

The Supreme Court of South Carolina

James Blanding,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Kristi Lea Harrington
Charleston County
Trial Court Case No. 2009-CP-10-05275

ORDER

For good cause shown, the request for an extension until May 4, 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 and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 2, 2012

cc: Assistant Attorney General Andrew Johnson
Deputy Chief Appellate Defender Wanda H. Carter

ALAN WILSON
ATTORNEY GENERAL



April 4, 2012

RECEIVED

APR 02 2012

S.C. Supreme Court

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

Re: James Blanding, #329153 v. State of South Carolina
2009-CP-10-5275

Dear Mr. Shearouse:

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

This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

Andrew Johnson
Assistant Attorney General

AJ/arh

cc: Wanda H. Carter, Esquire

The Supreme Court of South Carolina

James Blanding,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Kristi Lea Harrington
Charleston County
Trial Court Case No. 2009-CP-10-05275

ORDER

The request for an extension until April 4, 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 *Sherida J. Healy*

Chief Deputy Clerk

Columbia, South Carolina

March 2, 2012

cc: Assistant Attorney General Matthew J. Friedman
Deputy Chief Appellate Defender Wanda H. Carter



ALAN WILSON
ATTORNEY GENERAL

March 5, 2012

RECEIVED

MAR 09 2012

S.C. SUPREME COURT

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

Re: James Blanding, #329153 v. State of South Carolina
2009-CP-10-5275

Dear Mr. Shearouse:

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

This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/arh

cc: Wanda H. Carter, Esquire

The Supreme Court of South Carolina

James Blanding,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Kristi Lea Harrington
Charleston County
Trial Court Case No. 2009-CP-10-05275

ORDER

For good cause shown, the request for an extension until January 20, 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

December 22, 2011

cc: Assistant Attorney General Matthew J. Friedman
Deputy Chief Appellate Defender Wanda H. Carter

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

DEC 21 2011

S.C. Supreme Court

JAMES BLANDING,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**

(3

The undersigned counsel would respectfully request a **final thirty-day extension, until January 20, 2012**, in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by two prior orders of this Court.

2. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Jonathan Vick v. State with this court, as well as the initial briefs of appellant and designations of matter in the cases of John Henry Stokes v. State and Lewis C. Landreth v. State with the Court of Appeals on December 19, 2011. Counsel

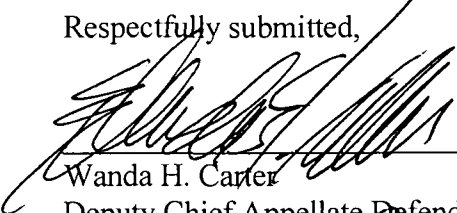
filed the petition for writ of certiorari and accompanying appendix in the case of John Lewis Mills v. State with the Supreme Court on December 15, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Mark Daniel Cureton v. State in the Supreme Court on December 9, 2011. Counsel filed the brief of petitioner in the case of Tommy Novack Lloyd v. State in the Supreme Court on December 2, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Leonard G. Stanfield v. State in the Supreme Court on November 22, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of William Avinger v. State in the Supreme Court on November 21, 2011. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Mark Bolte v. State and Stanley DeHart v. State in the Supreme Court on November 7, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Randy Edward Anderson in the Court of Appeals on November 4, 2013. In October, 2011, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Curtis Jerome Mitchell v. State, Ismael Cruz v. State, Vincent J. Beaton v. State, Gary Louis Cunningham v. State, Derek K. Behlke v. State and Timothy Dinkins v. State. Counsel also filed the petition for rehearing in the case of State v. Vashaun Ravenel in October, 2011. Additionally in October, 2011, Counsel had oral arguments in the cases of Michael Jermaine Goins v. State and Marcus Martin v. State in the Court of Appeals.

3. This request is made in good faith, and not for purposes of delay. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

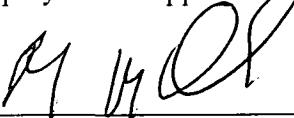
4. As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final thirty-day extension, until January 20, 2012**, in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender



Robert M. Dudek
Chief Appellate Defender

December 21, 2011

I DO NOT OPPOSE:



Matthew J. Friedman

The Supreme Court of South Carolina

James Blanding,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Kristi Lea Harrington
Charleston County
Trial Court Case No. 2009-CP-10-05275

ORDER

For good cause shown, the request for an extension until December 21, 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 and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Deanda J. Slesby*
Clerk

Columbia, South Carolina *Chief Deputy*

November 22, 2011

cc: Assistant Attorney General Matthew J. Friedman
Deputy Chief Appellate Defender Wanda H. Carter

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

NOV 21 2011

S.C. Supreme Court

JAMES BLANDING,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**



The undersigned counsel would respectfully request a thirty-day extension in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.

