

The Supreme Court of South Carolina

Dan Williams II,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable William P. Keesley
Lexington County
Trial Court Case No. 2009-CP-32-05487

ORDER

The request for an extension until April 25, 2012 to serve and file the Return to the Petition for Writ of Certiorari is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

March 20, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Kaelon E. May



ALAN WILSON
ATTORNEY GENERAL

March 19, 2012

RECEIVED

MAR 19 2012

S.C. Supreme Court

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

RE: Dan Williams, II v. State of South Carolina
2009-CP-32-5487

Dear Mr. Shearouse:

The Return to the Petition for Writ of Certiorari in the above appeal is due to be served and filed today. However, this is to respectfully request a 30-day extension to serve and file this Return to the Petition of Writ of Certiorari.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload and is for good cause.

Sincerely,

Kaelon E. May
Assistant Attorney General

cc: Dayne C. Phillips, Appellate Defender

The Supreme Court of South Carolina

Dan Williams II,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable William P. Keesley
Lexington County
Trial Court Case No. 2009-CP-32-05487

ORDER

For good cause shown, the request for an extension until February 2, 2012 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 *Arenda J. Shealy*
Chief Deputy Clerk

Columbia, South Carolina

January 4, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Kaelon E. May

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
William P. Keesley, Circuit Court Judge

ORIGINAL

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JAN - 3 2012

DAN WILLIAMS, II,

S.C. Supreme Court
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 Dan Williams, II respectfully requests an extension of a **final** 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 third request for an extension. In support of this request, counsel shows:

1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today, January 3, 2012.
2. Counsel for Mr. Williams 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 his caseload, counsel hopes that no further extension requests will be required.

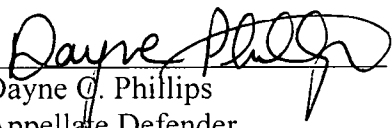
3. On December 21, 2011 counsel filed the initial brief of appellant and designation of matter in Dominique K. Ivey, Jr. v. State. On December 19, 2011 counsel filed the petition for writ of certiorari and appendix in Denise Michelle Edwards v. State. On December 16, 2011, counsel filed the petition for writ of certiorari and appendix in Lillian A. Sims v. State and Charles Dominick v. State. On December 13, 2011 counsel filed the petition for writ of certiorari and appendix in Fernando Saenz v. State.

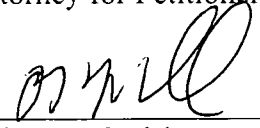
4. Counsel makes this request in good faith and not for purpose of delay.

5. As indicated by signature below, Kaelon Mays, of the South Carolina Attorney General's Office, does not oppose this request.

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

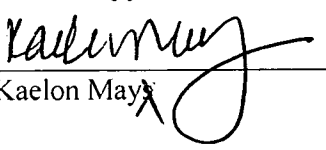
Respectfully submitted,


Dayne C. Phillips
Appellate Defender
Attorney for Petitioner


Robert M. Dudek
Chief Appellate Defender

January 3, 2012

I do not oppose:


Kaelon Mays

The Supreme Court of South Carolina

Dan Williams II,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable William P. Keesley
Lexington County
Trial Court Case No. 2009-CP-32-05487

ORDER

For good cause shown, the request for an extension until January 3, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

December 2, 2011

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Kaelon E. May

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Appeal from Lexington County
William P. Keesley, Circuit Court Judge

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S.C. Supreme Court

DAN WILLIAMS, II,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

(2)

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

Counsel for Dan Williams II 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 is due to be served and filed with the Court today, December 1, 2011.
2. Counsel for Mr. Williams 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 his caseload, counsel hopes that no further extension requests will be required.


3. On November 29, 2011 counsel filed the petition for writ of certiorari and appendix in Dana Lockamy v. State. On November 17, 2011, counsel had an oral argument in the Court of Appeals in the case of Bradley Senter v. State. On November 15, 2011, counsel filed the petition for writ of certiorari and appendix in Carlos Hazel v. State. On November 7, 2011 counsel filed the petitions for writ of certiorari and appendices in Donald C. Brevard v. State and George Wigington v. State. On November 1, 2011 counsel had an oral argument at the Court of Appeals in the case of State v. Gerald Fripp.

