

# The Supreme Court of South Carolina

Charles X. Mixon, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable James R. Barber  
Richland County  
Trial Court Case No. 2009-CP-40-03437

---

## ORDER

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For good cause shown, the request for an extension until April ~~22~~<sup>30</sup>, 20~~09~~<sup>12</sup> to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY 

Clerk

Columbia, South Carolina

April 2, 2012

cc: Appellate Defender LaNelle C. DuRant  
Assistant Attorney General Robert L. Corney

ORIGINAL  
RECEIVED

MAR 30 2012

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Richland County  
James R. Barber, III., Circuit Court Judge

CHARLES MIXON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

MOTION FOR AN EXTENSION OF TIME  
IN WHICH TO FILE THE PETITION FOR  
WRIT OF CERTIORARI AND APPENDIX

(3)

Counsel for Charles Mixon respectfully requests a **final extension of thirty (30) days until April 30, 2012** in which to file the petition for writ of certiorari and appendix in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a final request for an extension. In support of this request, counsel shows:

- (1) The petition for writ of certiorari and appendix are due to be served and filed today.
- (2) Counsel for Mr. Mixon respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.

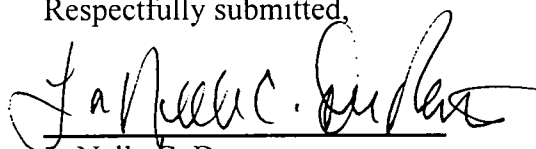
(3) On March 28, 2012, counsel filed the petition for writ of certiorari and appendix in the case of Donald Hulon v. State and the initial brief of appellant and designation of matter in the case of State v. Eric Spratt. On March 22, 2012, counsel filed the petition for rehearing in the case of State v. Shane Epting. On March 19, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Clarence Logan and the petition for writ of certiorari and appendix in the case of Jerry Galbreath v. State. On March 14, 2012, counsel had an oral argument in the case of State v. Cameron Hammonds in the Court of Appeals. On March 13, 2012, counsel had an oral argument in the case of State v. Bennie Golston in the Court of Appeals. On March 8, 2012, counsel filed the petition for rehearing in the cases of State v. Andre Massey and State v. Jake Wilson. On March 7, 2012, counsel had an oral argument in the case of In the Matter of the Care and Treatment of Bobby Manigo in this Court. On March 6, 2012, counsel had an oral argument in the case of State v. Patrick Herb in this Court. On February 23, 2012, counsel filed the petition for rehearing in the case of State v. James Nash. On February 21, 2012, counsel filed the initial reply brief of appellant in the case of State v. Brian Phillips and the return to petition for rehearing in the case of In the Matter of the Care and Treatment of Orlando Williams. On February 15, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Daniel Rogers. On February 14, 2012, counsel had an oral argument in the case of State v. Jaymes Wood in the Court of Appeals and filed the initial brief of appellant and designation of matter in the case of State v. Alonza Dennis. On February 13, 2012, counsel had an oral argument in the case of State v. Kevin Epting in the Court of Appeals. On

February 10, 2012, counsel filed the petition for writ of certiorari and appendix in the case of Mario Hunter v. State and the return to petition for writ of certiorari to the Court of Appeals in the case of State v. Phillip Sawyer.

- (4) Counsel makes this request in good faith and not for purpose of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.
- (5) Counsel for the Attorney General's office consents to this request as shown by signature below.

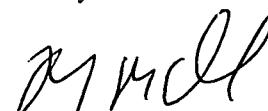
WHEREFORE, the undersigned counsel would respectfully request a **final extension of thirty (30) days until April 30, 2012** in which to file the petition for writ of certiorari and appendix in this case based upon the above exigent circumstances.

Respectfully submitted,



LaNelle C. Durant  
Appellate Defender

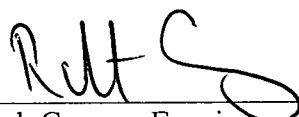
Attorney for Petitioner



Robert M. Dudek  
Chief Appellate Defender

This 30<sup>th</sup> day of March, 2012

I Consent:



Rob Corney, Esquire

# The Supreme Court of South Carolina

Charles X. Mixon, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable James R. Barber  
Richland County  
Trial Court Case No. 2009-CP-40-03437

---

## ORDER

---

For good cause shown, the request for an extension until March 30, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Shonda L. Shealy*

*Chief Deputy* Clerk

Columbia, South Carolina

March 1, 2012

cc: Appellate Defender LaNelle C. DuRant  
Assistant Attorney General Robert L. Corney

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Richland County

James R. Barber, III., Circuit Court Judge  
\_\_\_\_\_

RECEIVED  
FEB 29 2012  
S.C. Supreme Court

CHARLES MIXON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_  
MOTION FOR AN EXTENSION OF TIME  
IN WHICH TO FILE THE PETITION FOR  
WRIT OF CERTIORARI AND APPENDIX  
\_\_\_\_\_

(2)

Counsel for Charles Mixon respectfully requests an extension of thirty (30) days in which to file the petition for writ of certiorari and appendix in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a second request for an extension. In support of this request, counsel shows:

- (1) The petition for writ of certiorari and appendix are due to be served and filed today.
- (2) Counsel for Mr. Mixon respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of

extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.