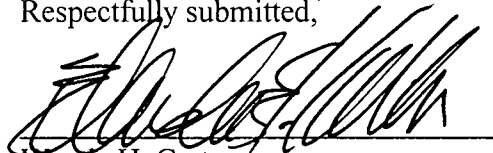
2. Counsel is filing the petition for writ of certiorari and accompanying appendix in the case of William Avinger v. State in the Supreme Court today. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Mark Bolte v. State and Stanley DeHart v. State in the Supreme Court on November 7, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Randy Edward Anderson in the Court of Appeals on November 4, 2013. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Curtis

Jerome Mitchell v. State in the Supreme Court on October 28, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Ismael Cruz v. State in the Supreme Court on October 24, 2011. Counsel had an oral argument in the case of Michael Jermaine Goins v. State on October 20, 2011, as well as an oral argument in the case of Marcus Martin v. State on October 19, 2011, both in the Court of Appeals. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Vincent J. Beaton v. State on October 17, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Gary Louis Cunningham v. State on October. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Derek K. Behlke v. State on October 12, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Timothy Dinkins v. State on October 7, 2011. Counsel filed the petition for rehearing in the case of State v. Vashaun Ravenel in the Court of Appeals on October 5, 2011.

3. This request is made in good faith, and not for purposes of delay.

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. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

November 21, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Kristi Lea Harrington, Circuit Court Judge

JAMES BLANDING,

PETITIONER,


V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

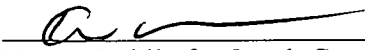
The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Matthew J. Freidman, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 21st day of November, 2011.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 21st day of November, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.

The Supreme Court of South Carolina

James Blanding,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Kristi Lea Harrington
Charleston County
Trial Court Case No. 2009-CP-10-05275

ORDER

The request for an extension until November 21, 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

October 24, 2011

cc: Assistant Attorney General Matthew J. Friedman
Deputy Chief Appellate Defender Wanda H. Carter

ORIGINAL



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

October 21, 2011

RECEIVED

OCT 21 2011

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

S.C. Supreme Court

Re: James Blanding 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, I am informing Matthew J. Friedman, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/kam

cc: Matthew J. Friedman



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

RECEIVED

AUG 22 2011

S.C. Supreme Court

August 22, 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.

James Blanding v. State of South Carolina

8/22/2011

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,

Lorienne French
Legal Services 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

May 4, 2011

RECEIVED

MAY - 4 2011

S.C. Supreme Court

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

Re: Trenton Bennett v. State of South Carolina
William A. Avinger v. State of South Carolina
James Blanding v. State of South Carolina

Dear Ms. Allen:

Enclosed are the requests for the above post-conviction relief hearing transcripts that were sent to Ms. Brenda Cooley, now retired court reporter. It is my understanding that these requests will now be given to another court reporter for transcribing

By copy of this letter to the Supreme Court, I would ask that the time limits be adjusted from today's date to receive the above transcripts.

Thank you for your assistance in this matter, I am,

Sincerely,

Lorieche French
Legal Services Coordinator

cc: Ms. Janet Johnson
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

May 4, 2011

Ms. Desiree R. Allen
Court Services Manager
1015 Sumter Street
Columbia, SC 29201

Dear Ms. Allen:

Please provide us with the following transcript:

James Blanding v. State of South Carolina Case #: 09-CP-10-05275

County: Charleston Date of Trial: November 18, 2010

Presiding Judge: Kristi Lea Harrington

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,


Loriene French
Legal Services Coordinator

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

COPY

BRENDA COOLEY
POST OFFICE BOX 24
SULLIVAN'S ISLAND, SC 29482

RECEIVED

FEB 22 2011

February 17, 2011

S.C. Supreme Court

Ms. Loriene French
Legal Services Coordinator
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

RE: James Blanding v State of South Carolina
Case No. 09-CP-10-05275

Dear Ms. French:

Thank you for your letter of February 3, 2011 requesting the transcript referenced above. By copy of this letter I am forwarding your letter to Desiree Allen, South Carolina Court Administration, 1015 Sumter Street, Suite 200, Columbia, South Carolina, 29201 who will assign someone for production of the transcript as I have resigned my position as circuit court reporter.

