request as evidenced by the attached exhibits. Finally, counsel respectfully requests that this Court not send the remittitur pending a ruling on this motion.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

September 30, 2010

EXHIBIT

A



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Capital Trial Division
1330 Lady Street, Suite 401
Columbia, South Carolina 29201

Telephone: 803.734.7818
Facsimile: 803.734.1668
Email: BMcGuire@sccid.sc.gov
Email: BYoung@sccid.sc.gov
Email: LWood@sccid.sc.gov
Email: Nholliday@sccid.sc.gov

William S. McGuire, Chief Attorney
S. Boyd Young, Deputy Attorney
Laura E. Wood, Mitigation Investigator
Natasha J. Holliday, Paralegal

APPEAL WAIVER

To Whom it May Concern:

I, Marion Bowman, having been fully informed by counsel, Joseph Savitz of the South Carolina Commission on Indigent Defense, Appellate Division, wish to withdraw the appeal concerning my motion for a new trial after discovered evidence heard by Judge Goodstein.

Marion Bowman SCDC # 6006
Lieber Correction Institution
136 Wilborn Avenue
P.O. Box 205
Ridgeville, SC 29472

Date: 9-21 2010

Witness: S. Boyd Young
Deputy Attorney-SCCID, Capital Trial Division

Date: 9-21 2010

EXHIBIT

B

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL
RECEIVED
OCT - 1 2010
S.C. SUPREME COURT

Appeal from Dorchester County
Diane Schafer Godstein, Circuit Court Judge

THE STATE,

RESPONDENT,

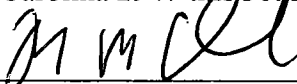
V.

MARION BOWMAN,

APPELLANT

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the [REDACTED] motion to reinstate or dismiss direct appeal based on client's drop affidavit in the above referenced case has been served upon S. Creighton Waters, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, and Marion Bowman, #6006 at Lieber Correctional Institution Post Office Box 205 Ridgeville, South Carolina 2947 this 30th day of September, 2010.



Robert M. Dudek
Chief Appellant Defender

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me
this 30th day of September, 2010.



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

The Supreme Court of South Carolina

The State,

Respondent,

v.

Marion Bowman, Jr.,

Appellant.

The Honorable Diane Schafer Goodstein
Dorchester County
Trial Court Case No. 2001-GS-18-00348
2001-GS-18-00349

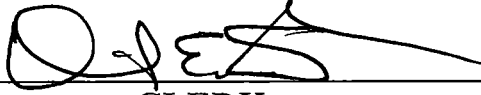
ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of appellant to timely serve and file the Initial Brief of Appellant and Designation of Matter in the above matter, as provided for in Rule 208(a)(1) of the South Carolina Appellate Court Rules and this Court's order dated August 19, 2010,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Dorchester County after fifteen (15) days, exclusive of the date of filing this Order.

JEAN H. TOAL, CHIEF JUSTICE

BY

A handwritten signature in black ink, appearing to be 'D. E. Waters', written over a horizontal line.

CLERK

Columbia, South Carolina

September 23, 2010

cc: Senior Appellate Defender Joseph L. Savitz, III
Senior Assistant Attorney General S. Creighton Waters

The Supreme Court of South Carolina

The State,

Respondent,

v.

Marion Bowman, Jr.,

Appellant.

The Honorable Diane Schafer Goodstein
Dorchester County
Trial Court Case No. 2001-GS-18-00348
2001-GS-18-00349

ORDER

Appellant seeks a second extension of time to serve and file the Initial Brief of Appellant and Designation of Matter in the above entitled matter. The request for an extension is granted and extended until September 17, 2010. 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 *Dwanda J. Shealy*
CHIEF DEPUTY CLERK

Columbia, South Carolina

August 19, 2010

cc: Senior Appellate Defender Joseph L. Savitz, III
Senior Assistant Attorney General S. Creighton Waters

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Appeal from Dorchester County
Diane Schafer Godstein, Circuit Court Judge

AUG 18 2010

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

MARION BOWMAN,

APPELLANT

PETITION FOR EXTENSION
TO FILE INITIAL BRIEF OF
APPELLANT AND DESIGNATION
OF MATTER

The undersigned counsel would respectfully requests an extension of thirty days in which to file the initial brief of appellant and designation of matter in the above-referenced death penalty case. In support of this motion, counsel would respectfully show the Court:

1. The initial brief of appellant and designation of matter in this case are due to be served and filed today, having been extended by a prior order of this Court.
2. Counsel is presently working on the following death penalty case:

State v. Roger Dale Johnson (6835 pages).

