

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

Samuel Anthony Wilder, Petitioner,

v.

State of South Carolina, Respondent.

ORIGINAL JURISDICTION

Appeal from Charleston County
John C. Few, Circuit Court Judge

Opinion No. 26841
Submitted March 17, 2010 – Filed July 26, 2010

DISMISSED

Appellate Defender Robert M. Pachak, of Columbia, for Petitioner.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Attorney General Salley W. Elliott, and Assistant Attorney General Mark R. Farthing, all of Columbia; and Solicitor Scarlett Anne Wilson, of Charleston, for Respondent.

PER CURIAM: Petitioner was convicted of murder and possession of a firearm during the commission of a violent crime and received consecutive sentences of life and five years. He had no direct appeal,¹ and following an evidentiary hearing on his post-conviction relief (PCR) application, the PCR judge found petitioner was entitled to a belated direct appeal. See White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). PCR counsel neglected to timely appeal this PCR order, and this Court issued a writ of certiorari in our original jurisdiction to review this PCR order. Since we find no merit to the direct appeal, we dismiss the writ of certiorari.

FACTS

Petitioner and the victim were married for less than a year when she left him. There was evidence that petitioner's wife was afraid of him. Two days after moving out of the home they shared, the victim was shot dead. She was inside a club when shots were fired, and then patrons, including the victim, ran into the street. Several witnesses testified they observed a man with a gun in the club, and then saw him shoot the victim in the back once they were outside the club. These witnesses were unable to identify petitioner as the armed shooter. Another witness, Terrance Smalls, was inside the club, and did identify petitioner as the shooter. A bartender, Harold Wigfall, also identified petitioner as the man shooting the gun in the club. Witness Smith observed petitioner with the gun in the club, then saw him shoot the victim in the street, stand over her where she fell, and shoot her again. Witness Campbell also identified petitioner as the shooter, as did witness Washington. Moreover, other witnesses were able to identify the automobile in which the shooter fled the scene. When this car was found, it contained fired cartridges matching those found at the scene. The automobile belonged to petitioner.

The State also called as a witness Scennie Murdaugh, an employee of the club where the shooting occurred. Murdaugh, who was working that night, testified and identified petitioner as the person firing the gun. The trial

¹ Although a direct appeal was filed, it was dismissed on counsel's motion because a post-trial motion was pending in the circuit court. Ultimately, a second direct appeal was begun but not perfected due to petitioner's appointed counsel's delicts.

judge refused to allow petitioner to attempt to impeach Murdaugh with nine alleged incidents of preparing false tax returns, holding these alleged prior bad acts were not probative of Murdaugh's credibility under Rule 608(b), SCRE.

ISSUE

Did the trial judge err in holding that allegations of preparing false tax returns are not probative of a witness's truthfulness?

ANALYSIS

Under Rule 608(b)(1), a trial judge may allow a witness to be cross-examined about "specific instances of [that witness's] conduct" if the trial judge, in his discretion, finds these instances probative of the witness's credibility. An abuse of discretion occurs when the trial court's ruling lacks evidentiary support or where it is controlled by an error of law. E.g., State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000). Here, the trial judge committed such an error when he held that preparing false tax returns was not conduct probative of Murdaugh's credibility. Compare In re Hamer, 342 S.C. 437, 537 S.E.2d 552 (2000) (filing false tax returns is a "serious crime" adversely reflecting on a judge's honesty and trustworthiness).

In order for this Court to reverse petitioner's convictions and sentences, however, we must find that the trial court's error prejudiced petitioner. Since Murdaugh was merely one of six eye witnesses to identify petitioner as the shooter, there were other witnesses whose testimony was consistent with that of the identifying witnesses, and physical evidence linked petitioner in the murder, her testimony was merely cumulative to other overwhelming evidence of guilt. As such, reversal is not warranted here. E.g., State v. Simmons, 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2001).

CONCLUSION

The writ of certiorari is

DISMISSED.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN,
JJ., concur.**

STATE OF SOUTH CAROLINA)
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COUNTY OF CHARLESTON)
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Samuel A. Wilder, #258295,)
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Applicant,)
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v.)
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State of South Carolina,)
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Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2012-CP-10-1025

**PARTIAL RETURN AND
MOTION TO DISMISS**

The Respondent, making its Return to the Application for post-conviction relief filed February 10, 2012 and amended February 29, 2012 would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the February 1998 term of the Charleston County Grand Jury for murder (1998-GS-10-1213) and possession of a firearm during the commission of a violent crime (1998-GS-10-1212). He was represented by Edward Brown, Esquire, and Rita Roache, Esquire.

On May 5, 1999, the Applicant proceeded to trial at which he was found guilty as indicted. On May 7, 1999 the Applicant was sentenced by the Honorable Luke N. Brown to life for the murder charge and five (5) years, consecutive, for possession of a firearm during the commission of a violent crime.

A Notice of Appeal was filed on the Applicant's behalf on May 14, 1999. On November 9, 1999, the Honorable Luke N. Brown heard a *pro se* post-trial motion filed by the Applicant.

However, the hearing was continued for additional presentations. By Order dated June 11, 2001, the South Carolina Supreme Court dismissed the Applicant's appeal without prejudice because the post-trial motion pending in the circuit court had not been ruled upon. The Remittitur was issued on June 28, 2001.

Before the hearing on the *pro se* post-trial motion was reconvened, the Applicant filed a Federal Habeas Corpus Petition on October 16, 2001. By Order dated February 6, 2002, the Honorable Margaret B. Seymour dismissed the Applicant's petition without prejudice to enable the Applicant to exhaust state remedies. Judge Seymour also denied the Applicant's motion for a preliminary injunction and motion for an emergency restraining order. The Applicant appealed Judge Seymour's order. The United States Court of Appeals for the Fourth Circuit denied the Applicant's certificate of appealability and dismissed the appeal. Wilder v. Catoe, No. 02-6397, decided April 30, 2002.

The hearing on the Applicant's *pro se* post-trial motion was held on December 20, 2001. Judge Brown denied the *pro se* motion in a written order dated January 11, 2002. The Applicant appealed his convictions and sentence and was represented by Milton Stratos, Esquire. By Order dated March 10, 2006, the South Carolina Court of Appeals dismissed the Applicant's direct appeal for failure of the Applicant to provide information regarding the transcript. The Remittitur was issued on March 29, 2006.

The Applicant subsequently filed an application for post-conviction relief on September 5, 2006. In his application, the Applicant alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that trial counsel failed to
 - a. Suppress all evidence from the search by the Charleston Police Department outside the city limits;

- b. Suppress the photograph of the Applicant as the fruit of an improper show-up;
 - c. Suppress all evidence seized from his car due to false information in the search warrant;
 - d. Inform the trial court of specific facts during the suppression hearing;
 - e. Impeach a State's witness with prior convictions;
 - f. Ensure the Applicant's post-trial motion was timely heard;
 - g. Object to the testimony of Jerome Garland;
2. Ineffective assistance of appellate counsel in that appellate counsel failed to follow the appellate court's instructions, allowed the appeal to be dismissed, and failed to move to reinstate the appeal; and
 3. Prosecutorial misconduct in that the prosecutor interviewed the victim's minor child without the Applicant's attorney present and obtained and used fabricated testimony at trial.
 4. The Applicant also submitted amendments to the application in which he asserted trial counsel was ineffective for failing to hire an expert to examine the blood at the scene, the gunshot residue on the victim's clothing, and the angle of the bullet entry and exit.

The Respondent made its Return to the application on May 7, 2007. An evidentiary hearing was convened at the Charleston County Courthouse on September 11, 2007. The Applicant was present at the hearing and was represented by Charles Brooks, Esquire. The Respondent was represented by Salley W. Elliott of the South Carolina Attorney General's Office. By Order dated November 12, 2007, the Honorable John C. Few denied and dismissed the PCR application, but granted the Applicant a belated appeal of his convictions pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

The Applicant filed a second Federal Habeas Corpus Petition on February 26, 2008. The Petition was dismissed by the Honorable Margaret Seymour without prejudice to allow the Applicant to exhaust his State remedies. The Applicant appealed Judge Seymour's Order to the Fourth Circuit Court of Appeals. The Appeal was dismissed on October 21, 2009.

A Notice of Appeal pursuant to White v. State was filed on the Applicant's behalf. The Applicant was represented by Robert M. Pachak, Esquire of the South Carolina Commission on Indigent Defense. The South Carolina Supreme Court dismissed the Applicant's appeal. State v. Wilder, Op. No. 26841 (S.C. Sup. Ct. July 26, 2010). The Remittitur was issued August 16, 2010.

The Applicant filed a third Federal Habeas Corpus Petition on February 10, 2011. The State's Motion for Summary Judgment was granted by the Honorable Margaret Seymour by Order dated March 9, 2012.

II.

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 file a motion or make any objection to the sentence.
 - b. Failure to do a reasonable investigation and file suppression motions.
 - c. Failure to object or make motions to the unconstitutional jury charge of criminal intent.
 - d. Failure to object to Judge dedicating his discretion to the Solicitor
 - e. Waiving the Applicant's fundamental right to decide whether or not to take a new appeal for the claim of ineffective assistance of appellate counsel.

In his amended application filed February 29, 2012, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Applicant contends he did not knowingly and voluntarily waive his right to appeal the ruling from his last PCR application.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, and the records from his prior PCR, appellate cases, and federal habeas matters.

III.

In his amended application for post-conviction relief, the Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. The Respondent lacks sufficient information to admit or deny this allegation. The Respondent requests an evidentiary hearing solely on this ground for relief. Sharper, Id.; Austin, 305 S.C. 453, 409 S.E.2d 395.

IV.

As to all the allegations raised in this Application other than the denial of the Applicant's right to appeal his prior PCR application, the Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not

have been raised . . . in the previous application.” Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised and did raise these grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of these allegations because this application is successive.

V.

As to all the allegations raised in this Application other than the denial of the Applicant’s right to appeal his prior PCR application, the Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on May 5, 1999. This Application was filed on February 10, 2012, which was over ten (10) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

VI.

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

VII.

WHEREFORE, the Respondent request a hearing be held solely on the issue of whether or not the Applicant freely and voluntarily waived his right to appeal the denial of his first post-conviction relief application. As to all other allegations, the Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

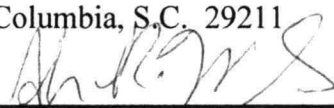
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

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

By:



Attorneys for the Respondents

Columbia, South Carolina
October 30, 2013

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STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

)

2006-CP-10-3454

Samuel Anthony Wilder, 258295
Applicant,

)

v.

)

ORDER GRANTING WHITE v. STATE
APPEAL AND DENYING ALL OTHER
ALLEGATIONS

State of South Carolina,
Respondent.

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CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed September 5, 2006. The Respondent made return to the application on May 7, 2007. An evidentiary hearing was convened at the Charleston County Courthouse on September 11, 2007. The Applicant was present at the hearing and was represented by Charles Brooks, Esquire. The Respondent was represented by Salley W. Elliott of the South Carolina Attorney General's Office.

The Applicant and his trial attorney, Edward Brown, testified at the hearing. This Court also had before it the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the State's return and attachments thereto, the trial transcript, the transcripts from the post-trial motion hearings, the order denying the Applicant's *pro se* post trial motion, the federal court documents and the all of the Applicant's appellate court records, including all orders, correspondence and other documents filed or issued by the court regarding the appeals.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the February 1998 term of the Charleston County Grand Jury for murder (1998-GS-10-1213) and possession of a firearm during the commission of a violent crime (1998-GS-10-1212). He was represented by Edward Brown, Esquire, and Rita Roache, Esquire. On May 5, 1999, the Applicant underwent trial by jury pursuant to which he was found guilty as charged. He was sentenced by the Honorable Luke N. Brown to life for the murder charge and five (5) years, consecutive, for possession of a firearm during the commission of a violent crime.

A timely notice of appeal was filed on Applicant's behalf on May 14, 1999. On November 9, 1999, the Honorable Luke N. Brown heard a *pro se* post-trial motion filed by the Applicant. However, the hearing was continued for additional presentations. By Order dated June 11, 2001, the appellate court dismissed the Applicant's appeal without prejudice because the post-trial motion was pending in the circuit court, had not been ruled upon, and, therefore, the appellate court did not have jurisdiction to hear the appeal. The remittitur was issued on June 28, 2001.

Before the hearing on the *pro se* post-trial motion was reconvened, the Applicant filed a federal habeas corpus petition on October 16, 2001. By Order dated February 6, 2002, the Honorable Margaret B. Seymour dismissed the Applicant's petition without prejudice to enable the Applicant to exhaust state remedies. Judge Seymour also denied the Applicant's motion for a preliminary injunction and motion for an emergency restraining order. The Applicant appealed



Judge Seymour's order. The United States Court of Appeals for the Fourth Circuit denied the Applicant's certificate of appealability and dismissed the appeal. Wilder v. Catoe, No. 02-6397, decided April 30, 2002.

The hearing on the Applicant's *pro se* post-trial motion was reconvened on December 20, 2001, and Judge Brown denied the *pro se* motion in a written order dated January 11, 2002. The Applicant appealed; however, the South Carolina Court of Appeals dismissed the appeal by Order dated March 10, 2006, for failure of the Applicant to provide information regarding the transcript. The remittitur was issued on March 29, 2006.

ASSERTED GROUNDS FOR RELIEF

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

1. Ineffective assistance of trial counsel in that trial counsel failed to
 - a. Suppress all evidence from the search by the Charleston Police Department outside the city limits;
 - b. Suppress the photograph of the Applicant as the fruit of an improper show-up;
 - c. Suppress all evidence seized from his car due to false information in the search warrant;
 - d. Inform the trial court of specific facts during the suppression hearing;
 - e. Impeach a State's witness with prior convictions;
 - f. Ensure the Applicant's post-trial motion was timely heard;
 - g. Object to the testimony of Jerome Garland;
2. Ineffective assistance of appellate counsel in that appellate counsel failed to follow the appellate court's instructions, allowed the appeal to be dismissed, and failed to move to reinstate the appeal; and

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3. Prosecutorial misconduct in that the prosecutor interviewed the victim's minor child without the Applicant's attorney present and obtained and used fabricated testimony at trial.

The Applicant also submitted amendments to the application in which he asserted trial counsel was ineffective for failing to hire an experts to examine the blood at the scene, the gunshot residue on the victim's clothing, and the angle of the bullet entry and exit. At the hearing, he also complained that trial counsel provided ineffective assistance for failing to retain a private investigator, for advising him not to testify at trial, for failing to challenge the competency of a child witness and for introducing the gunshot residue report into evidence causing the Applicant to lose the right to argue last to the jury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments at the post-conviction relief hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

At his post-conviction relief hearing, the Applicant testified that his trial counsel provided ineffective assistance of counsel for failing to properly investigate, failing to hire a private investigator, failing retain blood, gunshot residue and ballistics experts, failing to properly challenge the identification process, failing to challenge the competency of the victim's 11-year old daughter when she testified at trial, advising the Applicant not to testify at trial, and introducing the gunshot residue report into evidence causing the Applicant to lose the right to

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As to witness identifications of the Applicant as the perpetrator, this Court finds that the due process clause protects suspects against identification procedures that are unnecessarily suggestive and conducive to irreparable mistaken identity. Manson v. Brathwaite, 432 U.S. 98 (1971). The analysis consists of a two-step process. First, the Applicant must show the identification procedure was impermissibly suggestive and then, second, the court analyzes whether the identification is still reliable under the totality of the circumstances. Id. Factors considered by courts in determining whether the identification is reliable despite the suggestive nature of the identification procedure include the witness's opportunity to view the suspect at the time of the crime; the witness's degree of attention, the accuracy of the witness's prior description of the suspect; the witness's level of certainty at the time of identification; and the amount of time between the crime and identification. Id.