With kindest regards, I am

Sincerely,

Brenda Cooley

cc: Desiree Allen, Court Administration (w/enclosure)

The Hon. Daniel E. Shearhouse ✓
Clerk of Court
South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

February 3, 2011

RECEIVED

FEB 03 2011

S.C. Supreme Court

Ms. Brenda C. Cooley
Circuit Court Reporter
PO Box 24
Sullivan's Island, SC 29482

Dear Ms. Cooley:

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

James Blanding v. State of South Carolina Case #: 09-CP-10-05275

County: Charleston Date of Trial: November 18, 2010

Presiding Judge: Kristi Lea Harrington

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

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

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

Ms. Brenda C. Cooley
February 3, 2011
Page Two

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

Thank you for your kind cooperation in this matter.

Sincerely,


Loriene French
Legal Services Coordinator

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

Elizabeth B. Hutto

Attorney
639 Fair Spring Drive
Charleston, SC 29414
(843) 571-7238

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29201

January 20, 2011

RE: James S. Blanding v. State of South Carolina
Case No.: 2009-CP-10-5275

Dear Mr. Shearouse:

I was court appointed in the above-referenced post conviction relief matter. Enclosed, please find a Notice of Appeal, certificate of Service, and the Order of Dismissal in the above matter.

If you need any additional information, please let me know. Thank you for your assistance in this matter.

Sincerely,


Elizabeth B. Hutto

Enclosure

cc: Mr. Robert Dudek, Chief Appellate Defender
James S. Blanding

RECEIVED

JAN 21 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Kristi L. Harrington

Case No. 2009-CP-10-5275

James Blanding, #329153

Petitioner,

v.

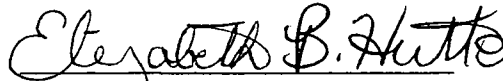
State of South Carolina,

Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable Kristi L. Harrington's December 23, 2010 order of dismissal of Petitioner's post-conviction relief action. Undersigned counsel received notice of entry of the order on December 30, 2010. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Elizabeth B. Hutto
639 Fair Spring Drive
Charleston, SC 29414
(843) 571-7238
Attorney for Petitioner

January 20, 2011

Other Counsel of Record:
Matthew J. Friedman
Assistant Attorney General
PO Box 11549
COLUMBIA, SC 29211
Attorney for Respondent

RECEIVED

JAN 21 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Kristi L. Harrington, Circuit Court Judge

Case No. 2009-CP-10-5275

James Blanding, #329153

Petitioner,

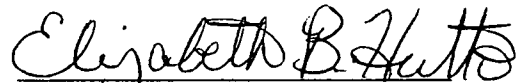
v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I, Elizabeth B. Hutto, 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 Respondent's counsel of record, Matthew J. Friedman, Assistant Attorney General, PO Box 11549, COLUMBIA, SC 29211. I further certify that all parties required by Rule to be served have been served this 20th day of January 2011.



Elizabeth B. Hutto
639 Fair Spring Drive
Charleston, SC 29414
(843) 571-7238
Attorney for Petitioner

SC
AG
AT
GS
SOC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
James Blanding, #329153,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2009-CP-10-5275

ORDER OF DISMISSAL

FILED
2010 DEC 23 AM 9:38
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 21, 2009 and amended on November 18, 2010. The Respondent made its Return on March 24, 2010. An evidentiary hearing into the matter was convened on November 18, 2010 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Elizabeth B. Hutto, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Mark Peper, Esquire, and his first appointed attorney Rodney Davis, Esquire, also testified at the hearing. Christina Blanding, Applicant's wife, also testified at the PCR hearing. This Court had before it the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the transcript of the pre-trial motions, the guilty plea transcript, the Court of Appeals' Order dismissing the direct appeal for failure to show any issue was preserved for appellate review, the Remittitur dated October 31, 2008, the PCR application and amended application, the Brief in Support of Application for Post-Conviction Relief, and Respondent's Return.