4. Counsel makes this request in good faith and not for purpose of delay.

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

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

Respectfully submitted,



Dayne C Phillips
Appellate Defender

Attorney for Petitioner

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
William P. Keesley, Circuit Court Judge

DAN WILLIAMS, II,

PETITIONER,

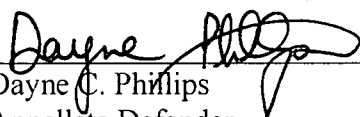
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

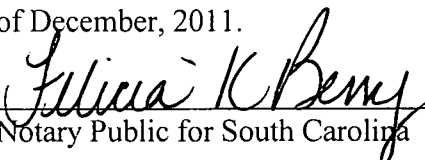
I certify that a true copy of the motion for an extension of time in which to file the petition for writ of certiorari and appendix in the above case has been served upon Kaelon May, Esquire, this 1st day of December, 2011.



Dayne C. Phillips
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 1st day
of December, 2011.



Felicia K. Bemy (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.

The Supreme Court of South Carolina

Dan Williams II,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable William P. Keesley
Lexington County
Trial Court Case No. 2009-CP-32-05487

ORDER

The request for an extension until December 1, 2011 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

November 1, 2011

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Kaelon E. May



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

 ORIGINAL

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

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

November 1, 2011

RECEIVED

NOV 1 2011

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

(1)

S.C. Supreme Court

Re: Dan Williams v. State of South Carolina

Dear Mr. Shearouse:

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

By copy of this letter to Assistant Attorney General Kaelon E. May, I am informing her of this request.

Thank you for your assistance in this matter.

Sincerely,

Dayne C. Phillips
Assistant Appellate Defender

DCP/fkb

Enclosure

cc: Kaelon E. May, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
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Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

September 6, 2011

RECEIVED

SEP - 6 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.

Dan Williams, II v. State of South Carolina

9/2/2011

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
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Facsimile: (803) 734-1397

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

August 11, 2011

RECEIVED

AUG 11 2011

Ms. Rema Gantt Thomas
Circuit Court Reporter
806 Yacht Club Pointe
Chapin, SC 29036-9998

S.C. Supreme Court

Dear Ms. Thomas:

Please provide us with the following transcript:

Dan Williams, II v. State of South Carolina Case #: 09-CP-32-05487

County: Lexington Date of Trial: May 18, 2011

Presiding Judge: William P. Keesley

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

The Brooks Law Offices, LLC

Charles T. Brooks, III
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
Post Office Box 291226, Columbia, SC 29229
OFFICE: (803) 418-5708
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792
Email: cbrooks@ctbrooks.com

Irma R. Brooks
Attorney

July 12, 2011

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Dan Williams II v State of South Carolina
Case No. 2009-CP-32-5487

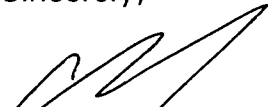
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,


Charles T. Brooks, III
CTB/jlb

Enclosed as stated

Cc: Kaelon E. May, Office of Attorney's General
South Carolina Office of Appellate Defense
Dan Williams, II, 175376

FILED
JUL 14 2011
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Honorable William P. Keesley, Circuit Court Judge


Case No: 2009-CP-32-5487

Dan Williams, II.....Appellant
S.C.D.C. 175376
v.
The State Respondent

NOTICE OF APPEAL

Dan Williams, II, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable William P. Keesley, July 1, 2011, which I, Charles T. Brooks, III, received on July 12, 2011.

RECEIVED
JUL 14 2011
S.C. SUPREME COURT



Charles T. Brooks, III
309 Broad Street
Post Office Box 3512
Sumter, South Carolina, 29151
(803) 418-5708
Attorney for Appellant

Other Counsel on Record:
Kaelon E. May, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3970

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas
Honorable William P. Keesley, Circuit Court Judge

Case No: 2009-CP-32-5487

Dan Williams, II.....Appellant

S.C.D.C. 175376

v.

The State.....Respondent

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 12th day of July, 2011, I served the foregoing Notice of Appeal, Order of Dismissal , as well as Certificate of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on July 12, 2011, addressed to the following as indicated below:

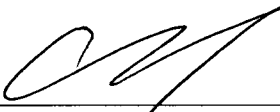
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Kaelon E. May, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Dan Williams, II, 175376
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina, 29067

Dated: July 12, 2011



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2009-CP-32-5487

Dan Williams, II, #175376,
Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,
Respondent.