As to the show-up identification in this case, this Court finds the factors weigh in favor of reliability. While one-on-one show-up identifications are inherently suggestive, Stovall v. Denno, 388 U.S. 293 (1967), the record in this case shows the witness who identified the Applicant at the "show-up" had the perpetrator in clear view, had a good opportunity to view the perpetrator at the time of the crime, maintained a high degree of attention on the perpetrator, followed the perpetrator outside to the car, was able to describe the make and model of the perpetrator's car, exhibited a high degree of certainty about his identification of the Applicant as the perpetrator, identified the Applicant as the perpetrator shortly after the crime, and knew the Applicant from having seen him around the area. This Court finds that there is nothing else counsel could have done to successfully challenge the show-up identification in this case. The trial judge heard the testimony, reviewed all of the factors, and admitted the show-up


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would have led to a different result).

Similarly, this Court finds trial counsel articulated a reasonable trial strategy for electing not to retain and use at trial the services of experts respecting blood at the scene, gunshot residue on the victim's clothing, and the angle of the bullet entry and exit. This Court finds that the Applicant failed to prove that his trial counsel's performance fell below professional norms in this regard. This Court finds counsel's strategy regarding use of these experts to be reasonable based upon the facts of the case, counsel's investigation, and counsel's experience in the trial of murder cases. See Simpson v. Moore, 367 S.C. 587, 603, 627 S.E.2d 701, 709-710 (2006) (stating where counsel articulates a valid reason for employing a particular trial strategy, counsel's conduct will not be determined ineffective assistance of counsel); Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) (same); McLaughlin v. State, 352 S.C. 476, 483-484, 575 S.E.2d 841, 844-845 (2003) (same). Moreover, the Applicant failed to present any of the experts about which he complains at the post-conviction relief hearing. Therefore, any claim of prejudice is purely speculative. See Dempsey, 610 S.E.2d at 815 (stating any finding of prejudice is purely speculative in a claim counsel was ineffective for failing to present an expert witness at trial where the applicant fails to present the testimony of the expert at the post-conviction relief hearing); see also Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992)(same); Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993)(same). Mere speculation as to what the experts' testimony might have been is insufficient to satisfy the Applicant's burden of showing prejudice. "In a post-conviction relief action, the Applicant "may not simply posit suppositions and speculations in an attempt to establish that counsel was ineffective." Simpson, 627 S.E.2d at 707, FN 2. This Court refuses to engage in speculation and finds this claim to be without merit.



present the last jury argument. This Court finds the claims respecting trial counsel to be without merit and must be denied and dismissed.

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 Petitioner 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 v. State, 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. 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 690. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test to evaluate 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." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).


In the present case, this Court finds that trial counsel is a criminal trial practitioner who has

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extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During the conferences with the Applicant, counsel discussed the pending charges, the elements of the charges, the maximum penalties, Applicant's constitutional rights, the evidence the State would present against the Applicant, the Applicant's version of the facts, and possible defenses or lack thereof. This Court also finds trial counsel personally conducted a thorough investigation into this case, including interviews with State's witnesses, a review of all of the State's evidence, and review of all law enforcement and expert witness reports and witness statements. Counsel viewed the scene with the prosecutor and lead investigator, interviewed potential defense witnesses, viewed the photograph of the Applicant and investigated the circumstances surrounding the show-up and line-up identifications.

This Court finds counsel was well prepared for trial and conducted his own investigation rather than hiring a private investigator because counsel knew many of the witnesses, was familiar with the scene of the victim's murder, and felt it unnecessary to expend funds for a private investigator when he preferred to personally conduct the investigation himself. This Court finds trial counsel articulated a reasonable trial strategy for conducting the investigation personally rather than hiring a private investigator, rendering the interviews with and cross-examination of witnesses more effective. This Court also finds that the Applicant failed to show the requisite prejudice from counsel's failure to hire a private investigator. The Applicant failed to establish there is a reasonable probability the result of the trial would have been different had counsel hired an investigator to conduct the pre-trial investigation. Instead, the Applicant engages in pure speculation. See Porter v. State, 368 S.C. 378, 629 S.E.2d 353 (2006) (stating applicant failed to meet his burden of proof when he failed to show that further investigation



identification evidence. This Court finds there is no substantial possibility of misidentification in this case involving the show-up.

This Court also finds that there is nothing more counsel could have done that would have resulted in suppression of the evidence against him because Charleston Police Department officers were at the scene where he was arrested or obtained his photograph upon arrest. This Court also finds the Applicant failed to show the search warrant for his car was based upon false information and the Applicant's testimony on this point lacks credibility.

As to counsel's challenge to identifications of him based upon photographic line-ups, this Court finds that the Applicant failed to establish the photographs or procedure used when presenting the photographic line-ups to witnesses were suggestive. See Simmons v. U.S., 390 U.S. 377 (1968) (stating pretrial photographic identification will be suppressed only where the identification procedure was so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification). There is nothing else that trial counsel could have done with respect to the suppression of this identification evidence and the Applicant failed to show that counsel's actions or inactions constituted ineffective assistance of counsel.

As to counsel's failure to challenge the competency of the victim's minor daughter, this Court finds counsel had no basis to challenge the child's testimony. The Applicant failed to establish that the child was incompetent other than by his mere conclusory statement, which this Court finds is not credible. This Court finds the child's testimony was clear and articulate. See Rule 601, SCRE. The Applicant did not establish that counsel's failure to challenge the competency of the child witness constituted deficient performance. This Court also finds the Applicant failed to show the requisite prejudice from counsel's conduct. The State used the child to present a motive for the victim's murder; however, the testimony was insignificant when



viewed in light of the overwhelming eyewitness identification evidence presented against the Applicant.

Further, as to trial counsel's introduction of the gunshot residue report that resulted in the loss of the last argument to the jury, trial counsel testified that he introduced the report as a matter of trial strategy. Counsel testified he felt it important for the jury to have the report in the jury room. This Court finds that Counsel discussed the matter with the Applicant before moving the report into evidence and that introduction of the report was something they decided together. The trial transcript reflects that the introduction of the report as a defense exhibit and the Applicant's loss of the final argument to the jury were discussed in the Applicant's presence at trial. This Court finds counsel's action to be based upon a reasonable trial strategy and that the Applicant failed to establish that counsel's conduct constituted deficient performance or that he suffered the requisite prejudice.

Additionally, this Court finds that trial counsel fully discussed with the Applicant his right against self-incrimination and right to testify at trial. Counsel also provided to the Applicant his assessment that it was not in the Applicant's best interest to testify but made it clear that the Applicant ultimately must make the decision. This Court finds the trial court thereafter also carefully questioned the Applicant about his rights and the voluntary and knowing nature of the Applicant's decision not to testify. This Court finds the Applicant made a knowing and voluntary decision not to testify and that he failed to show counsel's action or inaction respecting his decision not to testify constituted deficient performance or resulted in the requisite prejudice. This Court also finds that the testimony the Applicant states he would have provided at trial would not have changed the outcome of the trial.

A handwritten signature in black ink, appearing to be a stylized name, possibly "J. P. [unclear]".

Finally, this Court finds the Applicant's claim that counsel was ineffective for the four-year delay in resolving the Applicant's *pro se* post-trial motion is without merit. This Court finds that the Applicant filed the motion without counsel's knowledge and thereafter failed to advise counsel of his actions. The delay in having the post-trial motion heard is the result of the Applicant taking the matter into his own hands rather than acting through counsel and of the Applicant's failure to properly communicate with counsel about the motion after it was filed.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

The Applicant claims that the attorney appointed to represent him in the appeal following the denial of his *pro se* post-trial motion failed to follow the appellate court's instructions, allowed the appeal to be dismissed without perfecting the appeal and failed to move to reinstate the appeal, all resulting in the Applicant being deprived of a direct appeal that he wished to pursue. After discussion with counsel appointed to represent the Applicant for the appeal, the State agreed that the Applicant was entitled to a review of direct appeal issues as permitted by White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). In White v. State, our supreme court determined that, where the post-conviction relief judge finds the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues. Based upon the agreement of the parties, this Court concludes the Applicant is entitled to a review of his convictions pursuant to White v. State, supra. In order to secure this review, however, the Applicant must appeal from this Order.

ALL OTHER ALLEGATIONS

The Applicant failed to pursue other allegations at the post-conviction relief hearing, including allegations contained in his application respecting prosecutorial misconduct, counsel's failure to impeach a state's witness, and counsel's failure to object to the testimony of Jerome

A handwritten signature in black ink, appearing to be the initials 'JF' with a large, stylized flourish extending from the top.

Garland. These and any other allegations that are not specifically addressed in this order are waived because the Applicant failed to present sufficient evidence to meet his burden of proof regarding the claims. Therefore, the allegations are denied and dismissed.

CONCLUSION

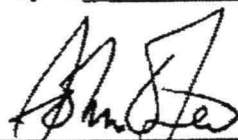
Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice, with the exception that the Applicant is granted a review of direct appeal issues, pursuant to White v. State, supra.

This Court advises the Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of this Order by counsel to secure the appropriate appellate review. An Applicant has a right to an appellate counsel's assistance in seeking review of denial of PCR. Rule 71.1(g), SCRCP, provides that if an Applicant wishes to seek appellate review, PCR counsel must file a notice of appeal on Applicant's behalf.

IT IS THEREFORE ORDERED:

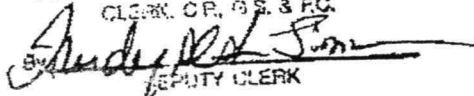
1. That the application for post-conviction relief must be denied and dismissed with prejudice with the exception the Applicant is granted a review of direct appeal issues pursuant to White v. State, supra.
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this _____ day of _____, 2007.



John C. Few
Presiding Judge
Ninth Judicial Circuit

11/12/07
AFFIDAVIT MADE DUTY
JULIE J. ARMSTRONG (SEAL)
CLERK, CR, GS, & FC


DEPUTY CLERK

1 THE COURT: All right. Mr. Johnson.

2 MR. JOHNSON: May it please the court. This is the
3 case of Samuel Wilder versus the State of South Carolina.
4 It is Case Number 2012-CP-10-1025.

5 Mr. Wilder was indicted at the February 1998 term of
6 the Charleston County Grand Jury for murder and possession
7 of a weapon during the commission of a violent crime.

8 On May the 5th, 1999, he proceeded to trial and was
9 found guilty as indicted. On May the 7th, 1999, he was
10 sentenced by the Honorable Luke Brown for life for murder
11 and five years consecutive for the possession charge. A
12 notice of appeal was filed on his behalf and the appeal
13 perfected.

14 By order dated June 11, 2001, the Supreme Court
15 dismissed the appeal without prejudice because the
16 post-trial motion pending in the circuit court had not been
17 ruled upon. I guess he had a -- brought a federal habeas
18 corpus which was denied. And then the post-trial motion was
19 heard on December 20th, 2001.

20 Judge Brown denied the pro se motion by a written
21 order on January 11, 2002. He appealed his convictions;
22 and by order of on March the 10th, 2006, the Court of
23 Appeals dismissed his appeal. The remitturer was issued on
24 March 29th, 2006.

25 He filed a PCR application September 5th, 2006. On

1 September 11, 2007, here at the Charleston County Courthouse
2 there was an evidentiary hearing. He was represented by
3 Charles T. Brooks, III. The State was represented by Sally
4 Elliott of the Attorney General's Office.

5 By order of November 12th, 2007, the Honorable John C.
6 Few denied and dismissed the PCR application but granted the
7 applicant a belated review of direct appeal issues pursuant
8 to White versus State.

9 He filed a second federal habeas corpus action on
10 February 26, 2008. That appeal was dismissed in 2009. A
11 notice of appeal pursuant to White versus State was filed on
12 his behalf and the Supreme Court denied and dismissed his
13 appeal. The remittitur was issued August the 16th, 2010.

14 He filed a third federal habeas petition on February
15 10th, 2011; and the State's summary judgment motion was
16 granted by the Honorable Margaret Seymour by order dated
17 March 9th, 2012.

18 He filed this current application on February 10,
19 2012, and amended it on February 29th, 2012. The State
20 filed a partial return of motion to dismiss on - let's see -
21 June 5th, 2014.

22 The State's motion to dismiss is based on the statute
23 of limitations and successiveness, all claims that he would
24 bring in a regular PCR. The only issue we are going forward
25 today is whether or not he was prejudiced by Mr. Brooks'

1 failure to file a PCR appeal pursuant to Austin versus
2 State. He is represented here today by Mr. Rodney Davis who
3 I will turn this case over to.

4 THE COURT: Mr. Davis.

5 MR. DAVIS: Thank you very much, Your Honor. May it
6 please the court. Judge, I was appointed on this case
7 November 19th, 2013.

8 The closest this case has come to an evidentiary
9 hearing was on June 16, 2014. We were in actually Berkeley
10 County. Judge Jefferson ordered that we handle some
11 hearings up there. I was actually given time to leave the
12 state at the actual initial scheduled -- the PCR week
13 because of a death in the family back in West Virginia. So
14 she took these cases and kept them under her supervision.
15 We heard them the week of June 15th, I guess was in 2014.

16 She because of some familiarity with a party to this
17 matter recused herself and continued the case. Mr. Wilder
18 was able to present and I was able to present for him
19 several issues that he has concerns over primarily being
20 that this should not only be a matter of an Austin appeal.

21 We were able to get some of those facts on the record,
22 but then Judge Jefferson recused herself and continued the
23 case. Following that hearing we corresponded back and
24 forth. And at our last meeting I went and met with him at
25 McCormick Correctional Institution on July the 2nd.

1 When I went to meet with him it was a very brief
2 meeting. In this case as well it was about a 10-minute
3 meeting. He ended the meeting by walking away and going
4 back to the unit. I have concerns about my ability to go
5 forward. He has concerns about my ability to go forward.

6 I don't have a written motion in this case, but I need
7 to bring it before the court because I do believe he has a
8 valid Austin claim.

9 But as far as any other claims, especially after the
10 attempted hearing in front of Judge Jefferson, she made it
11 very clear I believe that for us to attempt to raise any
12 other issues we would have to show that he could not have
13 raised them in his prior PCR. And I think that is
14 statutorily and the case law supports that.

15 If there is some way to show that we have an issue that
16 Mr. Brooks could not have raised it in his prior PCR then we
17 might be able to present that to the court and maybe raise
18 an additional issue and it would not be a successive PCR,
19 but short of an explanation from my client on why and how
20 the issue -- issues could not have been raised at his prior
21 PCR doesn't get us past that. And we have butted heads with
22 that, Your Honor.

23 I will tell you that I can't get an understanding of
24 that despite attempted efforts to try to do that. And I
25 know that Mr. Wilder is frustrated because he believes he

1 has explained it to me to present.

2 What I would hope the court would do is this. When I
3 last talked to him just briefly we could not communicate
4 well. It was my understanding -- I don't know that he
5 specifically said the words I don't want you any longer as
6 my attorney, but when I am trying to get information from
7 him he ended the meeting by walking out on that.

8 He may very well not want me to continue on with this
9 case, and in an abundance of caution I would raise that
10 issue to you and allow Mr. Wilder to respond to that.

11 THE COURT: All right. Mr. Wilder.

12 (WHEREUPON, Mr. Wilder confers with Mr. Davis.)

13 THE COURT: Mr. Wilder.

14 MR. DAVIS: Your Honor, he is asking -- he is asking if
15 he can be unshackled by one hand to be able to assist in
16 going through paperwork. I have a multi-inch file here, as
17 he does as well. So he is asking if you would allow the
18 deputies to free one of his hands.

19 THE COURT: All right. I don't have a problem with
20 that. You can free one of his hands.

21 (WHEREUPON, deputy complied.)

22 THE COURT: All right. Mr. Wilder, what is your
23 position concerning Mr. Davis continuing to represent you?

24 MR. WILDER: Your Honor, I have a motion here that I
25 filed.

1 MR. JOHNSON: And, Your Honor, if we could swear him in
2 as well.

3 (WHEREUPON, the witness was duly sworn.)