In the past month, co-counsel has filed briefs or petitions for rehearing in the following cases:

- State v. Jason Ervin Black*
- State v. Zachary Marquis Fowler*
- State v. Ron O. Finklea*
- State v. Christopher Calvin Ellis*

State v. William M. Washington

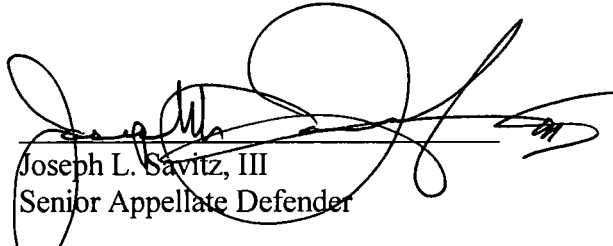
During that time period, counsel has also attended and testified in the post-conviction relief hearing in the following cases:

Luzenski Cottrell v. State (Florence County)
Freddie Owens v. State (Greenville County)

2. Counsel is well aware of Justice Waller's order on extensions in death penalty cases. However, this request is made out of absolute necessity, and not for purposes of delay.

WHEREFORE, the undersigned counsel would respectfully request a thirty day extension in which to file the initial brief of appellant and designation of matter in this case.

Respectfully submitted,



Joseph L. Savitz, III
Senior Appellate Defender
Attorney for Appellant

August 18, 2010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County
Diane Schafer Godstein, Circuit Court Judge

THE STATE,

RESPONDENT,

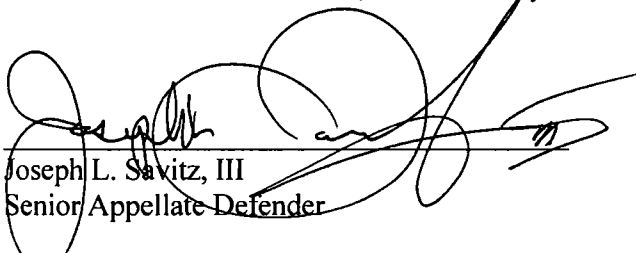
V.

MARION BOWMAN,

APPELLANT

CERTIFICATE OF SERVICE

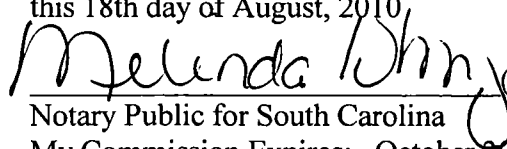
The undersigned attorney hereby certifies the petition in which to file the initial brief of appellant and designation of matter in the above referenced case has been served upon S. Creighton Waters, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 18th day of August, 2010.



Joseph L. Savitz, III
Senior Appellate Defender

Attorneys for Attorney

SUBSCRIBED AND SWORN TO before me
this 18th day of August, 2010,

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2018

The Supreme Court of South Carolina

The State, Respondent,
v.
Marion Bowman, Jr., Appellant.

The Honorable Diane Schafer Goodstein
Dorchester County
Trial Court Case No. 2001-GS-18-00348
2001-GS-18-00349

ORDER

The request for an extension to serve and file the Initial Brief of Appellant and Designation of Matter is granted and extended until August 18, 2010. 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

July 20, 2010

cc: Senior Appellate Defender Joseph L. Savitz, III
Senior Assistant Attorney General S. Creighton Waters



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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

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

July 19, 2010

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

RECEIVED

JUL 19 2010

S.C. SUPREME COURT

Re: The State v. Marion Bowman (capital case)

Dear Mr. Shearouse:

The initial brief of appellant and designation of matter in the above referenced case is due to be served and filed today. However, because of my current caseload, I have been unable to complete this brief for service. For that reason, I would respectfully request an extension of thirty days in which to serve and file this initial brief.