- (3) On February 23, 2012, counsel filed the petition for rehearing in the case of State v. James Nash. On February 21, 2012, counsel filed the initial reply brief of appellant in the case of State v. Brian Phillips and the return to petition for rehearing in the case of In the Matter of the Care and Treatment of Orlando Williams. On February 15, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Daniel Rogers. On February 14, 2012, counsel had an oral argument in the case of State v. Jaymes Wood in the Court of Appeals and filed the initial brief of appellant and designation of matter in the case of State v. Alonza Dennis. On February 13, 2012, counsel had an oral argument in the case of State v. Kevin Epting in the Court of Appeals. On February 10, 2012, counsel filed the petition for writ of certiorari and appendix in the case of Mario Hunter v. State and the return to petition for writ of certiorari to the Court of Appeals in the case of State v. Phillip Sawyer. On January 27, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Anthony Tilmon. On January 25, 2012, counsel filed the return to petition for writ of certiorari to the Court of Appeals in the case of In the Matter of the Care and Treatment of Vincent Way and the petition for writ of certiorari and appendix in the case of Andre Methelus v. State. On January 19, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Shawn Reeves and the petition for rehearing in the case of In the Matter of the Care and Treatment of Gilbert Gonzalez. On January 17, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Bobby

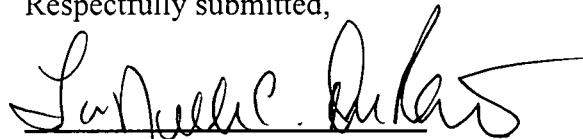
Barton. On January 3, 2012, counsel filed the petition for writ of certiorari, the brief of appellant pursuant to White v. State and appendix in the case of Clarence Robinson v. State.

(4) Counsel makes this request in good faith and not for purpose of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.

(5) Counsel for the Attorney General's office has been informed of this request

WHEREFORE, the undersigned counsel would respectfully request an additional extension of thirty (30) days in which to file the petition for writ of certiorari and appendix in this case based upon the above exigent circumstances.

Respectfully submitted,



LaNelle C. Durant  
Appellate Defender

Attorney for Petitioner

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Richland County  
James R. Barber, III., Circuit Court Judge  
\_\_\_\_\_

RECEIVED  
FEB 29 2012  
S.C. Supreme Court

CHARLES MIXON,

PETITIONER,

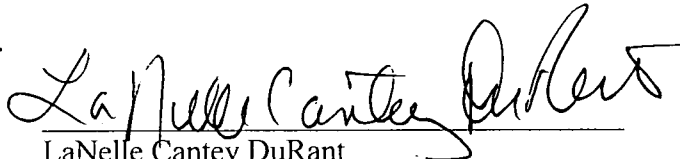
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

The undersigned attorney hereby certifies that a true copy of motion for an extension of time in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Robert Corney, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 29th day of February, 2012.

  
\_\_\_\_\_  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 29th day of February, 2012.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

# The Supreme Court of South Carolina

Charles X. Mixon, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable James R. Barber  
Richland County  
Trial Court Case No. 2009-CP-40-03437

---

## ORDER

---

The request for an extension until February 29, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Suzanne L. Shealy*  
Clerk

Columbia, South Carolina *Chief Deputy*

January 31, 2012

cc: Appellate Defender LaNelle C. DuRant  
Assistant Attorney General Robert L. Corney



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

January 30, 2012

RECEIVED

JAN 30 2012

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

S.C. Supreme Court

Re: Charles Mixon v. The State

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in this case are due to be served and filed with the Court today, January 30, 2012. However, because of my heavy workload at this time, I am requesting an extension for 30 days, in which to serve and file the petition.

By copy of this letter, I am informing Brian Petrano, of the Attorney General's Office, of my request.

Sincerely,

LaNelle C. Durant  
Appellate Defender

LCD/pds

cc: Brian Petrano, Esquire



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

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

November 29, 2011

RECEIVED

NOV 29 2011

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

S.C. Supreme Court

Dear Mr. Shearouse:

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

Charles X. Mixon v. State of South Carolina

11/29/2011

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

Thank you for your assistance in this matter.