4 THE COURT: You filed that motion?

5 MR. WILDER: Yes, sir.

6 MR. DAVIS: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 MR. DAVIS: Judge, he has handed me a motion that was
9 filed on July 6th which would have been four days after I
10 met with him at McCormick Correctional Institution. And
11 just as an officer of the court, I don't believe I received
12 that before seeing it today. Of course it would have been
13 sent directly from him to the Clerk of Court. They would
14 not have asked on it because hybrid representation.

15 I certainly knew I was going to raise this issue
16 verbally here today. I am not surprised; but I don't know
17 that I have seen that before, Your Honor.

18 THE COURT: All right. Mr. Johnson, have you seen this
19 before today?

20 MR. JOHNSON: It may be in my file, Your Honor. Yeah,
21 I have a copy.

22 THE COURT: All right. Do you acknowledge you have had
23 sufficient notice of the motion?

24 MR. JOHNSON: Yes, Your Honor.

25 THE COURT: Okay. All right. Mr. Wilder, argue your

1 motion ---

2 MR. WILDER: Well ---

3 THE COURT: --- on why you want a new lawyer and this
4 one relieved.

5 MR. WILDER: Well, I had a motion earlier in July of
6 2013 to get some renunciation of the papers that I signed.

7 THE COURT: Get some what?

8 MR. WILDER: Renunciation papers on the State on a plea
9 deal that I made. And I haven't received the papers yet. I
10 haven't gotten none of the papers.

11 And the plea deal was that I do 30 years and they get
12 the money from the estate. Plus, you know, I murdered my
13 wife -- or allegedly murdered my wife. And at the same time
14 I would renunciate the estate. So I gave up the insurance
15 policy, the life insurance policy, plus I ---

16 THE COURT: What has that got to do with wanting to
17 have this gentleman relieved as your attorney? You are
18 getting into the facts of the original case.

19 MR. WILDER: Well, what ---

20 THE COURT: I want to know why you want Mr. Davis to be
21 relieved as your lawyer.

22 MR. WILDER: Because I never got the renunciation and
23 here's a motion to get that stuff. And he made a
24 presentation to Judge Jefferson about this whole thing, and
25 Judge Jefferson was telling him how to present the motion.

1 In other words he didn't present the motion right.

2 And now he's telling you that there is no motion -- I
3 mean there is no plea deal. And the plea deal was valid. I
4 had the detrimental reliance on the plea deal.

5 THE COURT: Had a what?

6 MR. WILDER: A detrimental reliance. Because they got
7 the money from the estate. They got it right away. And he
8 was asking me some questions about why I didn't bring it up
9 before and all this stuff here, but that answer is in the
10 transcript because Judge Few wouldn't hear nothing I've got
11 to say. Judge Few said he want Mr. Brooks to bring up the
12 issues that he wants to bring up, not what I put in to bring
13 up before the court. Few said he wanted the issues that Mr.
14 Brooks said. And that is not the way PCR is supposed to go.

15 And myself and Mr. -- this attorney we -- we don't
16 communicate. We can't see eye to eye. I just asked him for
17 a new attorney so we could move on with the case. Because
18 if I say something to him he ain't going to understand what
19 I say, and what he says to me just don't make no sense. We
20 have been back and forth at this thing ever since we met.
21 And just this is the boiling point.

22 THE COURT: Okay. Mr. Johnson, what is your position?

23 MR. JOHNSON: Your Honor, since we are here and it's
24 not a full PCR hearing and this is only on a motion whether
25 or not Mr. Brooks filed a PCR appeal I see no reason that

1 Mr. Davis can't competently represent him.

2 THE COURT: Mr. Davis?

3 MR. DAVIS: Judge, I understand the State's position as
4 far as whether an appeal was filed, that is pretty -- we had
5 one of those yesterday.

6 My concern is that Mr. Wilder -- I will not go too far
7 into it, Judge; but I do think you need to understand the
8 issue he would like to raise was that there was a plea offer
9 that he relied on to his detriment but then it was not
10 satisfied.

11 I did go to the Probate Clerk of Courts office here in
12 Charleston and attempted to find the documentation he was
13 talking about. While there was some documentation it was
14 not in line with what he had hoped was there.

15 Certainly still I was trying to some way to argue that
16 additional issue but it not be a successive PCR. And that
17 is what gets me back to the same question I have asked. And
18 he is right, when we get together sometimes it feels like we
19 are talking past each other because the only question I even
20 need that I feel I need an answer to to deal with anything
21 other than an Austin appeal is when the judge asks why this
22 wasn't raised before with Mr. Brooks what is our answer to
23 that. If I have an answer to that I will be happy to try to
24 raise that issue. And that's what I've tried to get at at
25 our last meeting which was ceremoniously stopped by Mr.

1 Wilder.

2 I would like for him to be fully heard on what he
3 thinks he needs to be heard on, but I am at a disadvantage
4 in being able to do that.

5 This is not the first time -- his has -- he has filed
6 numerous documents with not only this Clerk of Court but
7 other courts. You heard some of it in the procedural
8 history that the attorney general presented.

9 This is not the first time that all the issue about
10 whether I continue as his attorney has been discussed; but
11 like I said, we were in front of Judge Jefferson attempting
12 to go forward. I thought we were prepared that day, and
13 then because of her familiarity with some party in this
14 matter she recused and continued. Since then communication
15 has been very difficult.

16 THE COURT: Okay. Anything else you want to say, Mr.
17 Wilder?

18 MR. WILDER: Yes, sir. I would like for someone to get
19 this motion.

20 THE COURT: Sir?

21 MR. WILDER: Hand him the motion.

22 THE COURT: You have got another motion?

23 MR. DAVIS: Your Honor, I am being handed -- let's see
24 here. And I am not -- I am not seeing that it has actually
25 been clocked with the clerk. Is that right -- I don't see

1 it has been -- oh, I apologize. I apologize. July 23rd of
2 2013. That is what you referenced earlier?

3 MR. WILDER: That is the motion that I want to give the
4 judge right now.

5 MR. DAVIS: But this is the motion you referenced
6 earlier when you were talking to the judge; is that right?

7 MR. WILDER: Yeah, uh-huh.

8 MR. DAVIS: So, Judge, when he had talked earlier about
9 in 2013 he requested court documents this is -- may be even
10 material. But if I may, he has got it right here. If I may
11 approach, Your Honor. Just providing proof in fact he did
12 file that request.

13 And I believe that is July 13, Your Honor. That is
14 before I would have been appointed on the case.

15 THE COURT: Mr. Johnson?

16 MR. JOHNSON: Yes, sir. The State's position, Your
17 Honor, I know that is a motion for discovery and under the
18 PCR Act, Section 17-27-150, a party in a non-capital post-
19 conviction relief proceeding shall be entitled to invoke the
20 process of discovery to the extent that a judge in the
21 exercise of his discretion and for good cause shown grants
22 leave to do so. There is no discovery in PCR unless Your
23 Honor grants it.

24 This motion is more applicable to the first 2006 PCR
25 hearing. Like I said, we are here only on whether or not

1 Mr. Brooks was ineffective or effective in filing his
2 appeal. I don't think that is pertinent to this action.
3 And honestly, Your Honor, I ask that that be stricken from
4 the record.

5 THE COURT: Mr. Wilder, what do you want to say?

6 MR. WILDER: Okay. First of all, Mr. Few said during
7 the last PCR hearing when my first PCR hearing that was
8 held - I think that was held on December 20th -- no -- that
9 was held September 11th, 2007. And the judge said I can't
10 tell if that is his list, that meaning the stuff that I
11 wanted to raise during the PCR and that -- and -- and not
12 your list. And he said I want to know what you as his
13 lawyer believe are the legitimate issues that need to be
14 tried here.

15 When he said that, he excluded what I had and he wanted
16 Mr. Brooks who was just appointed weeks before the hearing
17 to address issues before the court.

18 Now I had a motion for expert services. Mr. Brooks
19 addressed the motion and he gave the motion to Judge Dennis
20 for the expert funds in Berkeley County. The hearing was
21 held in Charleston County.

22 He changed his mind on the -- on the expert funds and
23 told the judge that it wasn't what -- the judge told him
24 that he had to have a witness or expert there in order to
25 grant the motion.

1 Brooks changed that motion over to something and tried to
2 put it on the trial attorney and lost that motion.

3 Now the motion was -- the motion was to test the blood.
4 I'm trying to explain this the best way I can. There was
5 some blood found inside the shoe of the deceased inside the
6 building. The witness testified -- as a matter of fact all
7 of the witnesses testified that the victim was shot outside
8 of the club. So why is there a shoe with blood in it inside
9 the building? And I wanted the blood tested to see if it
10 was her blood or somebody else's blood. And that would --
11 that would create reasonable doubt on the witnesses to see
12 whether they were telling the truth at the trial or
13 whatever.

14 THE COURT: I don't mean to interrupt you, but it
15 sounds like to me you are trying to get a second bite of the
16 apple as far as PCR relief is concerned. I mean you have
17 already had a PCR hearing and that has been dealt with by
18 Judge Few.

19 MR. WILDER: Yes, sir, I had a PCR hearing.

20 THE COURT: Now so you are not happy with what took
21 place there so we are to the point where, you know, you
22 wanted to appeal the decision of that first PCR; correct?

23 MR. WILDER: No, sir, we are not at the point because
24 the first PCR hearing was a White versus -- a White versus
25 State hearing.

1 THE COURT: But that was ruled upon, wasn't it? The
2 PCR hearing there was a rule -- an order issued from the PCR
3 hearing, correct?

4 MR. WILDER: I was on appeal ---

5 THE COURT: No, just answer my question yes or no ---

6 MR. WILDER: Yes, sir.

7 THE COURT: --- was there not an order issued from that
8 PCR hearing?

9 MR. WILDER: An order was issued.

10 THE COURT: Okay. So that's been dealt with. Now you
11 wanted to appeal that decision, correct, ---

12 MR. WILDER: I wanted ---

13 THE COURT: --- because you didn't agree with it?

14 MR. WILDER: No, I doubt if I want to appeal it; I want
15 to address the issue again because the issue was ---

16 THE COURT: All right, you better be careful what you
17 are saying now I mean if you wanted it appealed or not. You
18 didn't like what happened, correct?

19 MR. WILDER: I never get a chance to participate in the
20 hearing.

21 THE COURT: Okay. Well, so you didn't like what
22 happened; correct? Is that yes or no?

23 MR. WILDER: That is true.

24 THE COURT: Okay. And so because you didn't like what
25 happened, didn't like the decision, did you tell your lawyer

1 you wanted to appeal that decision?

2 MR. WILDER: Yes, sir.

3 THE COURT: Okay. Was it appealed?

4 MR. WILDER: No, sir.

5 THE COURT: All right. Was it appealed late?

6 MR. WILDER: He -- he lost the White versus State
7 appeal, and he put in a motion to file a belated appeal.

8 And they heard the appeal in the original jurisdiction, but
9 the PCR issues were never appealed.

10 THE COURT: Mr. Johnson.

11 MR. JOHNSON: Your Honor, I do have to refute that.
12 Because the White versus State was fully heard by the
13 Supreme Court I do have to refute the fact that it was never
14 appealed. It obviously was timely appealed or else the
15 Supreme Court would have said it was not timely appealed.

16 THE COURT: Okay.

17 MR. DAVIS: Judge, this is where it gets confusing.
18 But I think - and Mr. Wilder will certainly correct me if I
19 am wrong - even though the White appeal gives him a belated
20 direct appeal from his original conviction that is not what
21 he wanted in his original PCR. That was entered into by the
22 State and his attorney because it was available to them.

23 But I believe what he is trying to indicate to the
24 court today is I wanted my issues on the PCR heard; they
25 weren't; that decision I wanted to appeal it as well. I

1 believe that is his position. If I am wrong I am sure he
2 will correct me. So the State is accurate that the White
3 appeal from his conviction ---

4 THE COURT: Has been ---

5 MR. DAVIS: --- was fully heard.

6 THE COURT: All right, it has been disposed of.

7 MR. DAVIS: And appeal from any issue on a post-
8 conviction relief matter was not.

9 THE COURT: Okay.

10 MR. DAVIS: Is that accurate, Mr. Wilder?

11 THE COURT: Which is what I was -- maybe I didn't --
12 wasn't articulate; but that is what I was trying to, you
13 know, glean from my conversation with him.

14 So we are back to what was stated initially by Mr.
15 Johnson. The only issue is the Austin issue, correct? Mr.
16 Johnson?

17 MR. JOHNSON: Yes, sir.

18 THE COURT: Would you agree with that, Mr. Davis? What
19 I was thinking.

20 MR. DAVIS: And I agree that that is an issue. Again
21 what I will say is there is documentation here that there
22 was communication between Ashley Pennington and a
23 representative for the Connie Elaine Pettway, P-E-T-T-W-A-Y,
24 estate and a renunciation of right to administration was
25 signed by Mr. Wilder. Those documents exist.

1 I am not a probate lawyer. My understanding speaking
2 with Mr. Romanosky briefly was that -- and talking with the
3 folks at the probate Clerk of Court's Office - and that was
4 done on February 4th, 1998 - and it was witnessed by an
5 assistant public defender in Mr. Pennington's office who was
6 originally Mr. Wilder's attorney.

7 The fact that that may have been part of some type of
8 plea agreement is an issue that was not raised in his
9 original PCR. But for it to get past the State's argument
10 that it is successive and you could have, should have,
11 raised it then I need my client to help me on why that
12 wasn't raised then and I will be happy to try to get that
13 matter before the court.

14 I have never been able to get a satisfactory answer
15 from my client on why these documents dated from 1998 were
16 not -- could not have been raised at his prior PCR. If he
17 can give me an answer to that I will make an argument today
18 on that matter as well because I know that is what he would
19 like.

20 THE COURT: But he won't communicate with you?

21 MR. DAVIS: That is correct, Your Honor -- or the
22 attempts become as convoluted or worse than even these
23 proceedings here today, Your Honor.

24 Your Honor, if I may suggest. I think there has been a
25 healthy discussion especially for Mr. Wilder to hear the,

1 you know, the court's understanding of the procedure, some
2 of the State's positions, and allowing me to address. And I
3 don't believe he has had to correct me yet. That I do
4 understand what he is attempting to do.

5 If I may suggest the most immediate issue is the motion
6 to have me relieved or not. If you are inclined to do that
7 then it becomes a matter of whether he gets another
8 appointed counsel or proceeds pro se on whatever issues you
9 deem appropriate.

10 If that motion is denied and I continue on I would
11 respectfully ask that this not go forward today because if
12 it is broken -- if you rule I stay on, I would hope that
13 perhaps this has broken the ice. And I am not even talking
14 about delaying it until September. But if we could delay
15 it -- I have got to be back here tomorrow and Thursday on
16 other matters. You know, as you see fit to rule on that
17 motion. But I would argue that is the most immediate
18 motion. Depending on your ruling on that we may be able to
19 get some movement on the other issues.

20 THE COURT: Counsel, approach the bench.

21 (WHEREUPON, bench conference was had 10:44 a.m., 7/21/15.)

22 MR. JOHNSON: Your Honor, I think we are back on the
23 record for Mr. Wilder's PCR case, 2012 PCR case. I just
24 wanted to put on the record one thing that Mr. Davis had
25 said. He had said that at Mr. Wilder's previous PCR hearing

1 that the State and his PCR attorney agreed for a White
2 versus State; however, I want to correct that. There was a
3 full evidentiary hearing. And I have the order which was
4 signed by Judge Few on November 12, 2007, and filed it looks
5 like November 20, 2007, which explained that there was a
6 full evidentiary hearing and thereafter Judge Few denied and
7 dismissed his allocations but granted his White versus State
8 appeal.

9 MR. DAVIS: And I apologize for misspeaking on that,
10 Your Honor.

11 THE COURT: Okay. All right. Thank you, gentlemen.
12 All right. At this point I am going to deny the motion to
13 relieve Mr. Davis as counsel in order to give him an
14 opportunity to further discuss this matter with Mr. Wilder.