By copy of this letter, I am informing S. Creighton Waters, Esquire, of the Attorney General's Office, of my request.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Joseph L. Savitz, III
Senior Appellate Defender

JLS/mwl

cc: S. Creighton Waters, Esquire



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
Joseph L. Savitz, III, Senior Appellate Defender

June 1, 2010

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

Dear Mr. Shearouse:

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

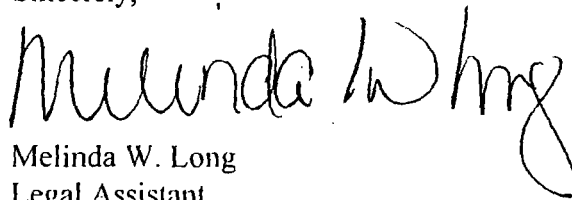
The State v. Marion Bowman

5/19/2010

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

Thank you for your assistance in this matter.

Sincerely,



Melinda W. Long
Legal Assistant

RECEIVED

JUN - 4 2010

S.C. SUPREME COURT



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
Joseph L. Savitz, III, Senior Appellate Defender

RECEIPT

I, Debbie M. Hopkins, of the South Carolina Supreme Court, have received the following original trial transcript(s) in the death penalty case of The State v. Marion Bowman

1. October 13, 2009 (Bonnie H. Kelly)

Date: June 3, 2010

Debbie M. Hopkins
(Name)



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) 734-1387

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

May 17, 2010

RECEIVED
MAY 17 2010
S.C. SUPREME COURT

Ms. Desiree Allen
S.C. Court Administration
1015 Sumter Street, 2nd Floor
Columbia, South Carolina 29201-3739

Dear Ms. Allen:

The transcript listed below was requested by this office. Pursuant to Rule 207(a)(2), SCACR, the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same.

<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Bonnie H. Kelly	4/27/10	Marion Bowman

Trial Date: October 13, 2009

I would appreciate your confirming in writing as to the status of the above-referenced transcript. If you should have any questions, please do not hesitate to contact me.

Sincerely,

Melinda W. Long
Legal Assistant

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



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
Joseph L. Savitz, III, Senior Appellate Defender

February 26, 2010

RECEIVED

FEB 26 2010

S.C. SUPREME COURT

Ms. Bonnie H. Kelly
Circuit Court Reporter
P O Box 50614
Columbia, SC 29250-0614

Dear Ms. Kelly:

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

The State v. Marion Bowman

Case #:

2001-GS-18-0348 and 0349

County: Dorchester

Date of Trial: October 13, 2009

Presiding Judge: Diane Schafer Goodstein

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

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

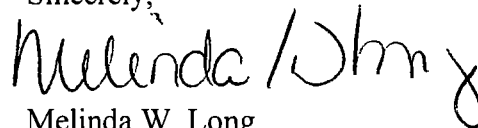
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's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

Ms. Bonnie H. Kelly
February 26, 2010
Page Two

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

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Melinda W. Long". The signature is written in a cursive style with a large, looping "y" at the end.

Melinda W. Long
Legal Assistant

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

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

The Honorable Diane S. Goodstein

Indictment Numbers: 2001-GS-18-0348 & 0349

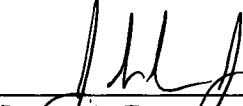
The State,.....Respondent.

v.

Marion Bowman, Jr.,.....Appellant.

NOTICE OF APPEAL

Mr. James A. Brown, Jr, Esquire, appeals the Order of the Court denying Appellant's request for a new trial. The Order denying the Motion for a New Trail was signed on December 28, 2009, filed on January 21, 2010 and received by mail from the Dorchester County Clerk of Court on January 27, 2010.



