

Janice Gilbert 335126

SMD #30

990 W. Peachy Hwy.

RECEIVED
APR 11 2012

APR 11 2012

S.C. SUPREME COURT

RECEIVED

APR 11 2012

S.C. SUPREME COURT

Apr. 5, 2012

Mr. Shearhouse,

I'm writing to you in reference of my Pro Se response to the Petition filed by my Attorney Wayne C. Phillips. I would like to know if I could have an extension from the 45 days that I have to turn in my response? I'm doing my best to have it ready but I'm on SMD (Special Management Unit) & I can't get access to the Law Library like that. Or could you write a letter to the Warden on my behalf & have me placed in the Law Library so I can prepare my brief & have it typewritten? His name is Warden Anthony Padula or better yet to speed up the process could you call down here @ 803-896-2400? Please write me back & stamp proof this & send me a copy.

P.S. You would have to explain my pending case & tell him why it's important for me to get in the Law Library under special conditions.

Thanking You In Advance,

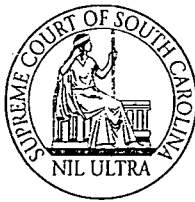
Janice Gilbert
335126

Samie Gilbert 335126
SIMD # 30
990 W. Sackety Hwy
Bishopville, S.C.
29010

AMS

The Supreme Court of SC
Daniel E. Shearhouse
P.O. Box 11330
Columbia, S.C.
29211

LEGAL MAIL ONLY



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 29, 2012

Jamie Michael Gilbert #335126
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Gilbert, Jamie Michael v. The State


Dear Mr. Gilbert:

Your counsel has submitted a Petition for Writ of Certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition & Appendix on March 28, 2012.

You may, within forty-five (45) days of the date of this letter, file with this Court a pro se response to the Petition filed by your counsel. In this response, you may raise and argue any issues you believe the Court should consider in this appeal. Upon receipt of your pro se response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

If you do decide to file a pro se response, the response must be either typewritten or legibly hand printed, and must have at least a one inch margin on all sides. Further, you will need to only submit one copy of your response, and this copy **should not** be stapled or bound in any manner.

Very truly yours,



CLERK

DES/jj

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Karen Ratigan

The Supreme Court of South Carolina

Jamie Michael Gilbert, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable J. Michael Baxley
Darlington County
Trial Court Case No. 2009-CP-16-00639

ORDER

For good cause shown, the request for an extension until March 28, 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 

Clerk

Columbia, South Carolina

February 28, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Karen Ratigan

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Darlington County
J. Michael Baxley, Circuit Court Judge

JAMIE MICHAEL GILBERT,

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

ORIGINAL

RECEIVED

FEB 27 2012

S.C. Supreme Court

(3)

Counsel for Jamie Michael Gilbert 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, February 27, 2012.
2. Counsel for Mr. Gilbert 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 February 16, 2012 counsel filed the petition for writ of certiorari and appendix in William Head v. State. On February 13, 2012 counsel had an oral argument in State v. Adrian Eaglin. On February 8, 2012 counsel filed the initial brief of appellant and designation of matter in Robert Lee Banks

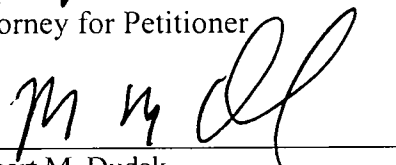
v. State. On February 2, 2012 counsel filed the initial brief of appellant and designation of matter in Dan Williams v. State. On January 26, 2012 counsel filed the petition for writ of certiorari and appendix in Joshua Manning v. State. On January 18, 2012 counsel filed the petition for writ of certiorari and appendix in Jeffrey Higgins v. State. On January 17, 2012 counsel filed the petitions for writ of certiorari and appendices in Billy James Lupo v. State and Stanley O. Williams v. State. On January 9, 2012 counsel filed the petitions for writ of certiorari and appendices in Joseph Samuel Whitt v. State and Edward Thompson v. State. On January 5, 2012 counsel filed the petition for rehearing in State v. Bradley Scott Senter. On January 3, 2012 counsel filed the petition for writ of certiorari and appendix in Willie James v. State.

4. Counsel makes this request in good faith and not for purpose of delay.
5. As indicated by signature below, Tyson Andrew Johnson, Sr., 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.