PPS

CLERK OF COURT
MAY 11 2011

This matter comes before the Court pursuant to an application for post conviction relief (PCR) filed December 7, 2009. Respondent made its Return on or about March 4, 2010. An evidentiary hearing into the matter was convened on May 18, 2011 at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

WPC #1

At the hearing, the Applicant testified on his own behalf. The State offered the testimony of James R. Snell, Jr., Esquire (Mr. Snell) Applicant's trial counsel. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, the Applicant's records from the South Carolina Department of Corrections, and the records from Applicant's prior appeal proceeding.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was

indicted at the January 2006 term of the Lexington County Grand Jury for Manufacture, Distribution, etc., Ice, Crank, Crack Cocaine 3rd or Subsequent Offense (2006-GS-32-0470). He was represented by James Snell, Esquire. On or about April 4, 2007, the Applicant underwent trial, pursuant to which he was found guilty. He was sentenced to confinement for a period of twenty-one (21) years.

A timely Notice of Appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals subsequently dismissed the Applicant's appeal by unpublished opinion submitted October 1, 2009 and filed October 15, 2009 (2009-UP-486). Remittitur was issued on November 2, 2009.

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

1. Ineffective assistance of counsel – “the testimony of the witness and counsel new it to be false”
2. Due Process Violation – “because the government knowingly elicited false statements from its witness.”

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR

EVIDENTIARY HEARING

Applicant's Testimony

At the evidentiary hearing the Applicant testified that his trial counsel did not review the discovery materials concerning Applicant's charges and case with the Applicant. The Applicant testified that he did not have the discovery to assist him in determining whether he should take a plea deal. Applicant testified that there was a plea offer of 8 years presented to him, but the solicitor would not reveal all of the evidence against the Applicant unless Applicant proceeded to trial. Applicant testified that he is, in fact, guilty of the crime he was charged with. Applicant admitted his participation in the drug deals. Applicant testified that his trial counsel informed the Applicant that

the confidential informant, who bought the drugs from Applicant, was a black male approximately the age of the Applicant. Applicant testified that he is requesting relief in the form of vacation of his conviction and sentence and given the opportunity to take the plea offer of 8 years originally offered to the Applicant.

Mr. Snell's Testimony

At the evidentiary hearing Mr. Snell testified that he was retained to represent the Applicant and that he had about 20 meetings with the Applicant during his representation. Mr. Snell testified that the charges against the Applicant arose from two control buys and a subsequent execution of a search warrant at the Applicant's residence. Mr. Snell testified with the Applicant's prior record, a conviction on any of the charges against the Applicant would have resulted in life without parole for the Applicant. Mr. Snell testified that he confirmed Applicant's prior record. Counsel testified that he was able to speak with the solicitor resulting in a bond reduction for the Applicant, allowing Applicant out on bond. Mr. Snell testified the State offered the Applicant a plea to possession with intent to distribute first offense with a sentence cap of 8 years. Counsel testified that the Applicant turned down this plea offer, wanting to proceed to trial. Counsel testified that the State withheld the identity of the confidential informant involved in the control buy with the Applicant and that if the State had to disclose the identity of the informant there would be no plea deal and the Applicant's case would be called for trial. Mr. Snell testified that he was unable to establish an alibi for the Applicant and that Applicant did not offer any potential witnesses for defense of his case.

Mr. Snell testified that the State served a notice of intent to seek life without parole (LWOP). Counsel testified that he discovered a typo in the Notice of Intent of LWOP document's caption,

which precluded the State from pursuing LWOP. Counsel testified that Applicant proceeded to trial facing fifteen to thirty years.

III. APPLICABLE LAW

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

WOL #4
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. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from ~~the South Carolina Department of Corrections~~, the application for post-conviction relief, the transcript from Applicant's trial, records from Applicant's prior appeal proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann §17-27-80 (2003), this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

(1) Ineffective Assistance of Counsel

At the PCR hearing Applicant failed to directly address his claim of ineffective assistance of counsel due to the alleged false testimony of a witness and counsel's supposed knowledge of such. Applicant's major assertion presented at the PCR hearing was that trial counsel was ineffective in failing to share and review the discovery with Applicant, thereby preventing Applicant from making a knowing and intelligent decision about whether to accept a plea bargain that was offered by the State. Applicant's counsel testified that the State had offered the Applicant a plea bargain in which there would have been a sentence cap of 8 years. The Applicant was facing life imprisonment. The Applicant's underlying charges were drug buys that involved a confidential informant. It was made clear to the Applicant and counsel that, if the State had to disclose the name of the confidential informant, there would be no plea bargain and the Applicant's cases would be called for trial. However, if the Applicant indicated that he would accept the plea offer, the State would put an 8-year cap on the sentence exposure. The State informed counsel and Applicant, that the State wanted to be able to use that confidential informant for other transactions.