James A. Brown
Law Offices of Jim Brown
1600 Burnside Road, P.O. Box 592
Beaufort, SC 29901

February 4, 2010

Other Counsel of Record:

Blair Jennings, Deputy Solicitor
First Circuit Solicitor's Office
101 Ridge Street, Courthouse
St. George, SC 29477-0234

S. Creighton Waters, Assistant Attorney General
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

RECEIVED
FEB 08 2010
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

The Honorable Diane S. Goodstein

Indictment Numbers: 2001-GS-18-0348 & 0349

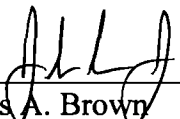
The State,.....Respondent.

v.

Marion Bowman, Jr.,.....Appellant.

PROOF OF SERVICE

I, James A. Brown, certify that I served a copy of the Notice of Appeal upon the Respondent by depositing a copy of this item in the United States Mail, postage prepaid, on February 4, 2010, addressed to its attorney of record, .



James A. Brown
Law Offices of Jim Brown
1600 Burnside Road, P.O. Box 592
Beaufort, SC 29901

February 4, 2010

Other Counsel of Record:

Blair Jennings, Deputy Solicitor
First Circuit Solicitor's Office
101 Ridge Street, Courthouse
St. George, SC 29477-0234

S. Creighton Waters, Assistant Attorney General
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Syp Ct.

Law Offices of Jim Brown, P.A.

1111 Bay Street • P.O. Box 592

Beaufort, SC 29901-0592

Phone: (843) 470-0003 Fax: (843) 470-0004

jimbrownlaw@hargray.com

www.attorneyjimbrown.com

February 4, 2010

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

RECEIVED

FEB 08 2010

S.C. SUPREME COURT

Re: The State v. Marion Bowman, Jr., 2001-GS-18-0348 &0349

Dear Clerk:

Under cover of this letter, please find enclosed an original Notice of Appeal and Proof of Service related to the denial of a Rule 29(b) Motion in the above-mentioned matter. An original is also being filed with Dorchester County Clerk of Court. Further, I am also writing to inform the Court that because I was appointed to represent Mr. Bowman and because he remains indigent and incarcerated on Death Row, I assume that the South Carolina Office of Appellate Defense will assume representation of Mr. Bowman for purposes of this appeal. Finally, as a matter of information only, Mr. Bowman also has a post-conviction proceeding pending in the Circuit Court related to these same convictions. Thank you, in advance, for attention to this matter. If you have any questions or concerns please do not hesitate to contact me.

Sincerely,


Jim Brown

w/enclosures

cc: Dorchester County Clerk of Court, w/ original enclosures
Blair Jennings, Deputy Solicitor, 1st Judicial Circuit, w/ original enclosures
S. Creighton Waters, Asst. Attorney General, w/ original enclosures
South Carolina Office of Appellate Defense, w/enclosures
Boyd Young, Esq., w/enclosures
John Sinclair, III, Esq., w/ enclosures
Marion Bowman, w/enclosures

behalf of the prosecution during the guilt/innocence phase of this trial and that testimony went uncorrected by the prosecutor, the trial court should grant a new trial, pursuant to Rule 29(b), based upon the newly discovered information revealed in a deposition of Mr. Felder.

The United States Supreme Court categorically condemns the utilization of false testimony. In fact, for nearly three quarters of a century, the Supreme Court has unequivocally indicated that the failure to correct the knowing presentation of false testimony will result in reversal of any conviction obtained therewith. *Mooney v. Holohan*, 294 US 103 (1935). In *Mooney*, the Court refuted the argument of the state attorney general that due process is satisfied when the "state has contrived a conviction...through deliberate deception of court and jury by the presentation of testimony known to be perjured." *Mooney*, at 112. The Court held that "[s]uch a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation." *Id.*, at 112.

Nearly a half century ago, the United States Supreme Court reversed a murder conviction based upon a prosecutor's failure to correct false testimony regarding a plea agreement struck between the state and a cooperating witness. *Napue v. Illinois*, 360 US 264 (1959). In *Napue*, the Court reviewed the constitutionality of a murder conviction obtained, in part, by the testimony of a cooperating co-defendant. At the trial, the co-defendant testified that he had not struck any plea bargain with the state's attorney. This was false and this false assertion went uncorrected. The Supreme Court held that the prohibition on the use of false testimony applied even when the "false testimony goes only to the credibility of the witness." *Napue*, at 269. The Court continued to note that a "lie is a lie..." and that it was "of no consequence that the falsehood bore upon the witness' credibility rather than directly..." on the question of guilt. *Id.*, at

269-270 (internal citations omitted).