Sincerely,

Sharon A. Graham  
Administrative Coordinator



# 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

RECEIVED

November 9, 2011

NOV 10 2011

S.C. Supreme Court

Ms. Daphne D. Helms  
Circuit Court Reporter  
556 Heron Glen Drive  
Columbia, SC 29229

Dear Ms. Helms:

Please provide us with the following transcript:

Charles X. Mixon v. State of South Carolina      Case #:      09-CP-40-03437

County: Richland      Date of Trial: June 8, 2011

Presiding Judge: James R. Barber, III

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

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

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

Sincerely,

Sharon A. Graham  
Administrative Coordinator

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

IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

JAMES R. BARBER, CIRCUIT COURT JUDGE

2009-CP-40-03437

Charles X. Mixon,.....Petitioner.

vs

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

**EXPLANATION AS TO WHY DETERMINATION BY TRIAL COURT THAT THE POST-CONVICTION RELIEF APPLICATION SHOULD BE DISMISSED DUE TO THE STATUTE OF LIMITATIONS IS IMPROPER**

**PURSUANT TO SCACR RULE 227(C)**

Under Section 17-27-45 of the South Carolina Code of Laws, “an application for relief filed pursuant to this chapter must be filed within one year after the entry of judgment of conviction.” Section 17-27-45(a), South Carolina Code Annotated (1976). In addition, “if the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after *the date of actual discovery of the facts by the applicant.*” Section 17-27-45(c), South Carolina Code Annotated (1976).

Mr. Mixon pled guilty to Murder, Armed Robbery, and Possession with Intent to Distribute Crack Second Offense on November 15, 2005, after being advised by his attorney. After Mr. Mixon’s plea, he asked his attorney, Ms. Rachael Dain, for a copy of his discovery materials. After numerous letters and attempts to get his discovery, Ms. Dain finally sent it to Mr. Mixon, and he received it in January of 2009. Upon receiving his discovery, Mr. Mixon learned that Ms. Dain had not reviewed allof his discovery with him, including the victim’s statement regarding the description of the alleged suspect, a photo lineup where the victim selected two people, and witness statements he had never seen that did not indicate him as a suspect. If Mr. Mixon had had this information at the time of his plea, he would not have pled guilty due to the discrepancy and credibility of the witnesses and identification of suspects.

Under the laws set forth upon above in the South Carolina Code, the post-conviction relief application can be filed within one year after the date of actual discovery of the facts by the applicant, in this case, Mr. Mixon. He did not find out about this information until January 2009. Upon learning this information, Mr. Mixon filed his application in May 2009, within one year of him ascertaining this information. Therefore, the Petitioner argues that the dismissal of his post-conviction relief application is improper.

Respectfully submitted,



---

Anna R. Good  
Law Office of Anna Good, LLC  
1720 Main Street, Suite 303  
Columbia, South Carolina 29201  
Telephone: (803) 429-9107  
Fax: (803) 799-4059

Attorney for the Petitioner.

September 16, 2011.

OTHER COUNSEL OF RECORD:  
Brian Petrano  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, SC 29211-1549

LAW OFFICE OF ANNA GOOD  
1720 MAIN STREET, SUITE 303  
COLUMBIA, SC 29201  
(803) 429-9107  
FAX: (803) 799-4059

---

September 16, 2011

**RECEIVED**

SEP 20 2011

**S.C. SUPREME COURT**

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
P.O. Box 11589  
Columbia, SC 29211-1589

Re: Charles X. Mixon v. The State of South Carolina  
Docket No.: 2009-CP-40-3437

To Whom It May Concern:

Enclosed please find a copy of the following:

1. Notice of Appeal;
2. Proof of Service; and
3. Order of Dismissal signed by Judge James R. Barber on August 17, 2011.

Mr. Mixon filed for post-conviction relief, which was denied after a hearing by Judge Barber. By copy of this letter I am notifying the Supreme Court that I am requesting that Appellate Defense assume the responsibility of this Appeal pursuant to Rule 602(e)(4), SCACR, since Mr. Mixon is indigent. I was appointed for his post-conviction relief case; however, have no experience with appeals.