15 That being said, we are going to recess this hearing to
16 see what kind of cooperation Mr. Davis and Mr. Wilder might
17 can reach in communicating about this matter. We will set
18 this to be reconvened tomorrow afternoon.

19 All right, in doing that in order to accommodate Mr.
20 Brooks who is involved in some other hearings in some other
21 courts in another part of the state we will take any
22 testimony that might become necessary from Mr. Brooks by way
23 of telephone. And that has been consented to by Mr. Davis
24 and Mr. Johnson.

25 So at this point in time we will momentarily,

1 temporarily, deny the motion to be relieved and have Mr.
2 Davis continue on in his representation and recess this
3 matter until tomorrow afternoon.

4 MR. JOHNSON: And, Your Honor, if I could also get a
5 ruling on his motion for discovery.

6 THE COURT: Okay. Hang on a minute. Let me find it.
7 I have it here somewhere.

8 MR. DAVIS: Your Honor, it was sitting on the front of
9 the bench, and since it was my client's copy I grabbed it.
10 May I approach?

11 THE COURT: Oh, yes.

12 MR. JOHNSON: I apologize.

13 THE COURT: That's fine. I tell you what, I am going
14 to take this under advisement because this is part of what I
15 think Mr. Davis is going to discuss with Mr. Wilder about
16 why this wasn't raised at the first PCR hearing as far as
17 this material. So I am going -- I am not going to rule on
18 this. I will hold it, you know, in abeyance until we
19 reconvene.

20 MR. DAVIS: Yes, sir. Thank you.

21 THE COURT: All right. Thank you.

22 MR. JOHNSON: And, Your Honor, in an abundance of
23 caution since it is being postponed until tomorrow afternoon
24 can we ---

25 THE COURT: Yes, I am going to order that this

1 gentleman remain in Charleston County and not be transported
2 back anywhere else.

3 THE DEPUTY: Your Honor, I will make that request, but
4 if I could ask the court even if it is done on a Form 4 or
5 whatever just something stating ---

6 THE COURT: So you will have something in writing?

7 THE DEPUTY: Yes, sir. That will help. Because
8 sometimes they will ship them back even those he is, quote,
9 unquote, done just to make sure.

10 THE COURT: Okay. Thank you, sir. Okay. We will get
11 you something in writing.

12 (WHEREUPON, adjourned 10:57 a.m., 7/21/15.)

13 (WHEREUPON, resume from 7/23/15, approximately 11:18 a.m.)

14 (WHEREUPON, one hand of Mr. Wilder was unshackled following
15 permission by the court.)

16 (WHEREUPON, Mr. Davis confers with client.)

17 MR. JOHNSON: May it please the court, Your Honor.

18 THE COURT: Yes, sir.

19 MR. JOHNSON: I believe we are back on record on Samuel
20 Wilder versus the State of South Carolina. It is Case
21 Number 2012-CP-10-1025. I believe that I have already given
22 you the procedural history on Tuesday. We had this case
23 continued. And so now we are back on what the State would
24 claim is an Austin versus State claim. But I will turn this
25 over to Mr. Davis who represents Mr. Wilder because I

1 believe that he has other arguments to which I would like to
2 respond, Your Honor.

3 THE COURT: Okay. Mr. Davis.

4 MR. DAVIS: May it please the court. Judge, I believe
5 we have four issues -- potential issues to deal with today.
6 Just to remind the court for the record, on Tuesday morning
7 Mr. Wilder was present in court. We raised some -- we gave
8 some factual background -- procedural background of where we
9 are at. But the issue that Your Honor dealt with that day
10 was a verbal motion for me to be relieved. Your order was
11 that that motion by Mr. Wilder was not granted but Your
12 Honor asked me to remain this week so that I could continue
13 speaking with him.

14 Without getting into it, I was not able to do that
15 until this morning. But I have had sufficient time to speak
16 with him this morning on the one issue that I had had
17 difficulty with. I was able to do that this morning.

18 So we are here today. I am still attorney of record
19 pursuant to your verbal order. I have not prepared a
20 written order to that effect pursuant to your verbal order.

21 Just as would addressing on that issue, Your Honor, I
22 will tell the court that I provided to Mr. Wilder today if I
23 had not before a letter -- two letters, one from Ashley
24 Pennington, Public Defender's Office, who would have been
25 the boss of Mr. Guy Vitetta who was Mr. Wilder's original

1 attorney on this case to John Romanosky who is another
2 attorney in the Charleston County Bar who primarily handles
3 real estate and probate matters. Then there is a letter
4 from Mr. Romanosky back to Ashley Pennington. I provided my
5 client with copies of those.

6 I have also provided my client with six pages of
7 documents that I obtained from Charleston County Probate
8 Court dealing with a probate issue which we briefly
9 discussed on Tuesday. So I have provided that to him today.

10 So, Your Honor, first of all just putting on the record
11 that I am continuing on as Mr. Wilder's attorney pursuant to
12 your order.

13 What we would attempt to address today on behalf of my
14 client, Your Honor, are three issues. The first issue that
15 my client would wish to complain about deals with the prior
16 PCR proceeding in which a White appeal from his conviction
17 was granted. It is my client -- it is my understanding it
18 is my client's argument that he was not requesting that
19 relief and that relief was ordered without his consent or
20 request. So that would be one issue he would seek to
21 address today.

22 Secondly, Your Honor, we would argue -- my client's
23 second argument would be that following the first PCR action
24 his counsel Mr. Brooks, who my understanding is available by
25 telephone call if we need him to testify -- I certainly

1 consent to that. That in fact following that PCR proceeding
2 which a White appeal was granted but PCR relief was not
3 granted my client would argue there was not an appeal from
4 that PCR and therefore he would be entitled to an Austin
5 appeal.

6 Finally, Your Honor, there are three specific claims
7 that my client -- we would like to present at least a
8 proffer or -- as to three issues that we would argue are not
9 successive because for a couple of reasons. Mr. Wilder and
10 his attorney Mr. Brooks were not able -- not allowed to
11 present at the first PCR. We understand the standard. We
12 would argue that these could not have been presented at that
13 PCR and we would ask leave of the court to present three
14 claims at this PCR.

15 And just as a preview for the court, the three claims
16 include the aforementioned probate court documents that the
17 argument would be in fact there was a plea deal arranged and
18 relied on by Mr. Wilder to his detriment that was then not
19 completed by the State through ineffectiveness of his
20 original criminal defense counsel.

21 And we would argue the reason that that was not raised
22 at the first PCR proceeding by Mr. Brooks is he did not
23 attempt to raise it and that Judge Few did allow Mr. Wilder
24 to testify to it thus preventing his ability to raise it.
25 That he would if he could have and he was not allowed to.

1 The second claim would be a claim that the original
2 trial judge did not properly charge the jury as to criminal
3 intent. Similarly we would argue that Mr. Brooks failed to
4 attempt to raise it when Judge Few limited the grounds to
5 only what the attorney would raise not to what Mr. Wilder
6 might want to raise.

7 And Judge, I apologize; it is going to be four. I so
8 apologize. It is going to be four.

9 Three, that there was a legal sentence imposed, a
10 five-year gun -- a sentence on the gun charge was
11 consecutive to the life charge of murder, that that was
12 improper. The same basis for why it is not successive.

13 And then finally it ties back into the plea deal that
14 there was an interest in a life insurance policy that is
15 part of the estate issue. So I guess it dovetails into that
16 that there was a life insurance policy that was relinquished
17 by Mr. Wilder as part of the plea deal that he relied on to
18 his detriment. So I guess that does dovetail into the first
19 one. So we can call it three.

20 We would seek to address a White issue and also an
21 issue and that this is not a successive PCR. If you're
22 inclined to allow Mr. Wilder to proceed on those claims that
23 they are not successive I can tell the court that as to the
24 life insurance issue I would be asking for a continuance to
25 obtain those documents. That still this morning is not

1 clear to me.

2 I had researched the probate issue, the estate issue
3 relinquishing some rights there. I do not have the
4 information on that. If we are allowed to pursue that I
5 would ask for a continuance on that issue. But I think that
6 frames our legal issues today.

7 THE COURT: All right. Mr. Johnson.

8 MR. JOHNSON: May it please the court, Your Honor. The
9 State's position, Your Honor, is that first Mr. Wilder did
10 have PCR counsel and a full evidentiary hearing in his first
11 PCR matter.

12 He actually did have an appeal there from, so Austin
13 would not be applicable. He must bring all claims and all
14 issues to that appeal. And, Your Honor, I have the proof of
15 service, the notice of appeal, as well as the - our brief,
16 the State's brief pursuant to White versus State.

17 And as I was discussing with counsel, White versus
18 State only applies in the PCR forum. It is whether or not
19 he is entitled to a belated review of direct appeal issues
20 pursuant to White versus State that is brought up in that
21 first initial PCR evidentiary hearing.

22 So I have the brief that is in response to the White
23 versus State claim. I also have the order from the Supreme
24 Court denying the White versus State -- or hearing it but
25 then denying it or dismissing it. And the remittitur there

1 from showing that he did receive an appeal from his initial
2 PCR.

3 If Your Honor would like to see that I have that and
4 can make it a court's exhibit. It is a document that can be
5 done online.

6 THE COURT: Let's go ahead and make it part of -- let's
7 make it part of the record.

8 MR. JOHNSON: We are going to make copies of it and
9 just for my sake and Mr. Wilder's sake. Court's exhibit?

10 THE COURT: That would be fine.

11 MR. JOHNSON: Okay.

12 THE COURT: Court's exhibit.

13 MR. JOHNSON: Is that all right, Rodney, court's
14 exhibit?

15 THE COURT: Court's exhibit?

16 MR. DAVIS: That is fine.

17 (WHEREUPON, Court's Exhibit Number 1, 8/16/10 Remittitur
18 Letter, was marked for identification.)

19 MR. JOHNSON: So then our position would be that he is
20 not entitled to another PCR appeal. We filed a motion -- a
21 partial return of motion to dismiss this case based on
22 statute of limitations successive and only having a hearing
23 based on the Austin versus State I will -- you know, I wish
24 I would have caught this and amended it earlier. But the
25 State's argument is he has had his bite of the apple and he

1 is not entitled to another successive Austin versus State
2 appeal.

3 Going to the arguments about PCR counsel
4 representation, Your Honor, PCR is not the forum for that
5 claim. That would be a federal habeas claim under Martinez
6 versus Ryan; but our State Supreme Court has issued an
7 opinion in Kelly versus State. And that is 404 S.C. 365
8 explicitly stating that trying to PCR PCR counsel is not
9 applicable in South Carolina.

10 The quote - if I may read, Your Honor - is that like
11 other states we hereby recognize the holding in Martinez is
12 limited to federal habeas corpus review and it is not
13 applicable to state post-conviction relief actions.

14 So any claims about what Mr. Brooks did or did not do
15 is not proper for this forum. And so I don't even think we
16 have to address those three claims that Mr. Davis spelled
17 out because that all has to do with what he did or did not
18 do or what Judge Few did or did not do.

19 He would have had to appeal what Judge Few did in that
20 initial appeal that he had. Apparently it was not done.
21 And so he -- we are stuck in that he does not get another
22 appeal, Your Honor. He has already had his bite at the
23 apple. It was fully flushed out by the Supreme Court. They
24 denied it. And now he just doesn't get to appeal every
25 time, you know, he feels like he gets to file a successive

1 application.

2 I do dispute the fact that this is a successive
3 application. He -- they claim to -- you know, they could
4 not have brought it up the first time. The probate court
5 documents certainly were available at the time of this first
6 PCR hearing.

7 The original trial judge -- first of all that is a
8 direct appeal issue which it would not be proper for the PCR
9 forum. And if it is proper it should have been taken care
10 of in the White versus State appeal. And the illegal
11 sentence, once again he had -- all this information was
12 available at the first PCR hearing therefore under the PCR
13 statute it says they must bring all claims in one original
14 PCR application.

15 Those claims had to have been vetted at that original
16 PCR. They were not. They are simply deemed waived or
17 abandoned. And therefore he is not entitled to bring those
18 claims in this PCR hearing.

19 For that matter, Your Honor, we ask that you deny and
20 dismiss this entire application as he has already had his
21 bite of the apple through a PCR appeal and any claims
22 against PCR counsel is not for this forum according to Kelly
23 versus State. Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Johnson.

25 Mr. Davis, any further?

1 MR. DAVIS: Judge, I will not belabor as to the
2 successive claims. I think the acquisitions are pretty
3 clear. You heard from Mr. Wilder the other day as well on
4 that. The only thing I will say on that is available is one
5 thing, able to argue is where we would differ. I don't
6 doubt the documents exist. I don't doubt Mr. Wilder had the
7 information. But the ability to make the argument we -
8 again, Mr. Brooks and the judge prevented those from being
9 raised. We would like to raise them now.

10 As to the Austin claim I was provided those by the
11 State. I have asked my client if he has them. At the
12 appropriate time I would like to get copies for him just and
13 leave the originals as a court exhibit but get copies to him
14 before he leaves the courthouse today if we can.

15 THE COURT: Yes, sir.

16 MR. DAVIS: The only response that I can answer on
17 behalf of my client for that is we would point out that the
18 filing by Mr. Brooks that created that order was out of time
19 and my client would point out that therefore became under
20 the -- under Supreme Court's original jurisdiction. So
21 procedurally he wishes that I raise that argument.

22 As to the White issue -- forgive me. The State's
23 position on the White issue my client's obviously -- his
24 position is while that was ordered as the original PCR that
25 is not the relief he was requesting.

1 THE COURT: Okay.

2 MR. DAVIS: I will just leave it at that, Your Honor,
3 that the direct appeal that he was granted as the original
4 PCR was not the relief he was granting from which he wanted
5 the conviction overturned because of ineffectiveness, so he
6 would argue he did not request nor consent to that relief.
7 (WHEREUPON, Mr. Davis conferred with client.)

8 MR. DAVIS: And, Your Honor, just for the record, I
9 have asked my client if there is any other issue that he
10 wishes me to raise, and I believe now that we have had the
11 extra time to talk I believe I have raised his issues
12 accordingly.

13 MR. JOHNSON: And, Your Honor, just to respond if I may
14 about the -- this is a motion to file an appeal out of time
15 for Mr. Brooks and so the State will, you know, concede that
16 that was filed out of time; however, there is no prejudice
17 because apparently the Supreme Court has, you know, they
18 accepted the appeal. They heard it. They flushed it out
19 and they ruled upon it. So that issue was heard.

20 Also the whole consenting or not consenting to that
21 being the relief, he had to bring that up in the appeal;
22 and, Your Honor, he simply didn't do it. So that is why
23 this should -- this is successive. And certainly statute of
24 limitations would limit him on this claim as well.

25 MR. DAVIS: And, Your Honor, before you rule if I could

1 just have a moment to look at a couple of documents.

2 THE COURT: Yes, sir.

3 (WHEREUPON, break to review documents and confer with
4 client.)

5 MR. DAVIS: Your Honor, if I may my client just as to
6 the White issue.

7 THE COURT: Yes, sir, go ahead.

8 MR. DAVIS: Just as to the White issue. He has
9 provided to me a quote from Douglas versus State which is
10 631 S.E.2nd 542 that a PCR judge who granted a petitioner's
11 right to seek belated writ to review the Court of Appeals
12 decision on direct appeal under the mistaken belief that
13 such result was compelled by White versus State, as we
14 explained in Austin versus State a White appeal is limited
15 to situations where the PCR advocate did not knowingly and
16 intelligently waive his right to direct appeal. Petitioner
17 of course was afforded the right.

18 So White is granted when for some reason you weren't
19 given direct appeal and didn't knowingly waive it. That is
20 where White comes in.

21 My client points out in this case Mr. Andrew Grimes,
22 now a deceased member of the Charleston County Bar, did in
23 fact file an appeal. So White kicks in only when appeal was
24 not had and client wanted it. In this case there was an
25 appeal. So that is an additional argument where my client

1 would argue that Judge Few erred in granting White because
2 White applies only when an appeal was not had and client
3 wanted it. Here client wanted it and had it so White should
4 not have been ordered.