Finally, the South Carolina Supreme Court has recently issued a ruling regarding a *Napue* claim. See *Riddle v. Ozmint*, 631 SE2d 70 (SC 2006). In *Riddle*, the state Supreme Court reversed a murder conviction, in part, because the state presented the false testimony from a witness and allowed that testimony to go uncorrected. In that case, a cooperating co-defendant falsely testified regarding the number of times he met with authorities to discuss his testimony. The state Supreme Court granted relief noting that the “issue is not why [witness] failed to tell the truth: rather, it is why the solicitor, who knew [witness’] testimony to be false, failed to correct it.” *Riddle*, at 75. The Court reaffirmed the notion that the “failure to correct false evidence is as reprehensible as its presentation.” *Id.*

Turning to the facts of this case and as a matter of review, Marion Bowman was tried and convicted for Murder and Arson, Third Degree, in a trial conducted in the Dorchester County Court of General Sessions. As part of the state’s case, Travis Felder testified on behalf of the prosecution as a cooperating witness. He testified that he assisted Mr. Bowman by giving him a ride from the scene of the arson. He testified that he struck a deal with the prosecution to reduce his criminal liability in exchange for his cooperation.

The jury learned that, as part of this agreement, the state would reduce both the criminal charges against Mr. Felder and minimize the potential that he would actually be incarcerated. In exchange, Mr. Felder would provide testimony of his knowledge of the events of February 16-17, 2001 which served as the basis of this trial. Further, the agreement mandated that Mr. Felder’s testimony be truthful and complete.

Mr. Felder testified that he left an apartment in Branchville and drove to the area of McAlhany Road and Nursery Road in Dorchester County. He testified that he then retrieved Mr.

Bowman and gave him a ride from the scene of an arson. He did not indicate his involvement in the procurement of the gasoline used to burn the automobile. Instead, his testimony falsely minimized his role.

However, Mr. Felder now indicates that he lied during this testimony. During a deposition provided to undersigned counsel during collateral proceedings, Mr. Felder admits a lie when he failed to indicate that he an apartment to obtain gasoline at the EZ Horizon Shop instead of directly traveling to the Nursery Road area in an effort to get rid of a car. He knew this gasoline was to be used to get rid of this car. However, the jury never heard this different version of Felder's testimony before deliberating and returning a guilty verdict against Mr. Bowman for murder and arson.

Also, Mr. Felder's false testimony was not corrected by the prosecution, as required by due process and fair trial requirements of the US and SC Constitutions. Instead, the prosecution continued to reward Mr. Felder for his false testimony by awarding him his bargain from the plea agreement despite his breach of its terms. The jury never learned of this perverse result as Mr. Felder was not sentenced until after the conviction and sentence of Mr. Bowman.

Finally, Marion Bowman was not aware of any of this information until after his conviction and sentence. To begin, Mr. Bowman did not consult with his trial attorneys after Travis Felder's sentence. Further, Mr. Bowman's collateral counsel did not fully understand the extent of Felder's lie and omission and his purposeful intent to avoid jail or the circumstances of his receipt of his plea bargain until the deposition conducted on August 26, 2008.

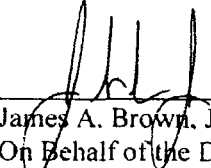
There, Felder indicated the reason he did not mention his full involvement during the trial was because he "had a lot of stuff on the table...was scared...was in jail for three months and--you know what [he's] saying." He also indicated that it was true that he "followed [Bowman] to the

EZ Horizon store where [Bowman] told [him] to go inside and buy gas.” Felder clearly stated this was different from his trial testimony. Finally, Felder indicated at the deposition that the prosecutor was aware of this alternate version of these events which were shielded from the jury.³

Again, the prosecution never corrected this falsehood. In fact, the prosecution appears to also have condoned perjury when Felder testified that he only met with representatives from the state twice, even though he clearly met with law enforcement officers and the prosecutor at least four times. This scenario is strikingly similar to that presented to the South Carolina Supreme Court in *Riddle*.