Please advise if you need anything further from me, and I will be happy to comply. With warm personal regards, I am

Very truly yours,

  
Anna R. Good

Enc

cc: Brian Petrano, SC Attorney General's Office  
Charles Mixon, Petitioner  
The Honorable Daniel E. Shearouse, Clerk of the Supreme Court

IN THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS  
JAMES R. BARBER, CIRCUIT COURT JUDGE  
2009-CP-40-03437

**RECEIVED**  
SEP 16 2011  
S.C. Supreme Court

Charles X. Mixon,.....Petitioner.

vs

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

**NOTICE OF APPEAL**

Charles Mixon appeals the Honorable James R. Barber's August 17, 2011, order denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the order on August 24, 2011. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



---

Anna R. Good  
Law Office of Anna Good, LLC  
1720 Main Street, Suite 303  
Columbia, South Carolina 29201  
Telephone: (803) 429-9107  
Fax: (803) 799-4059

Attorney for the Petitioner.

September 16, 2011.

OTHER COUNSEL OF RECORD:  
Brian Petrano  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, SC 29211-1549

IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

JAMES R. BARBER, CIRCUIT COURT JUDGE

2009-CP-40-03437

Charles X. Mixon,.....Petitioner.

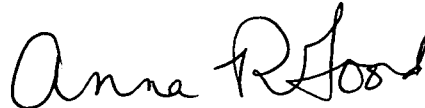
vs

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

**PROOF OF SERVICE**

I, Anna Good, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Brian Petrano, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 16<sup>th</sup> day of September, 2011.

Respectfully submitted,



---

Anna R. Good  
Law Office of Anna Good, LLC  
1720 Main Street, Suite 303  
Columbia, South Carolina 29201

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO: 2009CP4003437

Charles X #312475 Mixon  
Plaintiff

vs.

State of South Carolina  
Defendant

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
  - Rule 12(b), SCRPC;
  - SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other:
- ACTION STRICKEN (CHECK REASON):
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_

RICHMOND COUNTY  
 2011 AUG 22 PM 3:10  
 JEANETTE W. BRIDE  
 CLERK OF COURT

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
    - Affirmed;  Reversed;  Remanded;  Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
PRESIDING JUDGE

This judgment was entered on the \_\_\_\_ day of \_\_\_\_\_, 2011, and a copy mailed first class this 22 August 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Anna Good  
Charles X #312475 Mixon  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

Brian T Petrano  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)  
*Jeanette W. Bride*  
\_\_\_\_\_  
Clerk of Court

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

2009-CP-40-03437

Mixon, Charles X., 312475, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

ORDER OF DISMISSAL

RICHLAND COUNTY  
FILED  
2011 AUG 22 PM 3:06  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

### PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 11, 2009. An amended Application for Post-Conviction Relief was filed June 12, 2009. The Respondent made its Return on March 23, 2010. An evidentiary hearing into the matter was convened on June 8, 2011 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Anna Good, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the outset, the State made a motion to dismiss based on the defense of statute of limitations. In response, the Applicant made some generic ineffective assistance of counsel claims. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently incarcerated at the South Carolina Department of Corrections ("SCDC") pursuant to order of commitment of the Clerk of Court for Richland County. He was

*Mixon, Charles X., Order of Dismissal (2009-CP-40-03437)*

indicted for murder during the December 2004 term of the Richland County Grand Jury, and PWID crack cocaine second (2<sup>nd</sup>) and armed robbery during the February 2005 term of the Richland County Grand Jury. The Applicant's plea counsel was Rachel Dain, Esquire. On November 15, 2005, Applicant pled guilty to PWID crack cocaine second (2<sup>nd</sup>), armed robbery, and murder. The Honorable L. Casey Manning sentenced Applicant to confinement for a period of twenty five (25) years for the PWID crack cocaine second (2<sup>nd</sup>), thirty (30) years for the armed robbery, and forty five (45) years for the murder. These sentences are to run concurrent each with one another. There was no appeal.

In the amended PCR application 2009-CP-40-03437 the applicant alleges:

Amendments are as follows and to be applied to enclosed documents, stamp dated 2009 May 11:

Under Sentencing and punishment, guidelines set out in section 16-3-10 were not followed by the lower court.

I, the applicant, argue(s) that I have received an illegal 45 year sentence on the charge of Murder as indicted and convicted in the Court of General Sessions, dated November 15, 2005 case # 05-GS-40-10569.

SC code annotated sentencing and punishment title 16-3-10 states - There should be punishable for the crime, a mandatory minimum of 30 years, life imprisonment or death.

Unless under the circumstances that Murder was committed in the Commission of another felonious crime (not in my case), the 45 years received were illegal and falls in the range of being sentenced outside of the guidelines set forth in title 16-3-10 as is.

The above mentioned is in addition to support where I, the applicants claim to ineffective assistance of counsel would be furthered and not to only challenge the illegality of case # 05-GS-40-10334-P.W.I.D. Crack Cocaine 2nd offense - 25 year conviction but also case # 05-GS-40-10569 - Murder - 45 year conviction.