5 THE COURT: He had it at the time ---

6 MR. JOHNSON: No.

7 THE COURT: --- of the hearing before Judge Few?

8 MR. JOHNSON: Your Honor, he was -- I am looking at
9 procedural history. Mr. Grimes did file a notice of appeal;
10 however, there was a pending post-trial motion at the
11 General Sessions level and -- trial court level; and then
12 the Supreme Court dismissed the appeal without prejudice,
13 and then the I think the post-trial motion was heard. And
14 it said the Supreme Court -- or the Court of Appeals
15 dismissed the direct appeal for failure of applicant to
16 provide information regarding the transcript.

17 So that is not knowingly and intelligently waiving the
18 right to a direct appeal because he didn't provide the right
19 information I guess. And that is why he was granted the
20 White versus State in the first PCR hearing.

21 So his direct appeal, the first time it was never fully
22 heard until the Supreme Court hears it pursuant to White
23 versus State.

24 But -- I'm sorry, one more point, Your Honor. And even
25 if you bring up the White versus State issue you also have

1 to vet every PCR issue you have at that original hearing.
2 So that is our argument, that he got the chance to vent all
3 of those and then he got an appeal there from. If you have
4 any questions I can hopefully clarify.

5 (WHEREUPON, Mr. Davis confers with client.)

6 MR. DAVIS: Your Honor, if I may just so my client's
7 position is fully presented. On behalf of my client the
8 argument would be that White is available only when there is
9 no appeal filed. The State is correct procedurally; Mr.
10 Grimes filed it, dismissed without prejudice -- without
11 prejudice. There was an attempt to refile. And Mr. Wilder
12 would argue that -- unless there was no documentation filed,
13 unless there was no documentation filed for direct appeal
14 but Wright that White is inapplicable.

15 It is his position that he is being punished by getting
16 his White appeal, a discretionary appeal, as opposed to an
17 appeal by Wright from his conviction. That is his position.

18 THE COURT: Am I reading this decision correctly that
19 the court really dealt with both the White appeal and the
20 PCR appeal ---

21 MR. JOHNSON: That's what I read that.

22 THE COURT: --- in one -- in one ruling?

23 MR. JOHNSON: Correct. They have to. Yeah, that is
24 how it's -- not only do you respond to a White versus State
25 issue ---

1 THE COURT: But then there was the writ.

2 MR. JOHNSON: --- but then you also any of the why the
3 PCR judge was wrong you have to do it all in one brief.

4 THE COURT: So how do we get around that? I mean ---

5 MR. DAVIS: If I can, Your Honor.

6 THE COURT: Yes, sir. I mean I understand your
7 argument about the appeal was not

8 (WHEREUPON, Mr. Davis confers with client.)

9 MR. DAVIS: Your Honor, may I approach and share the
10 exhibit with my client?

11 THE COURT: Sure.

12 (WHEREUPON, document provided to Mr. Davis.)

13 THE COURT: Staple that together so we don't lose it.

14 MR. JOHNSON: Well ---

15 THE COURT: Has anybody got a stapler?

16 MR. JOHNSON: --- we have to get copies of it for Mr.
17 Wilder.

18 THE COURT: Oh, that's right. Okay.

19 MR. DAVIS: It was submitted on March 17, 2010. Filed
20 July 26, 2010.

21 (WHEREUPON, Mr. Davis confers with client.)

22 MR. DAVIS: Judge, two things my client would like to
23 point out. First of all he's referencing -- he has the
24 transcript from his original PCR, and he is referencing
25 where his PCR counsel informed the court -- when asked by

1 the court: So did he file an appeal but it was dismissed
2 because it was filed And then Mr. Brooks interrupts.
3 It was not filed timely by his court-appointed counsel.

4 It was timely. It didn't have all of the necessary
5 documentation to proceed in his position, and therefore his
6 position would be that Judge Few when ordering, again, the
7 White appeal was doing so under incorrect information.

8 And again, I have made it clear his position is if
9 something is filed White is not appropriate, and his
10 position is getting a discretionary appeal versus an appeal
11 by Wright is punishment to him.

12 THE COURT: But was the filing perfected? I mean you
13 have made a comment there were some documents not filed so.

14 MR. DAVIS: And procedurally I am trying to remember
15 exactly what ---

16 MR. JOHNSON: The filing -- that filing the original
17 one was not perfected because it said in the procedural
18 history that I have is that the Court of Appeals dismissed
19 it for failure of applicant to provide information regarding
20 the transcript. That is not perfected.

21 And once you -- and actually I do disagree with his
22 interpretation of White. It is not just when you file; it
23 is that you get the entire direct appeal process. And that
24 includes notice of appeal and the perfection and the court
25 hearing and vetting that issue. And so but White versus

1 State would have been an appropriate remedy that Judge Few
2 ordered.

3 MR. DAVIS: And then, Judge, as to your question as to
4 the fact that this order from July 2010 from the Supreme
5 Court your question about the fact that it appears to deal
6 with both White and Austin issues together, again, my
7 client's claim on that would be that it is insufficient
8 because of course it does not include a review of the three
9 claims that he was prevented from presenting.

10 May I approach again, Your Honor?

11 THE COURT: Yes, sir.

12 MR. JOHNSON: And that would go to the exact same claim
13 he is bringing with Mr. Brooks that is basically ineffective
14 assistance of PCR appellate counsel is what he is kind of
15 getting at, that they failed to raise that issue that would
16 debate Judge Few's order.

17 Again, I rely on Kelly versus State. That is not for
18 this forum, Your Honor. That may be a federal habeas forum
19 under Martinez versus Ryan, but that is not applicable in
20 South Carolina.

21 THE COURT: I'm just thinking out loud. I mean if I --
22 if I grant some relief and say okay he can appeal, you know,
23 the PCR decision, the court is going to get this and say we
24 have ruled on this. You know, they are not -- I can't
25 (WHEREUPON, Mr. Davis confers with client.)

1 THE COURT: I don't know what he filed when he filed
2 his other habeas corpus, you know, actions. I mean did he
3 raise these issues that you are raising today in those, Mr.
4 Davis?

5 MR. DAVIS: Your Honor, could I -- could we just hear
6 directly from Mr. Wilder on that?

7 THE COURT: Yes.

8 MR. DAVIS: I am not sure.

9 THE COURT: I mean he has filed it a couple of times I
10 think. It is being kicked back.

11 MR. DAVIS: Mr. Wilder -- obviously, Your Honor, we
12 have got voluminous documentation here. I have been --
13 while I am licensed in federal court I have never handled a
14 habeas matter, and so I have been more focused on the state
15 issue; so we just --

16 Mr. Wilder, the judge is wondering on any of your
17 habeas appeals have you raised your -- the extra claims.

18 Is that your question?

19 THE COURT: Yes, issues that you -- the issues you have
20 raised to me this morning.

21 MR. DAVIS: Have you done that on habeas appeal?

22 MR. WILDER: (Inaudible.)

23 THE COURT: Sir, speak up so we can hear you.

24 MR. WILDER: I hadn't raised it because -- because it
25 is not ripe to be raised on a habeas court because we have

1 first got to raise it in the state court. So I did not
2 raise it.

3 Yeah, if I go to habeas court they are going to kick it
4 back and say well you didn't raise -- give it -- the state a
5 chance to rule on it. So no. So ---

6 THE COURT: Well, a chance today is a chance for the
7 court to rule on it.

8 MR. WILDER: Yeah.

9 THE COURT: And if I ---

10 MR. WILDER: Yes, sir.

11 THE COURT: You know, if I deny it then what you say
12 applies, Mr. Johnson, it goes through the habeas process.

13 MR. JOHNSON: Yes, sir, it does.

14 THE COURT: I mean so and I feel like my hands are tied
15 somewhat. I mean I will think about this, but of course if
16 I rule with the State we don't need Mr. Brooks' testimony.

17 MR. JOHNSON: Correct.

18 THE COURT: Why don't we do this. You wanted to break
19 for lunch around 12:00?

20 MR. JOHNSON: Yes, Your Honor.

21 THE COURT: It is almost 12:00.

22 MR. JOHNSON: Okay.

23 THE COURT: Why don't we let me consider this during
24 the lunch break. You go to lunch. We come back. I can
25 rule on -- or anything -- anything else you want to put on

1 the record though, Mr. Davis, before we break? I am going
2 to ---

3 MR. DAVIS: Judge, simply I would ask that he be
4 ordered to remain in the building. That way we won't lose
5 track of him.

6 THE COURT: Yes. Please don't let ---

7 THE DEPUTY: I won't let him leave, Judge.

8 THE COURT: --- SCDC get a hold of him.

9 MR. DAVIS: And Judge, I would also ask leave of the
10 court to make copies of that for him before he breaks. I
11 will send that with him.

12 THE COURT: Right, because I -- yeah, I want to get
13 this done so I can get this thing stapled together.

14 MR. DAVIS: And then if I may.

15 THE COURT: Yeah, we will get him a copy of this to
16 look at.

17 (WHEREUPON, Mr. Davis confers with client.)

18 MR. DAVIS: Judge, the final thing, my client has since
19 we are kind of prospectively looking to whether habeas is
20 the appropriate relief he has indicated because -- and I can
21 get dates when we come back if I need to -- that Mr. Brooks'
22 out-of-time appeal from his PCR occurred after the statute
23 had run on his habeas which -- which does -- could -- would
24 substantially prejudice him if then he is barred from
25 federal relief because of improper inaction of his State PCR

1 attorney. That is the only other ---

2 MR. JOHNSON: Which is falling directly under Martinez
3 versus Ryan, which Kelly versus State says is not applicable
4 in this forum or in this state.

5 MR. DAVIS: And that's the only other extra thing we
6 have, Your Honor. And I will make -- if my client does not
7 already have I will make sure my client has copies of
8 Martinez and Kelly.

9 THE COURT: Sure. Okay. Okay. All right. Okay. We
10 will break for lunch now. Let's make sure he gets a copy of
11 that.

12 Does he -- will they take him somewhere during lunch,
13 Mr. Wilder?

14 THE DEPUTY: Yes, sir, they will take him downstairs in
15 our holding facility and they will have -- he will have
16 lunch while he is here.

17 THE COURT: Okay. We can get him a copy of that.

18 (WHEREUPON, the hearing adjourned 11:55 p.m., July 23,
19 2015.)

20 (WHEREUPON, the hearing resumed 7/23/15 at approximately
21 1:28 p.m.)

22 THE COURT: Anything else from either one of you
23 gentlemen in the Wilder matter before I rule?

24 MR. JOHNSON: I don't think so, Your Honor.

25 (WHEREUPON, Mr. Wilder confers with counsel.)

1 MR. DAVIS: Nothing from the applicant, Your Honor.

2 THE COURT: Okay. Thank you, Mr. Davis.

3 All right. Gentlemen, after my review of the entire
4 file and after reading the cases that have been cited here
5 today and after my review of the decision rendered by our
6 Supreme Court in this very case, Mr. Wilder versus the State
7 of South Carolina, I find that there is no relief that I can
8 offer Mr. Wilder.

9 This matter has been disposed of by this state court;
10 and I don't think I can go back behind the decision of the
11 Supreme Court and allow him another, you know, bite at the
12 apple in this court.

13 It certainly does not close him from proceeding with a,
14 you know, a federal habeas proceeding. And I think that
15 would be the proper step for him at this point in time. So
16 I respectfully deny the relief that you are seeking here,
17 Mr. Wilder; but I wish you well with your federal
18 proceeding.

19 MR. WILDER: Okay.

20 MR. JOHNSON: Thank you, Your Honor.

21 MR. DAVIS: If I may just to protect the record, Judge.

22 THE COURT: Yes, sir.

23 MR. DAVIS: Certainly that order seems to deal with the
24 White and Austin issue. And so then as to the issue of
25 additional claims that we would argue we were prevented --

1 he was prevented from raising them in the first PCR could we
2 have a specific ruling on that? I would appreciate it for
3 the record.

4 THE COURT: Well, again that was something I feel like
5 his PCR counsel should have dealt with. His PCR counsel
6 failed to -- obviously Mr. Wilder could have complained to
7 his lawyer about what the judge did or didn't allow him to
8 hear and he could have raised that, and if it wasn't raised
9 I mean that has been dealt with by the Supreme Court's
10 ruling on the PCR appeal. So does that give you some basis
11 for my ruling?

12 MR. DAVIS: Thank you, Your Honor.

13 (WHEREUPON, Mr. Davis confers with client.)

14 MR. JOHNSON: Would you like me to prepare an order,
15 Your Honor?

16 THE COURT: Yes, sir. Please, sir.

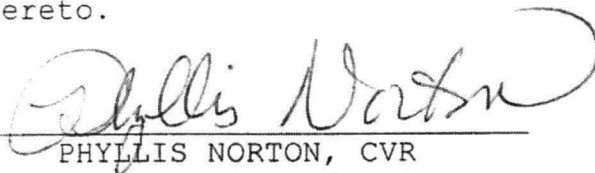
17 (Whereupon the hearing concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on July 21 and July 23, 2015.

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



PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: November 14, 2015

Certified Transcript Provided For: SCCID
Certification Reference # 111415 OR16

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

SAMUEL A. WILDER #258295)

Plaintiff(s))

vs.)

STATE OF SOUTH CAROLINA)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP-10-3386

(Please Print)

Submitted By: SAMUEL A. WILDER

Address: 386 Redemption Way

McCormick, SC 29899

SC Bar #: _____

Telephone #: _____

Fax #: _____

Other: _____

E-mail: _____

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts
Constructions (100)
Debt Collection (110)
Employment (120)
General (130)
Breach of Contract (140)
Other (199)

- Torts - Professional Malpractice
Dental Malpractice (200)
Legal Malpractice (210)
Medical Malpractice (220)
Previous Notice of Intent Case #
Notice/ File Med Mal (230)
Other (299)

- Torts - Personal Injury
Assault/Slander/Libel (300)
Conversion (310)
Motor Vehicle Accident (320)
Premises Liability (330)
Products Liability (340)
Personal Injury (350)
Wrongful Death (360)
Other (399)

- Real Property
Claim & Delivery (400)
Condemnation (410)
Foreclosure (420)
Mechanic's Lien (430)
Partition (440)
Possession (450)
Building Code Violation (460)
Other (499)

- Inmate Petitions
PCR (500)
Mandamus (520)
Habeas Corpus (530)
Other (599)

- Judgments/Settlements
Death Settlement (700)
Foreign Judgment (710)
Magistrate's Judgment (720)
Minor Settlement (730)
Transcript Judgment (740)
Lis Pendens (750)
Transfer of Structured Settlement Payment Rights Application (760)
Other (799)

- Administrative Law/Relief
Reinstate Driver's License (800)
Judicial Review (810)
Relief (820)
Permanent Injunction (830)
Forfeiture-Petition (840)
Forfeiture-Consent Order (850)
Other (899)

- Appeals
Arbitration (900)
Magistrate-Civil (910)
Magistrate-Criminal (920)
Municipal (930)
Probate Court (940)
SCDOT (950)
Worker's Comp (960)
Zoning Board (970)
Administrative Law Judge (980)
Public Service Commission (990)
Employment Security Comm (991)
Other (999)

- Special/Complex /Other
Environmental (600)
Automobile Arb. (610)
Medical (620)
Other (699)
Pharmaceuticals (630)
Unfair Trade Practices (640)
Out-of State Depositions (650)
Sexual Predator (510)

Submitting Party Signature:

Samuel A. Wilder

Date:

6-20-16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

collo guy

FORM 5

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

2016-CP-10-3386
IN THE COURT OF COMMON PLEAS

Samuel A. Wilder, #258295)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2016 JUN 29 PM 4:23
CLERK OF COUNTY
FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Inst., 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Charleston County General Sessions Court, 100 Broad St., Chas. S.C. 29412
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Murder (98-GS-10-1212)

PWDVC (98-GS-10-1213)

(c)

5. The date upon which sentence was imposed and the terms of the sentence:

(a) **May 5, 1999, five years for weapons charge**

(b) **and consecutive to life for common law murder**

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. **South Carolina Court of Appeals**

ii.

iii.