W
#4

This Court finds that the State is ordinarily privileged from disclosing the name of a confidential informant. State v. Wright, 322 S.C. 484, 472 S.E.2d 642 (Ct. App.1996). However, the State may be compelled to reveal an informant's identity where the informant is either an active participant in a criminal transaction or a material witness to the question of the defendant's guilt or innocence. State v. Batson, 261 S.C. 128, 198 S.E.2d 517 (1973). Even if the informant is an active participant in the criminal act and/or a material witness, the court may still sustain an invocation of the nondisclosure privilege if other factors and circumstances warrant doing so. State v. Bultron, 316 S.C. 323, 457 S.E.2d 616 (Ct. App.1995). The trial court must balance the public's interest in perpetuating the flow of vital information to law enforcement officials against the right of the individual to prepare his defense. Id. The burden is on the accused to show facts and circumstances giving rise to the exception to the privilege against disclosure. Batson, supra; State v. Shupper, 263 S.C. 53, 207 S.E.2d 799 (1974).

Remarkably, the Applicant testified at the PCR hearing that he is guilty of the crime charged. Applicant admitted under oath that he participated in the drug deals. Also, trial counsel testified that he and the Applicant reviewed the discovery materials together, however Applicant advised counsel there were no witnesses for counsel to interview or present on Applicant's behalf. (Tr. p. 192, lines 8-9). Counsel testified that Applicant could not provide him with an alibi or any other substantial defense. (Tr. p. 192, lines 9-10). Counsel stated under oath that based on the facts of Applicant's case, the State's evidence, Applicant's prior record, and the lack of a viable defense, that counsel advised Applicant it was a mere certainty that at trial Applicant will be convicted and receive a sentence of life without parole. (Tr. p. 192, lines 15-17). Therefore, it seems rather impossible for this Court to determine that Applicant can prove prejudice even if Applicant showed deficient performance of

counsel. However, this Court finds there is absolutely no showing of deficient performance of trial counsel. The only testimony approaching that standard is the Applicant's claim that he was told by his trial counsel that the confidential informant was a black male approximately the same age as Applicant. The Applicant testified that he had not sold any drugs to such a person. Apparently, Applicant decided the State could not prove him guilty because no drug transaction occurred between the Applicant and a black male. When the informant was disclosed and the videotape of the transaction shown at trial, the confidential informant was not a black male, but a white male. This Court finds that the Applicant did participate in a drug buy, has readily admitted such, and thus while Applicant may not have sold drugs to a black male, the fact remains that Applicant sold drugs to a confidential informant, who testified at the Applicant's trial.

WPC
#7

The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Except for the identity of the confidential informant, the Applicant could not point to any specific matters counsel failed to discover such that there is a reasonable probability the result of the proceeding would have been different. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Applicant had sufficient time to confer with counsel, especially since counsel was able to get Applicant released on bond. This Court finds the Applicant was properly advised of the facts and circumstances surrounding his case, such that Applicant was able to make a knowing and intelligent decision whether to accept the State's plea offers. The Applicant was even given a last minute opportunity, before opening statements at trial, to

enter an Alford plea with a sentence range of 15 to 30 years, but again rejected the plea offer and proceeded to trial. This Court finds that the Applicant has failed to show how he was prejudiced by trial counsel's alleged ineffectiveness; therefore this allegation is denied and dismissed.

(2) Due Process Violation

At the PCR hearing the Applicant failed to directly address his claim of violation of due process, ^{alleging} when the State knowingly elicited false statements from its witness; however, that claim falls under Applicant's allegation of prosecutorial misconduct, which Applicant addressed at the PCR hearing. This Court finds Applicant's testimony is not credible. This Court does find trial counsel is credible. This Court finds that the Applicant has failed to prove that trial counsel told Applicant the confidential informant was a black male. In any event, trial counsel did not make the facts of the case and had nothing to do with creating the predicament caused by Applicant's prior convictions. Even if this Court were to assume trial counsel advised Applicant the drug deals were with a black male, there is no indication that trial counsel was repeating something different than what he had been told and there is no evidence that the allegedly incorrect information was anything other than a mistake. This Court finds the State was acting within its province in withholding disclosure of the informant's identity in exchange for the plea bargain, and gave logical, practical reason for doing so. While, trial counsel could have moved to disclose the name of the informant, the only reasonable conclusion this Court finds is that the plea bargain would have been withdrawn and the Applicant would have found himself in the same position. This Court finds there has been no showing of prosecutorial misconduct, therefore this allegation is denied and dismissed.

V. CONCLUSION

Based on all the forgoing, 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 for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

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IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1st day of July, 2011.

William P. Keesley
William P. Keesley
Presiding Judge
Eleventh Judicial Circuit

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