Amendments to be made to the application for Post-Conviction Relief applies to that which was time and stamp dated 12:08 PM May 11<sup>th</sup> 2009 in the Richland County Judicial Center by Jeanette W. Mc Bride C.C.I. and G.S.

Amendments to apply to application for Post-Conviction Relief are specifically to be added to the number 10 applicable question (10-A) including attachment page ~~one~~ <sup>one</sup> of application furthering questioned answers.

Page 1 of 3

(Continued...)

Continuance)

Amendments are to be made as in addition, omitting none  
therein file already.  
Amendments to be made are, as follows:

10)-A) Ineffective assistance of counsel whereas counsel:

- Failed to request the lesser included offense,
- failed to act as a diligent and conscientious advocate,
- failed to give complete loyalty,
- did not ~~even~~ have client's best interest in mind,
- neglected necessary investigations and preparations,
- did not do necessary factual investigation,
- did not do legal research,
- did not conscientiously gather information to protect rights,
- did not advise client of all rights or take any actions that were necessary<sup>in</sup> to protect and preserve them,
- never properly ascertained whether or not client actually understood or comprehended all of the issues involved in the case,
- never explained or discussed with client how the elements of the crime charged and the evidence that the prosecution planned to introduce into evidence against client, related to on another and did not discuss how the sentencing would be done especially as it is related to the elements of the crime in State v. Boyd,
- never intended to offer any defense to the court on my behalf
- failed to properly acquaint herself with the law and facts in the assessment of both the law and facts,
- failed to function as the counsel that the constitution's 6th amendment guarantees, and
- failed to appeal my case.

Further more I, the applicant, state concisely that counsels conduct so undermined proper functioning of adversarial process that trial could not have been relied on as having produced a just result. To succeed on a 6th amendment claim of ineffective assistance of counsel I show that there is a "reasonably probability," which is a probability sufficient to undermine confidence in the outcome, that, but for counsels' unprofessional errors result of the proceeding would have been different. Limitations of time and money however, forced early strategic choices, often based solely on conversations with I, the applicant and really no review of the prosecution's evidence.

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... Continuance)

Though requested I, the applicant, did not receive the prosecution's evidence in the counsel's possession to assist in building a defense in the listed cases. However, I did finally retrieve evidence come January 14, 2009, some 38 months later, which revealed after discovered evidence which only enhance the claim of ineffective assistance of counsel by legal advise in which I, the applicant, took a plea to the illegal indictment charge of P.W.I.D. Crack Cocaine 2nd offense where I, the applicant, had never been ~~convicted~~ convicted let alone charged with a first offense ever in my criminal history which is a discovery violation by the prosecution and should have been held ~~to~~ to render my guilty plea inadmissible.

By counsel's ineffectiveness I was advised to take a plea in which the Honorable Judge Manning accepted without ~~affirmative~~ showing that it (guilty plea) was made intelligently and voluntarily which is error as admissibility of a plea must be based on reliable determination ~~on~~ on voluntariness issue which satisfies constitutional rights of ~~the~~ the applicant.

~~As~~ a plea of guilt is more ~~than~~ admission of conduct, it is a conviction. Ignorance and incomprehension has been a perfect cover up for unconstitutional ~~in~~ in this case. As an effective user of a federal constitutional right ~~is~~ proceeding is of course governed by federal standards.

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At the evidentiary hearing, in reply to the State's motion to dismiss, the Applicant proceeded on the allegations that his plea counsel did not go through his entire discovery with him, that he would not have pled if he knew his entire discovery, and that he didn't knowingly plea because discovery was not known. None of those claims defeat the statute of limitations.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Respondent made a motion to dismiss based on the defense of statute of limitations.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going

to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

This Court interprets all of the Applicants' claims as ineffective assistance of counsel. This Court finds that this Application for Post-Conviction Relief should 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 pled guilty to the offense(s) he challenges in this Application on November 15, 2005. The Applicant was therefore required to file his application before November 16, 2006.<sup>1</sup> The original Application was filed on May 11, 2009 which was well beyond the time that 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

<sup>1</sup> SCRPC, Rule 6(a) – In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included.

judgment as a matter of law.” Therefore, this Court summarily dismisses the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

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## CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

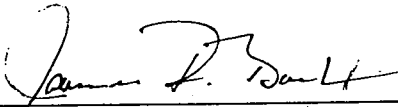
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 17 day of August, 2011.

  
The Honorable James R. Barber  
Presiding Judge  
Fifth Judicial Circuit

August, South Carolina.