(b) the result in each such Court to which you appealed:

i.

ii. **Dismissed pending disposition of new trial**

iii.

(c) the date of each such result:

i. **June 11, 2001**

ii.

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. **Appeal dismissed without prejudice**

ii.

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) **N/A**

(b)

- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) inordinate delay in resolving Petitioner's new trial
- (b) motion and arrest of judgment.
- (c) breach violation and breach of plea agreement.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Barker Mingo's reason for delay since 1/4/2006.
- (b) ~~New Discovered evidence and breach of plea~~
- (c) agreement by the State. See attached sheets

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? *** yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? yes

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. Filed na
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. United States District Court
 - ii. _____
 - iii. _____

(c) the disposition thereof:

- i. **Denied**
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. **2/6/02**
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. **None**
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. **N/A**
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. **N/A**
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) **Newly discovered evidence**
- (b)
- (c)

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? **yes**
- (b) your trial, if any? **yes**
- (c) your sentencing? **yes**
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? **yes**
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. **Guy Vitetta, Chas Co. Public Defender**
 - ii. **Edward Brown & Rita Roache**
146 Spring Street, Chas S.C.
 - iii. **Milton Demetrios/ Wanda Haile/ Robert Pachak**
Laura Beor Appellate Defenders
- (b) the proceedings at which each such attorney represented you:
 - i. **Trial Counsel**
 - ii. **Trial Counsel**
 - iii. **Direct appeal and appeal from PCR**

19. State clearly the relief you seek in filing this application:

~~New Trial or specific sentence performance, or~~
~~sentence correction~~

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
County of MCCORMICK)

VERIFICATION

I, Samuel A. Wilder, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Samuel A. Wilder

SWORN to and subscribed before me this 17th day of June, 2016.

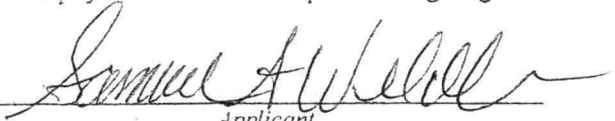
Michael Casare (L.S.)
Notary Public

My Commission Expires: July 09, 2026

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

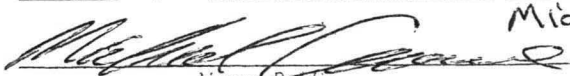
ko I, Samuel A. Wilder, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

17 day of June, 2016.


Notary Public Michael Canipe

My Commission Expires: July 09, 2026

2016-CP-10-3380

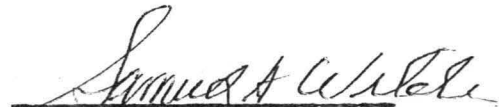
ISSUES BEFORE THIS COURT

FILED
2016 JUN 29 PM 4:23
JULIE J. HARTZ
CLERK OF COURT

1. The Applicant contends that he was denied their right to direct appeal from his State conviction.
2. The Applicant contends that he was denied their right to have a review of denial of a PCR filed 2/10/2012.
3. The Applicant contends that he was denied the benefit of Ander's Brief and Johnson's Brief due to procedure error.
4. The Applicant contends that he was denied the benefits of the plea bargain when the Solicitor said that the plea was off the table but the party had already got \$75,000.00 in insurance money and applicant had a detrimental reliance of the deal.
5. The Applicant contend that he was denied the right to be heard on his new trial motion in violation of the Due Process Clause that was filed 1/04/06 in Charleston County.
6. Ineffective assistance of appellate counsel on appeal in the original jurisdiction on PCR appeal.
7. Ineffective assistance of appellate counsel for failure to appeal issues from my PCR.

Dated

June 20 2016



Samuel A. Wilder

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Samuel A. Wilder, #258295,)

2016-CP-10-3386

Applicant,)

v.)

**MOTION TO RESTRICT
FUTURE FILINGS**

State of South Carolina,)

Respondent.)

The Applicant's repetitive and abusive filings should be restricted in order to preserve the Court's time and resources and stop any interference with the fair administration of justice.

The Applicant has received his full bite at the apple. Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or one bite at the apple; this bite includes an applicant's right to appeal the denial of a post-conviction relief application and the right to assistance of counsel in that appeal. Matthews v. Evatt, 105 F.3d 907, 916 (1997), Gamble v. State, 298 S.C. 176, 379 S.E.2d 118, 119 (1989), Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

The Applicant has filed three (3) PCR Applications on the 1999 conviction alone, and he has appealed in the federal courts to no avail. A new Application was filed on June 29, 2016. The Applicant has had his full bite at the apple at least two (2) times on that conviction. In fact, it is the State's position that the Applicant has consumed the entire apple.

I. REQUESTED REMEDY

Due to the repetitive and frivolous nature of Applicant's numerous applications, the State would request the Court to direct the Charleston County Clerk of Court not to accept any further PCR applications from the Applicant unless he pays the normal filing fee generally required for the filing of a summons and complaint. The United States Supreme Court has denied litigants who have filed repetitive, frivolous petitions the right to proceed *in forma pauperis*, resulting in the litigants having to pay the required filing fee with that Court. In re Whitaker, 513 U.S. 1, 115 S.Ct. 2, 130 L.Ed.2d 1 (1994); In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994); In re Demos, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991); In re Sindram, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991); In re McDonald, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989).

The State would also request that the Applicant be required to provide a properly notarized affidavit certifying that the Applicant believes, in good faith, that the matter raised is not frivolous. In In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), the South Carolina Supreme Court required Maxton, who had filed numerous meritless petitions with the Court, to pay a filing fee and accompany any future filings with a properly notarized affidavit by Maxton certifying that he, in good faith, believed that the matters he was raising were non-frivolous and proper for the Court to consider. Id. Other courts have required that the abusive litigant file an affidavit certifying that he believes the petition raises an original claim or is non-frivolous before accepting filings from the litigant. In the Matter of Verdone, 73 F.3d 669 (7th Cir.1995); Abdul-Akbar v. Watson, 901 F.2d 329 (3d Cir.1990); Green v. Warden, 699 F.2d 364 (7th Cir.), *cert. denied*, 461 U.S. 960, 103 S.Ct. 2436, 77 L.Ed.2d 1321 (1983).

The State would also request that if the Applicant submits an Application that is

accompanied with a notarized affidavit, that, before filing, the Clerk's office be directed to submit the Application to the Chief Administrative Judge. The State would ask the Administrative Judge to then make a finding on whether the issues raised in the Application are non-frivolous and proper for the Court to consider. If the Administrative Judge finds the Application proper, it would then be submitted to the Clerk's office for filing. No Application would be filed without a proper finding from the Chief Administrative Judge.

The State also requests that the Applicant be warned that should he continue to file Applications containing matters that are frivolous, that he may be held in contempt or for the Court to impose sanctions as circumstances of the case and discouragement of like conduct in the future may warrant. The Supreme Court imposed such warning on an Applicant in In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996).

II. SUPPORTING FACTS

The Applicant's extensive litigation history is necessary to understand this request for injunction:

Underlying Convictions

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the February 1998 term of the Charleston County Grand Jury for murder (1998-GS-10-1213) and possession of a firearm during the commission of a violent crime (1998-GS-10-1212). He was represented by Edward Brown, Esquire, and Rita Roache, Esquire.

On May 5, 1999, the Applicant proceeded to trial at which he was found guilty as indicted. On May 7, 1999, the Applicant was sentenced by the Honorable Luke N. Brown to life

for the murder charge and five (5) years, consecutive, for possession of a firearm during the commission of a violent crime.

A Notice of Appeal was filed on the Applicant's behalf on May 14, 1999. On November 9, 1999, the Honorable Luke N. Brown heard a *pro se* post-trial motion filed by the Applicant. However, the hearing was continued for additional presentations. By Order dated June 11, 2001, the South Carolina Supreme Court dismissed the Applicant's appeal without prejudice because the post-trial motion pending in the circuit court had not been ruled upon. The Remittitur was issued on June 28, 2001.

Before the hearing on the *pro se* post-trial motion was reconvened, the Applicant filed a Federal Habeas Corpus Petition on October 16, 2001. By Order dated February 6, 2002, the Honorable Margaret B. Seymour dismissed the Applicant's petition without prejudice to enable the Applicant to exhaust state remedies. Judge Seymour also denied the Applicant's motion for a preliminary injunction and motion for an emergency restraining order. The Applicant appealed Judge Seymour's order. The United States Court of Appeals for the Fourth Circuit denied the Applicant's certificate of appealability and dismissed the appeal. Wilder v. Catoe, No. 02-6397, decided April 30, 2002.

The hearing on the Applicant's *pro se* post-trial motion was held on December 20, 2001. Judge Brown denied the *pro se* motion in a written order dated January 11, 2002. The Applicant appealed his convictions and sentence and was represented by Milton Stratos, Esquire. By Order dated March 10, 2006, the South Carolina Court of Appeals dismissed the Applicant's direct appeal for failure of the Applicant to provide information regarding the transcript. The Remittitur was issued on March 29, 2006.

PCR APPLICATIONS

A. Wilder v. State (2006-CP-10-3454)

Filed: 9/5/2006
Conviction: 1999
Allegations: Ineffective assistance of counsel; ineffective assistance of appellate counsel; prosecutorial misconduct
Hearing: 9/11/2007
Judge: John C. Few
Ruling: Order Dismissing PCR 10/12/ 2007
Appeal: Dismissed – 7/26/2010

B. Wilder v. State (2006-CP-10-1853)

Filed: 2/10/2012
Conviction: 1999
Allegations: Ineffective Assistance of Trial Counsel
Hearing: 07/23/2015
Judge: Roger E. Henderson
Ruling: Order of Dismissal 8/28/2015
Appeal: Dismissed – 3/25/2016

The State reserves the right to amend this motion to include the updated information that is currently listed as unknown above.

IV. CONCLUSION

The Applicant's allegations and accusations have become increasingly frivolous and ridiculous. The Applicant continues to waste the time and resources of the Charleston County Clerk of Court's Office, the Chief Administrative and Presiding Judges in the Ninth Circuit, the South Carolina Attorney General's Office, numerous appointed attorneys of the Charleston County Bars, Court Personnel, and the South Carolina Supreme Court.

There is a strong interest in finality of the criminal process; judicial review must stop at some juncture and finality must be realized. Aice v. State, 305 448, 409 S.E.2d 392 (1991). The Court quoted Justice Harlan when discussing the importance of finality in litigation when they

stated the following:

If law, criminal or otherwise, is worth having and enforcing, it must some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in doing so, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefitted by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved. A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process...This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first.

Anderson v. Leeke, 271 S.C. 435, 441, 248 S.E.2d 120 (1978).

V. PRAYER FOR RELIEF

For these reasons, The State requests the Court to find the following:

1. The Clerk of Court should refuse to accept further petitions from the Applicant asking the Court to entertain matters unless he pays a filing fee generally required for filing motions and petitions with this Court.
2. The Applicant should be prohibited from filing any legal actions in any jurisdiction in South Carolina without submitting the requisite filing fees¹ and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous.
3. Any Applications submitted with properly notarized affidavits be submitted to the Chief Administrative Judge to make a finding on whether the allegations are non-frivolous and proper for the Court before they are filed;

¹ S.C. Code Ann. 8-21-310(11)(a) (Supp. 2004)

IT IS THEREFORE ORDERED:

1. The Clerk of Court should refuse to accept further petitions from the Applicant asking the Court to entertain matters unless he pays a filing fee generally required for filing motions and petitions with this Court.
 - a. The Applicant should be prohibited from filing any legal actions in any jurisdiction in South Carolina without submitting the requisite filing fees¹ and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous.
 - b. Any Applications submitted with properly notarized affidavits be submitted to the Chief Administrative Judge to make a finding on whether the allegations are non-frivolous and proper for the Court before they are filed.
 - c. The Clerk of Courts should be instructed to return all documents that do not comply with this order.

AND IT IS SO ORDERED this 17th day of November, 2016.

ROGER M. YOUNG, SR.
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina.

¹ S.C. Code Ann. § 8-21-310(11)(a) (Supp. 2004)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)
Samuel A. Wilder, #258295,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2016-CP-10-3386

ORDER RESTRICTING FUTRUE FILINGS

This matter comes before this Court by way of an application for post-conviction relief filed June 29, 2016.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the February 1998 term of the Charleston County Grand Jury for murder (1998-GS-10-1213) and possession of a firearm during the commission of a violent crime (1998-GS-10-1212). He was represented by Edward Brown, Esquire, and Rita Roache, Esquire.

On May 5, 1999, the Applicant proceeded to trial at which he was found guilty as indicted. On May 7, 1999, the Applicant was sentenced by the Honorable Luke N. Brown to life for the murder charge and five (5) years, consecutive, for possession of a firearm during the commission of a violent crime.

A Notice of Appeal was filed on the Applicant's behalf on May 14, 1999. On November 9,

1999, the Honorable Luke N. Brown heard a *pro se* post-trial motion filed by the Applicant. However, the hearing was continued for additional presentations. By Order dated June 11, 2001, the South Carolina Supreme Court dismissed the Applicant's appeal without prejudice because the post-trial motion pending in the circuit court had not been ruled upon. The Remittitur was issued on June 28, 2001.

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PCR APPLICATIONS

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Allegations: Ineffective assistance of counsel; ineffective assistance of appellate counsel; prosecutorial misconduct
Hearing: 9/11/2007
Judge: John C. Few
Ruling: Order Dismissing PCR 10/12/ 2007
Appeal: Dismissed – 7/26/2010

B. Wilder v. State (2006-CP-10-1853)

Filed: 2/10/2012
Conviction: 1999
Allegations: Ineffective Assistance of Trial Counsel
Hearing: 07/23/2015
Judge: Roger E. Henderson
Ruling: Order of Dismissal 8/28/2015
Appeal: Dismissed – 3/25/2016

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that Applicant had a full opportunity to litigate his current allegations in prior court proceedings. The Applicant continues to raise the same meritless claims by repeated collateral attacks on his convictions. The public interest in finality of judgments requires that litigation must eventually come to an end.

Due to the repetitive and frivolous nature of Applicant's numerous applications, this Court directs the Charleston County Clerk of Court to not accept any further PCR applications from the Applicant unless he pays the normal filing fee generally required for the filing of a summons and complaint. The United States Supreme Court has denied litigants who have filed repetitive, frivolous petitions the right to proceed *in forma pauperis*, resulting in the litigants having to pay the required

filing fee with that Court. In re Whitaker, 513 U.S. 1, 115 S.Ct. 2, 130 L.Ed.2d 1 (1994); In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994); In re Demos, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991); In re Sindram, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991); In re McDonald, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989).

Additionally, this Court finds that the Applicant is required to provide a properly notarized affidavit certifying that the Applicant believes, in good faith, that the matter raised is not frivolous. In In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), the South Carolina Supreme Court required Maxton, who had filed numerous meritless petitions with the Court, to pay a filing fee and accompany any future filings with a properly notarized affidavit by Maxton certifying that he, in good faith, believed that the matters he was raising were non-frivolous and proper for the Court to consider. Id. Other courts have required that the abusive litigant file an affidavit certifying that he believes the petition raises an original claim or is non-frivolous before accepting filings from the litigant. In the Matter of Verdone, 73 F.3d 669 (7th Cir.1995); Abdul-Akbar v. Watson, 901 F.2d 329 (3d Cir.1990); Green v. Warden, 699 F.2d 364 (7th Cir.), *cert. denied*, 461 U.S. 960, 103 S.Ct. 2436, 77 L.Ed.2d 1321 (1983).

This Court also finds that if the Applicant submits an Application that is accompanied with a notarized affidavit, that, before filing, the Clerk's office be directed to submit the Application to the Chief Administrative Judge for Common Pleas. The Administrative Judge should then make a finding on whether the issues raised in the Application are non-frivolous and proper for the Court to consider. If the Administrative Judge finds the Application proper, it would then be submitted to the Clerk's office for filing. **No Application should be filed without a proper finding from the Chief**

Administrative Judge.