Therefore, Marion Bowman requests that this Court vacate his convictions and sentences and award him a new trial based upon this recently discovered evidence.

AND I SO MOVE



James A. Brown, Jr.
On Behalf of the Defendant

September 8, 2008

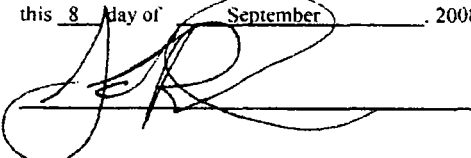
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CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding.

this 8 day of September, 2008.



³Q: “In your meeting with the Solicitor originally you told him you had bought the gas that was used to burn Candy (sp) Martin and her car, right? A: “Yes, sir.”

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JAN 27 2010

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 The State of South Carolina.)
)
)
 v.)
)
 Marion Bowman, Jr.,)
)
 Defendant.)
)

IN THE COURT OF GENERAL SESSIONS
 STATE GRAND JURY-
 PROS SECTION

Indictments: 2001-GS-18-0348 & -0349

ORDER DENYING MOTION FOR A NEW TRIAL

2010 JAN 21 PM 2:53
 CLERK OF COURT
 DORCHESTER COUNTY
 SOUTH CAROLINA

This matter is before the Court on a motion for a new trial filed by Marion Bowman, Jr. ("Defendant"), dated September 8, 2008, and based on Rule 29(b), SCRCrimP. For the following reasons, this Court denies the motion.

I.

Defendant was indicted for murder and arson, and the State sought the death penalty. The case was tried before this Court and a jury in May of 2002, and the jury not only found Defendant guilty but after the sentencing phase recommended the death penalty. Defendant was accordingly sentenced to death for murder and ten years for third degree arson.

The case was appealed to the South Carolina Supreme Court, which affirmed both convictions and sentences. State v. Bowman, 623 S.E.2d 378 (S.C. 2005). Certiorari was sought but denied by the United States Supreme Court.

Defendant then filed an Application for Post-Conviction Relief ("APCR") on April 7th, 2006. The Honorable James E. Lockemy was appointed to handle that proceeding. Shortly before the evidentiary hearing in that PCR began, Defendant filed the instant motion before this Court sitting in general sessions. The PCR evidentiary hearing has been completed and the

parties have since finished post-trial briefing; thus, the PCR case is presently before the Judge Lockemy for decision.

A hearing on Defendant's present motion was held before this Court on October 13th, 2009, at the Dorchester County Courthouse. Defendant was present and represented by Jim Brown, Esquire, who also represents Defendant in the PCR, and Boyd Young, Esquire. The State was represented by S. Creighton Waters and Alphonso Simon from the South Carolina Attorney General's Office, and Blair Jennings from the First Circuit Solicitor's Office.

II.

Defendant's motion is based on the testimony of trial witness Travis Felder. Travis Felder testified in the State's guilt phase case that after the Defendant knocked on the door and asked him to help parking a car, Travis got in his own car and followed Defendant - who was driving the victim's Ford Escort - back to the murder scene at Nursery Road, where he witnessed Defendant carry the victim's body to the car and light it on fire. **{Motion for New Trial App. 9-19}**.

Later during the defense sentencing phase case, defense counsel Norbert Cummings, Esquire, called Travis Felder to testify, and Travis admitted that he had not earlier told the jury that at Defendant's direction he purchased gasoline at the service station, and transported it to Nursery Road where Defendant took it from the car and used it to burn Kandee's car. **{MNT App. 120}**. The video was also shown, and Travis admitted the person on the tape purchasing gas at approximately 3:14 a.m. was him. **{MNT App. 43-44}**.