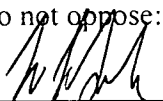
Respectfully submitted,

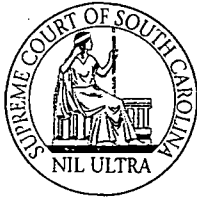

Dayne C. Phillips
Appellate Defender
Attorney for Petitioner


Robert M. Dudek
Chief Appellate Defender

February 27, 2012

I do not oppose:


Tyson Andrew Johnson, Sr.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 9, 2012

Jamie Michael Gilbert #335126
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Gilbert, Jamie Michael v. The State

Dear Mr. Gilbert:

This responds to your letter of February 3, 2012. You are currently being represented by Dayne Phillips, Esquire, of the Division of Appellate Defense. We are forwarding a copy of your letter to Mr. Phillips to make him aware of your request.

Concerns about filing in your appeal should be directed to your counsel. You may contact Mr. Phillips at Post Office Box 11549, Columbia, SC 29211. The phone number for that office is 803-734-1343.

Very truly yours,

CLERK

DES/jj

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Karen Ratigan

Jamie Gilbert # 335126

SMU # 86

990 Wilsbach Hwy.

Bishopville, S.C. 29010

February 3, 2012

S.C. SUPREME COURT

FEB 03 2012

RECEIVED

Supreme Court of South Carolina,

I'm writing this in concerns for preparation of my Writ of Certiorari. I'm trying to get all of my documents & files concerning my case. I have never received transcripts or any Motion of Discovery about my case. During my PCR hearing I told the Judge (as well as the courts) this same thing & bc of that my PCR was denied. I'm asking that I can obtain these items so I can prepare my defense. Another reason I'm writing this is because every time I write my trial Counsel & Solicitor's office they don't reply back. According to Haddock 321 S.E.2d 601 (S.C. 1984) that is a violation by trial counsel. However though, please contact me & help me receive these items. I also ask that you stamp proof this letter & mail me a copy back.

Thanks,

Jamie Gilbert 335126

RECEIVED

FEB 03 2012

S.C. SUPREME COURT

Jamie Gilbert #335126

SMU #86

990 Wisacky Hwy.

Bishopville, S.C.

29010

The Supreme Court of S.C.

P.O. Box 11330

Columbia, S.C.

29211

LEGAL MAIL ONLY

The Supreme Court of South Carolina

Jamie Michael Gilbert, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable J. Michael Baxley
Darlington County
Trial Court Case No. 2009-CP-16-00639

ORDER

For good cause shown, the request for an extension until February 27, 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 *Brenda J. Shauls*
Clerk

Columbia, South Carolina *Chief Deputy*

January 30, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Karen Ratigan

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Darlington County
J. Michael Baxley, Circuit Court Judge

RECEIVED

JAN 27 2012

JAMIE MICHAEL GILBERT,

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

(2)

Counsel for Jamie Michael Gilbert 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:

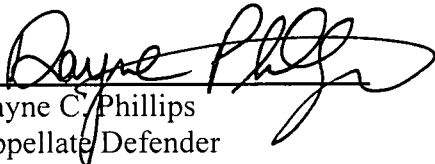
1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today, January 27, 2012.
2. Counsel for Mr. Gilbert respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions 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 January 26, 2012 counsel filed the petition for writ of certiorari and appendix in Joshua Manning v. State. On January 18, 2012 counsel filed the petition for writ of certiorari

and appendix in Jeffrey Higgins v. State. On January 17, 2012 counsel filed the petitions for writ of certiorari and appendices in Billy James Lupo v. State and Stanley O. Williams v. State. On January 9, 2012 counsel filed the petitions for writ of certiorari and appendices in Joseph Samuel Whitt v. State and Edward Thompson v. State. On January 5, 2012 counsel filed the petition for rehearing in State v. Bradley Scott Senter. On January 3, 2012 counsel filed the petition for writ of certiorari and appendix in Willie James v. State. 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. 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

Certiorari to Darlington County
J. Michael Baxley, Circuit Court Judge

JAMIE MICHAEL GILBERT,

PETITIONER,

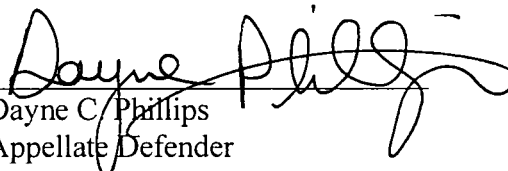
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

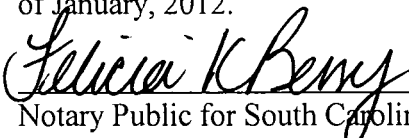
CERTIFICATE OF SERVICE

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 Karen Ratigan, Esquire, this 27th day of January, 2012.


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 27th day
of January, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.



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

December 28, 2011

RECEIVED

DEC 28 2011

S.C. Supreme Court

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

Re: Jamie Michael Gilbert 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 Karen Ratigan, I am informing her of this request.

Thank you for your assistance in this matter.