This Court also cautions the Applicant that should he continue to file Applications containing matters that are frivolous, he may be held in contempt or for the Court to impose sanctions as circumstances of the case and discouragement of like conduct in the future may warrant. The Supreme Court imposed such warning on an Applicant in In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996).

There is a strong interest in finality of the criminal process; judicial review must stop at some juncture and finality must be realized. Aice v. State, 305 448, 409 S.E.2d 392 (1991). The Court quoted Justice Harlan when discussing the importance of finality in litigation when they stated the following:

Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved.

A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process. While men languish in jail, not uncommonly for over a year, awaiting a first trial on their guilt or innocence, it is not easy to justify expending substantial quantities of the time and energies of judges, prosecutors, and defense lawyers litigating the validity under present law of criminal convictions that were perfectly free from error when made final. (citation omitted) This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation

of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first.

Anderson v. Leeke, 271 S.C. 435, 441-442, 248 S.E.2d 120, 123 (1978) citing Mackey v. United States, 401 U.S. 667, 91 S.Ct. 1160, 1179, 28 L.Ed.2d 404 (1971).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has received his full bite at the apple. The Applicant's repetitive filings shall be restricted in order to preserve the Court's time and resources and stop any interference with the fair administration of justice.

IT IS THEREFORE ORDERED:

1. The Clerk of Court should refuse to accept further petitions from the Applicant asking the Court to entertain matters unless he pays a filing fee generally required for filing motions and petitions with this Court.
 - a. The Applicant should be prohibited from filing any legal actions in any jurisdiction in South Carolina without submitting the requisite filing fees¹ and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous.
 - b. Any Applications submitted with properly notarized affidavits be submitted to the Chief Administrative Judge to make a finding on whether the allegations are non-frivolous and proper for the Court before they are filed.
 - c. The Clerk of Courts should be instructed to return all documents that do not comply with this order.

AND IT IS SO ORDERED this ____ day of _____, 2016.

ROGER M. YOUNG, SR.
Chief Administrative Judge
Ninth Judicial Circuit

_____, South Carolina.

¹ S.C. Code Ann. § 8-21-310(11)(a) (Supp. 2004)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Samuel A. Wilder, #258295)

Plaintiff(s))

vs.)

State of South Carolina)

Defendant(s))

Submitted By Samuel A. Wilder

Address: 386 Redemption Way
McCormick, SC 29899

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP -

SC Bar #: _____

Telephone #: _____

Fax #: _____

Other: _____

E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

** If Action is Judgment/Settlement do not complete*

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) _____ | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 <u>-NI-</u> _____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) _____ | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Libel (380) <input type="checkbox"/> Other (399) _____ | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) _____ |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) _____ | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) _____ | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) _____ | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) _____ |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) _____ <input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Permanent Restraining Order (680) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Pre-Suit Discovery (670) | | | |

Submitting Party Signature: _____

Samuel A. Wilder

Date: _____

7-11-18

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA)
)
County of Charleston)
)
Samuel A. Wilder, #258295)
)
Full name and prison number (if any) of Applicant)
)
)
v.)
)
)
State of South Carolina)
)
)
)
)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution, 380
Redemption Way, McCormick, S.C. 29899
2. Name and location of Court which imposed sentence Chas Co. General
Session Court, 100 Broad Street, Chas S.C.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) murder) 98-GS-10-1212
 - (b) Possession of a weapon during a violent crime,

(c) 98-GS-10-1213

5. The date upon which sentence was imposed and the terms of the sentence:

(a) May 7, 1999, five years for weapons charge and

(b) consecutive life sentence for common law murder

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty X

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Dismissed pending disposition of new trial motion

ii. _____

iii. _____

(c) the date of each such result:

i. June 11, 2001

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Direct appeal dismissed without prejudice

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

- (c) ~~98-08-10-1213~~ _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel
- (b) see attached sheets
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) pursuant to State v. Smalls 810 S.E.2d 836 (S.C.
- (b) 2018 and Thompson v. State, 2018 WL 1404480
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Habeas Corpus, 10/16/ 2018
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. UNITED States District Court
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. **Denied**
- ii.
- iii.
- iv.

(d) the date of each such disposition:

- i. **February 6, 2002**
- ii.
- iii.
- iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. **None**
- ii.
- iii.
- iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. **yes**
- ii.
- iii.

(b) the proceedings in which each ground was raised:

- i. **direct appeal**
- ii.
- iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) **New Ruling from the Supreme Court of South Carolina**
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? **yes**
- (b) your trial, if any? **yes**
- (c) your sentencing? **yes**
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? **yes**
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
no

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. **Guy Vitetta, Chas Co. Public Defender**
 - ii. **Edward Brown & Rita Roache**
146 Spring Street, Cas. S.C.
 - iii. **Andrew Grimes, post trial motion, Milton Demetrian**
Wanda Haile/ Robert Dudek, Robert Pachak;
- (b) the proceedings at which each such attorney represented you:
 - i. **Trial Counsel**
 - ii. **Trial Counsel**
 - iii. **Direct Appeal**

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, *Samuel A. White*, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Samuel A. White

SWORN to and subscribed before me this 11 day of July, 2018.

J. Frankler (L.S.)
Notary Public

My Commission Expires: *J* 12.16.2019

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Samuel A. Williams, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Samuel A. Williams
Applicant

SWORN or affirmed to and subscribed before me this

11 day of July, 2018.

JC Franklen
Notary Public

My Commission Expires: 12.16.2019

2018 - CP - 10 - 3805

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Samuel Weikler, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Samuel Weikler
Applicant

SWORN or affirmed to and subscribed before me this
11 day of July, 2018.

Jeff Sankler
Notary Public

My Commission Expires: 12-16-2019

FILED 201
2018 AUG -3 AM 10:01
JUDICIAL DEPARTMENT

Denied. Must pay \$150.
towards filing fee.
Ronny
Circuit Court judge
8/1/18

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
SAMUEL A. WILDER, #258295)
)
Plaintiff,)
)
Vs.)
)
STATE OF SOUTH CAROLINA)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2020 - CP - 10 - 4613

ORDER


FILED
2020 OCT 21 PM 12:25
JULIE J. ARMSTRONG
CLERK OF COURT

Applicant submitted an Application for Post-Conviction Relief to the Charleston County Clerk of Court along with an Application to Proceed without Payment of Costs and an Affidavit in Support thereof. Pursuant to the Order Restricting Future Filings signed by Judge Young on November 17, 2016, Applicant is prohibited from filing any legal actions in any jurisdiction in South Carolina without submitting the requisite filing fees and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous.

IT IS THEREFORE ORDERED that this Application is REJECTED due to Applicant's non-compliance of payment and not ~~submitted~~ ^{submitting} a proper affidavit as instructed in the November 17, 2017 Order.

AND IT IS SO ORDERED this 20th day of October, 2020.

Charleston, South Carolina



Jennifer B. McCoy
Chief Administrative Judge
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Samuel A. Wilder, # 258295)
)
Plaintiff(s))

CIVIL ACTION COVERSHEET

vs.)

CP - -

State of South Carolina)
)
Defendant(s))

(Please Print)

Submitted By: Samuel A. WILDER
Address: 386 ~~Redemption~~ Redemption Way
McCormick, SC 29899

SC Bar #: _____
Telephone #: _____
Fax #: _____
Other: MA
E-mail: _____

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
- Constructions (100)
 - Debt Collection (110)
 - Employment (120)
 - General (130)
 - Breach of Contract (140)
 - Other (199)

- Torts - Professional Malpractice**
- Dental Malpractice (200)
 - Legal Malpractice (210)
 - Medical Malpractice (220)
 - Previous Notice of Intent Case #
20 -CP- -
 - Notice/ File Med Mal (230)
 - Other (299)

- Torts - Personal Injury**
- Assault/Slander/Libel (300)
 - Conversion (310)
 - Motor Vehicle Accident (320)
 - Premises Liability (330)
 - Products Liability (340)
 - Personal Injury (350)
 - Wrongful Death (360)
 - Other (399)

- Real Property**
- Claim & Delivery (400)
 - Condemnation (410)
 - Foreclosure (420)
 - Mechanic's Lien (430)
 - Partition (440)
 - Possession (450)
 - Building Code Violation (460)
 - Other (499)

- Inmate Petitions**
- PCR (500)
 - Mandamus (520)
 - Habeas Corpus (530)
 - Other (599)

- Judgments/Settlements**
- Death Settlement (700)
 - Foreign Judgment (710)
 - Magistrate's Judgment (720)
 - Minor Settlement (730)
 - Transcript Judgment (740)
 - Lis Pendens (750)
 - Transfer of Structured Settlement Payment Rights Application (760)
 - Other (799)

- Administrative Law/Relief**
- Reinstate Driver's License (800)
 - Judicial Review (810)
 - Relief (820)
 - Permanent Injunction (830)
 - Forfeiture-Petition (840)
 - Forfeiture-Consent Order (850)
 - Other (899)

- Appeals**
- Arbitration (900)
 - Magistrate-Civil (910)
 - Magistrate-Criminal (920)
 - Municipal (930)
 - Probate Court (940)
 - SCDOT (950)
 - Worker's Comp (960)
 - Zoning Board (970)
 - Administrative Law Judge (980)

- Special/Complex /Other**
- Environmental (600)
 - Automobile Arb. (610)
 - Medical (620)
 - Other (699)
 - Pharmaceuticals (630)
 - Unfair Trade Practices (640)
 - Out-of State Depositions (650)
 - Sexual Predator (510)

Submitting Party Signature: _____

Samuel Wilder

Date: _____

Aug 14, 2020

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Charleston County Clerk of Court
Julie J. Armstrong, Clerk
100 Broad Street, suite 106
Charleston, S.C. 29401

Dear Clerk:

Please find PCR application for filing and return stamp
filed copy to me.

Sincerely,

A handwritten signature in cursive script, appearing to read "James Wilson", written in black ink.

FORM 5

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

Samuel A. Wilder, #258295)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Inst. 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Charleston County General Sessions Court, 100 Broad Street Charleston SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 98-GS-10-1212)(common law murder)(possession of a
 - (b) firearm during a violent crime)(98-GS-10-1213)

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) **May 7, 1999 (5 years consecutive to a life sentence for**

(b) **murder.**

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. **Supreme Court of South Carolina**

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. **Appeal dismissed**

ii. _____

iii. _____

(c) the date of each such result:

i. **March 10, 2006**

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. **Order date April 19, 2006**

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) **N/A**

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) incompetent at the time of the crime and at trial
- (b) in violations of the 14th Amendment
- (c) Ineffective assistance of first counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) record was sealed on 3/17/98 by Pleicones
- (b) No competency hearing before trial or discussion
- (c) to know if my examination could be be helpful.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? PCR
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? yes
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Post conviction Relief Application
- ii. NEW TRIAL MOTION
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Charleston County Court of Common Pleas
- ii. _____
- iii. _____
- iv. _____

- (c) the disposition thereof:
 - i. **No disposition on new trial motion**
 - ii. _____
 - iii. _____
 - iv. _____

- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. **Order dated April 10, 2006, on PCR hearing**
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. **N/A**
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. **N/A**
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) **I was on medication at that time**
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? **yes**
- (b) your trial, if any? **yes**
- (c) your sentencing? **yes**
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? **yes**
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. **Edward Brown**
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. **trial and sentencing**
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

New trial

20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
County of McCormick)

VERIFICATION

I, Samuel A. Wilder, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Samuel Wilder

SWORN to and subscribed before me this 14th
day of August, 2020.

Salvador A. Pineda (L.S.)
Notary Public

My Commission Expires: January 13th 2030

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Samuel Wilder, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Samuel Wilder
Applicant

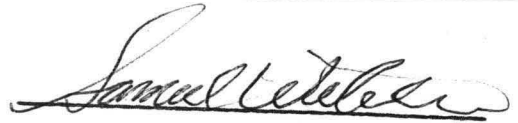
SWORN or affirmed to and subscribed before me this
14th day of August, 2020.

Leticia D. Gray
Notary Public

My Commission Expires: January 13th 2030

CERTIFICATE OF SERVICE

The undersigned hereby certify that he mail PCR application to the Charleston County Clerk of Court Julie J. Armstrong, 100 Broad street, Suite 106, Charleston S.C. 29401 this 16 day of November 2020 by depositing same in the U.S. mail.

A handwritten signature in cursive script, appearing to read "Small [unclear]", is written over a horizontal line.

Attached Sheets

1. Ineffective assistance of counsel by not conducting a competency evaluation hearing to determine whether the competency evaluation could help me decide how to plea.


2. Ineffective assistance of counsel by negotiating a fix sentence for my agreeing to give up my rights to the children insurance policy and the estate.

- 3.3. Ineffective assistance of counsel by his failure to object to the court authority to trial the murder charge because Title 14-5-740 and 14-5-410 of South Carolina Code of Laws, make the Court's judgment void.

4. The indictment for murder does not incorporate the word murder and therefore the court cannot return a verdict for murder since murder was not part of the charging paragraph in the indictment therefore there is a technicality the judgment is void.

Dated

November 14 2020


Samuel A. Wilder

COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 106
CHARLESTON, S.C. 29401-2258
(843) 958-5000
(843) 958-5020 FAX
clerkofcourt.charlestoncounty.org



FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
100 BROAD STREET, SUITE 143
CHARLESTON, S.C. 29401-2265
(843) 958-4400
(843) 958-4434 FAX
clerkofcourt.charlestoncounty.org

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

The enclosed document is being returned for the following reason(s);

- The document is not signed / notarized.
- The filing fee is insufficient. The correct amount is: _____
- The check or money order must be made payable to the Clerk of Court.
- This document is a copy. We must have an original.
- This is not a Charleston County case.
- Incorrect warrant number provided.
- Defendant's name does not match warrant/case number provided.
- The case has been transferred/remanded to: _____
- Inmate litigation must comply with S.C. Code of Laws, Title 24, Chapter 27.
- The document is refused for filing pursuant to S.C. Code of Laws §30-9-30(B)(1).
- Name of submitting party: _____
- There is not a case listed in our system that matches this caption.
- Information may be obtained from our web-site at <http://clerkofcourt.charlestoncounty.org/>
- The required new case coversheet is not included. (SCCA234)
- The required motion/order coversheet is not included. (SCCA/233)
- The required order (Form 4) coversheet is not included. (SCRCP Form 4C)
- Other: affidavit not in compliance with order
restricting filings -

Staff initials

Date

12/16/20

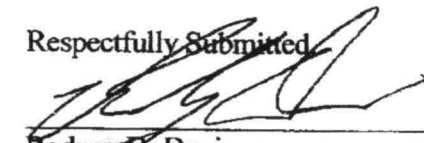
STATE OF SOUTH CAROLINA)	IN THE SUPREME COURT OF SOUTH CAROLINA
)	Case No.: 2012-CP-10-1025
COUNTY OF CHARLESTON)	
)	
SAMUEL A. WILDER,)	REQUEST FOR REPRESENTATION ON APPEAL
)	
Applicant.)	
)	
-versus-)	
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,


 Rodney D. Davis
 South Carolina Bar #: 12396

9/25, 2015
 Charleston, South Carolina.



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

February 17, 2016

Mr. Samuel A Wilder, #258295
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Your case

Dear Mr. Wilder:

I am writing to follow-up from our discussions regarding the propriety of your *White v. State*¹ appeal during several recent telephone calls. This is a lengthy letter, but I want to make sure that I cover everything we've discussed and the cases that you asked me to review.

As I understand it, you wanted the 2007 PCR court to allow you to have your direct appeal first and not deal with the other PCR claims at the hearing that day. I agree with you that would be a better process in some circumstances, but ultimately you did receive the direct appeal. You could have simultaneously received your *Austin* review of the denial of your PCR application, but appellate counsel Pachak failed to raise any PCR issues in his 2009 brief. It is that issue – the failure to receive any *Austin* review – that I will ask the Court to consider if it does not dismiss the Notice of Appeal.