In the instant motion for a new trial, Defendant claims the new trial should be granted because the prosecution allegedly failed to correct false evidence inasmuch as Felder did not mention during his guilt phase testimony that he purchased the gas for Defendant. The State filed

a Memorandum in Opposition, in which it argued: (1) the motion was not timely made within a reasonable time, (2) the supposed new evidence was merely impeaching and would not probably change the result, (3) the evidence was not new, as it was known to the defense prior to the guilt phase, (4) the fact that Felder said in a deposition in September 2008 that he told the solicitor he bought the gas was not "new" evidence when the defense indisputably knew about it at trial, (5) a claim of alleged failure to correct false evidence is not appropriately made in a Rule 29 motion, and (6) there was no violation of the duty to correct false evidence, since Felder's guilt phase testimony was not false, the State did not knowingly allow false evidence to go uncorrected, and the evidence was not material anyway. At the hearing, Defendant stated his motion was *not* based on a failure to correct false evidence, but in the fact that Felder supposedly lied by omitting his purchase of the gas, and this was not presented to the jury prior to its guilt phase verdict.

III.

Although the State has appropriately raised and sought a ruling on all the arguments it asserted in its responsive memorandum, this Court's conclusion that the issue does not constitute "new" evidence is alone sufficient to reject the motion, and precludes the need to address the State's remaining claims.

To obtain relief under Rule 29(b), SCRCrimP, Defendant must show that there is after-discovered evidence, and that it: (1) is such that it would probably change the result if a new trial were granted, (2) has been discovered since the trial, (3) could not have been discovered prior to trial in the exercise of due diligence, (4) is material, and (5) is not merely cumulative or impeaching. Johnson v. Catoc, 345 S.C. 389, 548 S.E.2d 587 (2001); State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999).

In the instant case, counsel Cummings testified repeatedly at the PCR hearing that he had received the video in discovery prior to trial, that he watched it with his client, that his client told him that the video showed Travis Felder on the tape purchasing gas, and that he knew Felder purchased the gas prior to the beginning of trial. {MNT App. 354-55; 359; 364-66; 400-01}.

The instant motion is a freestanding claim filed in general sessions court, and counsel Cummings' testimony that the defense knew prior to the guilt phase that Felder was on the tape purchasing gas operates as a binding concession on elements (2) and (3) of the standard for after-discovered evidence. This alone is sufficient to deny the motion, regardless of materiality.

As noted before, Defendant stated at the hearing before this Court that his motion was not based in a duty to correct false testimony. Regardless, inasmuch as Defendant may contend that the "new" evidence is Felder's claim in the recent deposition that he told the solicitor he purchased the gas, it still would not meet the second and third prongs of the test for after-discovered evidence. Whether Felder told Bailey does not change the fact that defense counsel and Defendant knew at the time of the guilt phase of the existence of the video and that Felder had bought the gas, but elected not to do anything about it until the sentencing phase. The evidence to be analyzed in a Rule 29 after-discovered evidence motion is the substantive testimony about what happened at the time of the incident – that is, that Felder bought the gas – not whether Felder allegedly later mentioned that fact to someone in law enforcement. Since the defense knew the facts but elected not to do anything at the time, it cannot now raise the issue over six years later in a new trial motion, by claiming the "new" evidence is a claim by the witness in a PCR deposition years later that he told the State something the defense indisputably already knew at trial. See United States v. Meinster, 619 F.2d 1041 (4th Cir.1980) (defense waived claim that State's witness testified

falsely he had no deal, where defense was aware of the deal before trial but did not object or do anything with regard to the issue at trial and only asserted it after trial).

IV.

Accordingly, based on the foregoing analysis, the motion for a new trial based on after-discovered evidence is respectfully DENIED.

AND IT IS SO ORDERED this 20 day of December, 2009.



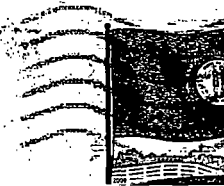
DIANE S. GOODSTEIN
Presiding Judge
First Judicial Circuit

Sumner
South Carolina

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Beaufort, SC 29901-0592

SAVANNAH GA 314

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South Carolina Supreme Court
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