Sincerely,

Dayne C. Phillips
Assistant Appellate Defender

DCP/fkb

cc: Karen Ratigan, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

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

October 25, 2011

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

Dear Mr. Shearouse:

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

Jamie Michael Gilbert v. State of South Carolina

10/25/2011

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,

Loriene French
Legal Services Coordinator

RECEIVED

OCT 25 2011

S.C. Supreme Court



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

September 8, 2011

RECEIVED

SEP - 8 2011

Ms. Pamela Ozment-Cartee
Circuit Court Reporter
531 East Carolina Avenue
Hartsville, SC 29550

S.C. Supreme Court

Dear Ms. Ozment-Cartee:

Please provide us with the following transcript:

Jamie Michael Gilbert v. State of South Carolina Case #: 09-CP-16-00639

County: Darlington Date of Trial: June 9, 2011

Presiding Judge: J. Michael Baxley

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,


Lorie French
Legal Services Coordinator

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

pu

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 26, 2011

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Jamie M. Gilbert v State of South Carolina
Case No. 2009-CP-16-0639

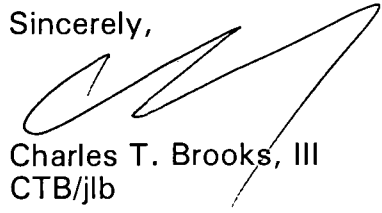
Dear Sir or Madam:

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: Karen C. Ratigan, Office of Attorney's General
South Carolina Office of Appellate Defense
Jamie M. Gilbert, 335126

RECEIVED
JUL 29 2011
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas
Honorable J. Michael Baxley, Circuit Court Judge

Case No: 2009-CP-16-0639

Jamie Michael Gilbert, Appellant
S.C.D.C. No.: 335126


v.

The State Respondent

NOTICE OF APPEAL

Jamie Michael Gilbert, appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable J. Michael Baxley, on July 15, 2011, which I, Charles T. Brooks, III, received on July 26, 2011.

July 26, 2011



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:
Karen C. Ratigan, 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 DARLINGTON COUNTY
Court of Common Pleas
Honorable J. Michael Baxley, Circuit Court Judge

Case No: 2009-CP-16-0639

Jamie Michael Gilbert.....Appellant
S.C.D.C. No.: 335126

v.
The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 26th day of July 2011 I served the foregoing Notice of Appeal, Order of Dismissal, as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on July 26, 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: Karen C. Ratigan, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Jamie Michael Gilbert, 335126
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina, 29010


Dated: July 26, 2011


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

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)
)
Jamie Michael Gilbert,)
S.C.D.C. No. 335126,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No. 2009-CP-16-0639

**ORDER DENYING
POST CONVICTION RELIEF**

 This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 29, 2009. The Respondent made its return on October 27, 2009. An evidentiary hearing into the matter was convened on June 9, 2011 at the Darlington County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Karen C. Ratigan, Esquire, of the South Carolina Office of the Attorney General represented the Respondent. Also present at the hearing were Teresa and Cedric Henneghan, members of the victim's family.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Applicant's plea attorneys, Rosalind Sellers, Esquire, and J. Richard Jones, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Darlington County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and Respondent's return.

PROCEDURAL HISTORY

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

indicted at the January 2007 term of the Darlington County Grand Jury for armed robbery (2007-GS-16-0648) and at the July 2008 term for grand larceny (2008-GS-16-1029) and murder (2008-GS-16-1030). He was represented on these charges by J. Richard Jones, Esquire.

On April 22, 2009, Applicant pled guilty to armed robbery, grand larceny, and voluntary manslaughter before the Honorable Paul M. Burch. Sentencing was deferred until a later date. On June 3, 2009, Judge Burch sentenced Applicant to concurrent terms of twenty-three (23) years for armed robbery, ten (10) years for grand larceny, and twenty-three (23) years for voluntary manslaughter. Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failure to investigate.
 - b. Lack of a lawyer/client relationship.
2. Involuntary guilty plea.

JRB
2

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 presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their 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).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his

allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). 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, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Applicant stated three (3) attorneys from the Public Defender’s Office were involved with his case, and they were all ineffective. Applicant testified his indictments should have been challenged. Applicant admitted in the PCR hearing that he was found in the victim’s car and had given a statement to authorities, but argued that there was no evidence against him. Regardless, Applicant stated he would have been successful at trial, and his attorneys forced him to plead guilty to the charges.

Rosalind Sellers testified she was brought in to assist with this case because communication had broken down between Applicant and his original attorneys—Robert L. Kilgo, Jr. and J. Richard Jones. Attorney Sellers testified she reviewed the charges, the possible sentences, and the impact of his statement with the Applicant, his mother, and his aunt. Attorney Sellers testified she reviewed the discovery materials with Applicant on more than one occasion. Counsel testified the evidence showed both Applicant's knowledge and direct involvement in the crime; moreover, the Applicant testified against his co-defendant at the co-defendant's trial.