Procedural History

First, I will review the timeline of your case. You were convicted after a jury trial held May 5-7, 1999. Your trial attorney filed a notice of appeal, but dismissed it in order to pursue a Motion for New Trial. Following the denial of your motion for a new trial, a second notice of appeal was filed. Due to a conflict with the Office of Appellate Defense, a private attorney was appointed to represent you. However, due to your attorney's failure to request the transcript and respond to the court's inquiries, your direct appeal was dismissed.

¹ *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

Letter to Mr. Wilder
February 17, 2016
Page 2 of 4

On September 5, 2006, you filed a PCR application, alleging an unconstitutional sentence, ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and prosecutorial misconduct. A PCR hearing was held on September 11, 2007 before the Hon. John C. Few. The Order granting a *White v. State* appeal and denying all other allegations was entered on November 20, 2007 and served upon PCR counsel on March 7, 2008.

On May 14, 2008, your PCR attorney filed a motion to the file the notice of appeal out of time. The appellate rules do not allow that, so ordinarily you would have to file a second PCR application asking for review pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), i.e. a belated PCR appeal. However, in the interest of judicial economy, the Supreme Court issued an order on June 12, 2008 accepting review of the case in its original jurisdiction and ordering briefing on “any issues [Petitioner] seeks to raise from the denial of his PCR application, including the issue of whether the PCR judge correctly granted *White v. State* review, as well as all direct appeal issues he seeks to raise.” Rob Pachak was appointed to represent you. He filed a brief raising only two issues: (1) Whether there was any evidence to support the PCR judge’s findings that appellant could be granted a belated appeal? (2) Whether the trial court erred and abused its discretion in refusing to allow a State’s witness to be impeached with nine (9) counts of preparing false tax returns. **THIS WAS YOUR DIRECT APPEAL (see discussion below).** On July 26, 2010, this Court entered a *per curiam* opinion dismissing the writ of certiorari because it found no merit to the direct appeal.

On February 10, 2012, you filed a second PCR application, alleging ineffective assistance of trial counsel and ineffective assistance of your first PCR counsel. A PCR hearing was held July 21 and 23, 2015 before the Hon. Roger E. Henderson. The Order of Dismissal, finding the second application successive, was filed on September 11, 2015. Your second PCR attorney filed a timely notice of appeal but failed to include the explanation required under Rule 243(c), SCACR. I filed the required response to the Supreme Court on December 30, 2015. We are currently awaiting the Court’s decision on whether it will accept or dismiss your appeal.

Your Direct Appeal

At the 2007 PCR hearing, the State conceded that appellate counsel was ineffective in failing to properly perfect your direct appeal.² The remedy for that is a belated direct appeal, which is also known in South Carolina as a *White v. State* appeal.

By definition, an appeal of right is an appeal that does not require the leave of the trial or appellate court as a prerequisite to taking an appeal. In South Carolina, that appeal of right is a

² See R. 713 (“The State is agreeing to a *White v. State* appeal so any issues as to appellate counsel we are agreeing he is entitled to a belated direct appeal with you.”); R. 720-721 (discussing that though a direct appeal was filed for several times, the applicant never got it); R. 721-722 (PCR counsel asked to present evidence on the claims of ineffective assistance of trial counsel rather than having the applicant file another PCR after the belated direct appeal).

Letter to Mr. Wilder
February 17, 2016
Page 3 of 4

direct appeal to the Court of Appeals following a verdict at the trial court. All other appeals are considered discretionary because they require the filing of a petition for writ of certiorari. The *White v. State* process presents somewhat of a hybrid, because in order to receive the remedy of a belated direct appeal, you must first show the courts that you did not voluntarily or intelligently waive your right to direct appeal. However, since you are entitled to a direct appeal, the *White v. State* appeal **must** be granted unless the court finds that the appeal was waived by the defendant.

You were appointed counsel, Robert Pachak, who handled your *White v. State* appeal. He filed the final brief in your case on December 29, 2009. He raised the *White v. State* issue, as required, and also raised the meritorious claim that he found from a review of the trial record.

Pursuant to the Supreme Court's order, Mr. Pachak should have also raised any of your meritorious claims of ineffective assistance of trial counsel in his filing. As I explained in my December 30, 2015 letter to the Court, you never really got an *Austin* review of the allegations of ineffective assistance of counsel raised in your 2007 PCR application. I am hopeful that the Court will allow you the opportunity to pursue your *Austin* review now.

Case Law You Asked Me to Review

You referred me to several cases, which I will address in turn.³ In *Evitts v. Lucey*, 469 U.S. 397 (1985), the Kansas court denied the defendant the right to any direct appeal. The U.S. Supreme Court found that the defendant should have been given one appeal of right. Your case is distinguishable because the PCR court found that you were entitled to your one appeal of right, which was given to you when Rob Pachack was appointed to represent you and he filed a brief raising a direct appeal issue.

In *Legee v. State*, 349 S.C. 222, 562 S.E.2d 618 (2002), the S.C. Supreme Court included a footnote that said:

We note the PCR court's grant of the issue pursuant to *White v. State* is in error because Petitioner in fact had an appeal and, as such was not denied his right to an appeal. *White v. State* is inapplicable because it provides the right to a *belated* appeal when the applicant did not knowingly and intelligently waive his right to an appeal. The State, however, did not raise this issue.

Prior to Legee's filing of his PCR application, he had filed a direct appeal which was considered by the Court of Appeals. The Court affirmed Legee's convictions in an unpublished opinion. Thus, Legee's case had nothing to do with *White v. State*. His PCR application was instead based on ineffective assistance of trial counsel and appellate counsel. Your case, however, did involve

³ You also referred me to *Fay v. Noia*, 372 US 391 (1963), which was abrogated by *Coleman v. Thompson*, 501 U.S. 722 (1991), such that is no longer good law.

Letter to Mr. Wilder
February 17, 2016
Page 4 of 4

White v. State because you did not waive your right to appeal. It was your former appellate attorney who failed to respond to the Court of Appeals and the dismissal of his direct appeal was his fault. The State conceded that issue, which is why appellate counsel's testimony was not necessary at the PCR hearing.

In *Roe v. Flores-Ortega*, 528 U.S. 470 (2000), the Court held that an attorney is constitutionally required to consult with a defendant about appeal when there is reason to think either (1) that rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. In your case, your trial attorney filed the requisite notice of appeal. Thus, *Roe* is not applicable. I understand that you read the phrase "the decision to appeal rests with the defendant" as meaning that your PCR attorney could not consent to a *White v. State* appeal on your behalf. However, you have to read every phrase or sentence from an opinion in context. Moreover, a *White v. State* appeal was the proper remedy based on your claim of ineffective assistance of appellate counsel.

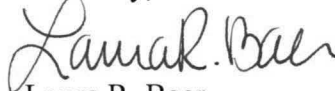
In *Pennsylvania v. Finley*, 481 US 551 (1987), the Court was dealing with whether there is federal constitutional right to an *Anders*-like procedure from the denial of post-conviction relief. In *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), the South Carolina Supreme Court wrote:

This Court has approved the withdrawal of counsel in meritless post-conviction appeals, provided the procedures outlined in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), were followed. Although the recent United States Supreme Court decision in *Pennsylvania v. Finley*, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987), holds that the *Anders* procedure is not required in such cases, we adhere to our prior procedure.

Thus, South Carolina does not follow *Finley* on state law grounds. *Johnson* is good for the current argument that you were entitled to appellate review of the dismissal of your PCR application, which you never actually received.

I hope that this letter is responsive to your questions and concerns. Please feel free to contact me. Otherwise, I will let you know when the Court has made a decision on whether to allow me to file a petition for writ of certiorari in your case.

Sincerely,



Laura R. Baer
Appellate Defender



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

B

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

December 30, 2015

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11300
Columbia, South Carolina 29211

Re: **Rule 243(c) Response and Request Time Limits be Held in Abeyance**
Samuel A. Wilder v. State
Appellate Case No. 2015-002014
Lower Court Case No. 2012CP1001025

Dear Mr. Shearouse:

I am the appellate defender representing the above-referenced Petitioner, Samuel Wilder. I am writing to provide the reason for Mr. Wilder's appeal pursuant to Rule 243(c), SCRE.

BACKGROUND

Mr. Wilder's second PCR hearing was held on July 23, 2015, following which an Order of Dismissal was entered on September 11, 2015. On September 25, 2015, a timely Notice of Appeal was filed on Mr. Wilder's behalf by PCR counsel, Rodney D. Davis. On October 21, 2015, your office wrote to Mr. Davis requesting an explanation of as to why Mr. Wilder was seeking Austin¹ review and why the lower court's determination that his PCR application was barred as successive was improper. On December 10, 2015, Mr. Davis wrote to the Court, indicating that he did not have a good faith basis for the appeal and directing Mr. Wilder to file a *pro se* letter with the Court within twenty (20) days.

Meanwhile, Mr. Wilder's case was forwarded to Appellate Defense and a request for his transcript was made on November 2, 2015. On November 18, 2015, we received the PCR hearing transcript and sent a letter to the Court to that affect. On December 8, 2015, I was assigned as the appellate defender representing Mr. Wilder and sent him a representation letter indicating the same.

¹ Austin v. State, 305 S.C. 453, 246 S.E.2d 395 (1991).

Letter to Clerk of Supreme Court re: S. Wilder
December 30, 2015
Page 2 of 4

After receiving Mr. Davis' correspondence, I spoke with Ashli Thompson in your Office on December 15, 2015. Ms. Thompson indicated that the case was referred to Appellate Defense prematurely in error, prior to the resolution of the Rule 243(c) explanation. Because of the Court's prohibition against hybrid representation and the fact that Mr. Wilder was previously notified that I am the attorney representing him, I am writing to submit the Rule 243(c) explanation on his behalf.

MR. WILDER IS ENTITLED TO AUSTIN REVIEW

Based on my review of his case thus far, *it does not appear that Mr. Wilder ever actually received the Austin review of the issues raised in his first PCR hearing*, which was held on September 11, 2007, before the Honorable Chief Judge John C. Few. Appellate counsel will argue that fundamental fairness requires a belated review the arguably meritorious issues raised in his original PCR hearing.

The South Carolina Supreme Court has held that “[a]ll applicants are entitled to a full and fair opportunity to present claims in one PCR application. Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). “Under the PCR rules, an appellant is entitled to a full adjudication on the merits of the original petition, or ‘one bite of the apple.’ *This ‘bite’ includes an applicant’s right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal.*” Id. at 261, 523 S.E.2d at 755-56 (internal citations omitted) (emphasis added).

Furthermore, a petitioner is denied his right to appellate review when either: (1) he requested, yet was denied an opportunity to seek appellate review; or (2) his right to appellate review was not knowingly and intelligently waived. Id. (citing King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992)). Accordingly, when a petitioner is denied his right to appeal under either of the two circumstances, then he is entitled to belated appellate review of his initial PCR application. See, e.g., Austin, 305 S.C. at 454, 246 S.E.2d at 396.

In the present case, this Court issued an Order dated June 12, 2008, granting review of Petitioner's case in its original jurisdiction and instructed the filing of a brief that included “*any issues he seeks to raise from the denial of his PCR application*, including the issue of whether the PCR judge correctly granted White v. State² review, as well as all direct appeal issues he seeks to raise.” See attached Sup. Ct. Order, June 12, 2008 (emphasis added). The Order included a footnote instructing prior appellate counsel that an Anders³ brief would not be proper because “the PCR judge’s grant of a belated review of petitioner’s direct appeal issues constitutes a meritorious ground for appeal thereby precluding the filing an Anders brief.”

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

³ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

Prior appellate counsel filed a brief, but raised only two issues, both of which were related to Mr. Wilder's direct appeal. They included: (1) Whether there was any evidence to support the PCR judge's findings that appellant could be granted a belated appeal? (2) Whether the trial court erred and abused its discretion in refusing to allow a State's witness to be impeached with nine (9) counts of preparing false tax returns. On July 26, 2010, this Court entered a *per curiam* opinion dismissing the writ of certiorari because it found no merit to the direct appeal.

Prior appellate counsel failed to raise any of Mr. Wilder's PCR issues from his 2007 PCR hearing in his brief. Thus, contrary to the Assistant Attorney General's argument at the 2015 PCR hearing, Mr. Wilder has not "already had his bite at the apple" and the allegations raised at the 2007 PCR hearing were not "fully fl[esh]ed out by the Supreme Court." 2015 PCR Tr., p. 30, ll. 19-24. While appellate counsel may discover additional meritorious issues from Petitioner's 2007 PCR hearing, a review of the records from the 2007 PCR reveal at least two meritorious PCR issues. They include:

- (1) Whether trial counsel was ineffective in advising Petitioner not to testify in his own defense based on his prior convictions where the majority of them were over ten years old and would likely have been excluded pursuant to Rule 609(b), SCRE?
- (2) Whether Petitioner's five year sentence for use of a firearm in the commission of a violent crime violated S.C. CODE ANN. § 16-23-490 where Petitioner was sentenced to life for the underlying offense?

With respect to the second issue, though it was asserted to be a new allegation at the 2015 PCR hearing, Mr. Wilder actually raised the issue of the illegality of his sentence in violation of S.C. CODE ANN. § 16-23-490 in his original PCR application. Petitioner's Sept. 5, 2006 PCR App., p. 3. The State acknowledged that allegation in its Return. State's May 7, 2007 Return, p. 3. The first PCR court found that all other allegations raised by Mr. Wilder were waived due to a lack of presentation of evidence to support them. That finding was error because no additional testimony was necessary to support the allegation that Mr. Wilder's five year sentence was improper. This error could be gleaned from a simple review of the sentencing transcript and sentencing sheets. Trial Tr. 616, ll. 3-13; Sentencing Sheets. As such, former appellate counsel should have raised the illegality of Mr. Wilder's five year sentence in his brief.

THE 2ND PCR COURT ERRED IN FINDING PETITIONER'S OTHER ALLEGATIONS BARRED

Regarding the non-Austin claims, as explained above, the illegal sentence issue was raised at the first PCR hearing and should be included in the Austin review. The other issues raised at the 2015 hearing and deemed "successive" by the court were the violation of Mr. Wilder's plea agreement and the failure to properly charge criminal intent. Mr. Wilder's contention is not ineffective assistance of PCR counsel, but rather that his presentation of evidence was improperly limited by the first PCR court.

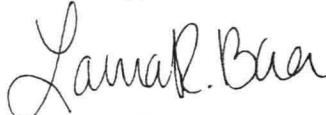
Letter to Clerk of Supreme Court re: S. Wilder
December 30, 2015
Page 4 of 4

2007 PCR Hearing Tr. 14, ll. 12-18; 2007 PCR Hearing Tr. 27, ll. 13-21; 2007 PCR Hearing Tr. 31, l. 11 – 32, l. 7; 2007 PCR Hearing Tr. 37, ll. 9-20; see *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991) (prohibiting a successive PCR application on the ground that his first complete PCR application was insufficient *due to ineffective PCR counsel*). Thus, the second PCR court erred in finding his allegations were barred as successive and Mr. Wilder's case should be remanded for an evidentiary hearing.

Based on the foregoing, counsel respectfully requests that this Court not dismiss the notice of appeal and allow Petitioner's counsel to fully review Petitioner's case and file a Petition for Writ of Certiorari. ***Petitioner's counsel further requests that all time limits be held in abeyance pending a decision on whether this Court will dismiss the Notice of Appeal.***

If this Court requires additional information, please do not hesitate to contact me.

Sincerely,



Laura R. Baer
Appellate Defender

Enclosures:

May 5-7, 1999 Trial Transcript, pp. 310 and 616
Sentencing Sheets
Petitioner's PCR App. filed Sept. 5, 2006, pp. 1-3
State's Return filed May 7, 2007, pp. 1-3
Supreme Court Order filed June 12, 2008

cc:

James Rutledge Johnson, Esq.
Samuel Wilder