Richard Jones testified the initial attorney on this case was Robert Kilgo, and that Mr. Kilgo had filed the discovery motions. Attorney Jones testified all three lawyers had reviewed the case with Applicant. He testified that he personally reviewed the State's evidence with Applicant, as well as the charges, the potential sentences, and the doctrine of accomplice liability. Attorney Jones testified the State had a strong case against Applicant, and that Applicant had given a full confession. In his opinion, there were no problems with the indictments as now claimed by Applicant, and that he would have challenged the indictments if they were defective. Counsel testified he encouraged Applicant to plead guilty because he was concerned Applicant would receive – at a minimum – a life sentence if he went to trial. Attorney Jones testified the State agreed to reduce the murder charge to voluntary manslaughter and allow Applicant to plead guilty without a sentence recommendation if he testified at his co-defendant's trial. Mr. Jones testified he explained all of this to Applicant and that Applicant's testimony at his co-defendant's trial was consistent with his statement. Attorney Jones testified there was no question of Applicant's involvement in the victim's death.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony is not

credible, while also finding counsels' testimony is credible. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and were thoroughly competent in their representation. Further, it is clear from the record that Applicant was a very difficult client, and was uncooperative with his attorneys throughout their representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.9; p.14). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.6-9).

This Court finds Applicant has failed to meet his burden of proving his plea attorneys did not properly investigate or prepare his case. This Court notes Applicant had three (3) attorneys working on his case at various times. Further, both attorneys Sellers and Jones testified they reviewed the discovery materials, State's evidence, charges, and potential sentences with the Applicant. This Court finds their testimony is credible. While Applicant testified there was no evidence linking him to the victim's death, this Court finds this assertion is without support. The Applicant gave a full confession and was found in the victim's vehicle. Furthermore, the doctrine of accomplice liability also applied in this case. Regardless, Applicant failed to articulate what else counsel should have done to better prepare his case. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

As to the indictments, Applicant failed to articulate why he believed they were insufficient. This Court has examined the indictments, and finds they were sufficient to put Applicant on notice of the charges he was facing. See State v. Gentry, 363 S.C. 93, 103, 610

S.E.2d 494, 500 (2005); State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

This Court finds Applicant has also failed to meet his burden of proving he was forced or pressured into pleading guilty, and such an allegation is clearly refuted by the guilty plea transcript. See Anderson v. State, 342 S.C. at 57, 535 S.E.2d at 657. The Applicant told the plea judge the facts recited by the solicitor were accurate and did not dispute that he was the one who ran over the victim several times with the victim's own car. (Plea transcript, p.14; Sentencing transcript, pp.8-11). Applicant told the plea judge he was guilty and did not want to take his charges to a jury trial. (Plea transcript, pp.8-9). Applicant told the plea judge he was satisfied with Jones' representation on these charges. (Plea transcript, p.9), that he had not been threatened into pleading guilty, and that he was entering the plea of his own free will. (Plea transcript, p.8). This Court finds Applicant has completely failed to present any credible evidence or testimony that his plea counsel coerced him into entering a guilty plea to the charges.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence plea counsel committed either errors or omissions in representing Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsels' performance.

This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant has waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Applicant's three attorneys were not deficient in any manner, and Applicant was not prejudiced by counsels' representation. Furthermore, Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed, with prejudice.

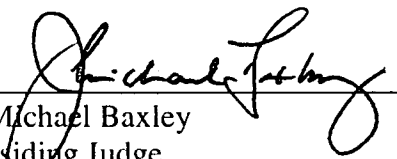
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

Jan 7

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed, with prejudice; and
2. That Applicant must remain in the custody of Respondent for the completion of his sentence.

IT IS SO ORDERED this 15th day of July, 2011.



J. Michael Baxley
Presiding Judge
Fourth Judicial Circuit

Darlington, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)
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)
)
JAMIE MICHAEL GILBERT, 335126)
)
)
Applicant,)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

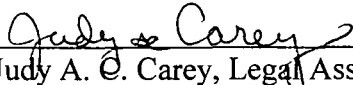
2009-CP-16-0639

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Order Denying Post Conviction Relief** of the Respondent in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Charles T. Brooks, III, Esquire
Post Office Box 3512
Sumter SC 29151

DATED this 25th day of July, 2011.



Judy A. Carey, Legal Assistant
For Respondent

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Albert C. Smith II
Jamie M. Gilbert
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South Carolina Supreme Court
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Columbia, SC 29211