1/28/11
JLH

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the June 2007 term of the Charleston County Grand Jury for three counts of kidnapping (2007-GS-10-7560, 7561, 7562), burglary – 2nd degree non-violent (2007-GS-10-7563), and armed robbery (2007-GS-10-7559). Mark Peper, Esquire, represented the Applicant. On February 6, 2009, the Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable Deadra L. Jefferson sentenced him to confinement for fifteen (15) years for burglary – 2nd degree non-violent and thirty (30) years for each other offense. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. By Order dated October 15, 2008, the South Carolina Court of Appeals dismissed the appeal based on Applicant's failure to show an issue was preserved for appeal. The Remittitur was issued on October 31, 2008.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel by Rodney Davis in that Mr. Davis failed to attend the interview in which Applicant gave a proffer.
2. Ineffective assistance of counsel by Mark Peper in that Mr. Peper
 - a. Did not request that the State stipulate to the "gentleman's agreement" that the proffer would not be used against Applicant at trial.
 - b. Failed to fully inform Applicant of the constitutional rights he waived in accepting the plea agreement.
 - c. Failed to provide a written explanation on appeal showing that an issue was preserved for appeal.
3. Involuntary guilty plea.
4. Due process violation.

2011
HIT

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 his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified that he attempted to retain attorney Michael O'Neal, but he was unable to retain Mr. O'Neal. Applicant asserted that he then requested a public defender. Rodney Davis, Esquire, was appointed to represent Applicant. Applicant testified that he told Mr. Davis that the police were harassing his wife. Applicant testified that on May 17, 2006, he was picked up from the county jail and taken to the police station. He asserted that he asked for his attorney, but Detective Hall told him that if he did not cooperate then his wife would be charged as an accessory and his children would be taken away. He testified that he subsequently signed a confession. Applicant testified that Mr. Davis came to see him the next day and was outraged that Applicant signed a confession.

Applicant testified that he later retained Mark Peper, Esquire, to represent him. He asserted that Mr. Peper told him that the statement would not come in at trial. Applicant testified that he did not know what to do once the statement was ruled admissible. He asserted that Mr. Peper told him that a plea for thirty (30) years was better than life without parole (LWOP) or ninety (90) years. He also testified that he did not realize he was waiving direct appeal issues when he pled guilty.

Plea counsel, Mark Peper, testified that he met with Applicant about four or six times.

30
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He contended that his main goal was to keep the proffer out at trial. He asserted that he had an informal meeting with Assistant Solicitor Nathan Williams three or four days before trial, and Mr. Williams indicated that Applicant's statement would be a proffer and would not be held against Applicant at trial unless he testified. Mr. Peper testified that they did not get far enough at trial for the solicitor to stipulate that the proffer would not be used against Applicant. Mr. Peper testified that during the pre-trial hearing the solicitor changed his mind and asked the court to admit the proffer. Counsel testified that Judge Jefferson ruled that the proffer was admissible after a Jackson v. Denno hearing. Judge Jefferson found that the statement was given voluntarily and that about half of the statement was not truthful. Mr. Peper objected to Judge Jefferson's ruling. He testified that he told Applicant he could appeal the proffer ruling if he continued with the trial. He did not recall whether or not he told Applicant that he could not appeal the proffer ruling if he pled guilty.

Mr. Peper testified that there were no plea offers prior to the pre-trial motions. He asserted that Applicant was charged with five or six armed robberies and the State could have pursued an LWOP sentence if he went to trial on two or more armed robberies. Mr. Peper testified that he explained to Applicant the terms of the negotiated plea agreement in that he would receive a sentence of thirty (30) years and several charges would be dismissed. He asserted that it was Applicant's decision to plead guilty based on counsel's advice.

Mr. Peper testified that he filed a timely Notice of Appeal. He asserted that he received a letter from appellate defense indicating that they would not take over representation of Applicant's appeal because it was taken from a guilty plea. Mr. Peper testified that he sent a letter to Applicant's wife and informed her about the deadline to file a response to the Court of Appeals and advised her of the option to retain another attorney for the appeal. He testified that

4 of 11
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he did not hear back from Applicant's family. Mr. Peper asserted that he notified the Court of Appeals to advise that he did not know of any arguable basis for appeal.

Rodney Davis, Esquire, testified that he was originally appointed to represent Applicant. He testified that he spoke with Applicant about making a proffer. He asserted that he must have been unavailable at the time Applicant made his proffer. Counsel testified that he wanted to be present for the proffer. He asserted that he and investigator Lee Ginn met with Applicant prior to the proffer, and they explained to Applicant that he would need to be completely forthright and completely honest when making the proffer. They explained to Applicant that a proffer offers him limited protection, but he must be completely truthful and the State will determine whether or not he was truthful. Counsel testified that he informed Applicant that he might have to take a polygraph test.

Christina Blanding, Applicant's wife, testified that the police threatened to arrest her and take away her children. She asserted that she was later arrested. Ms. Blanding testified that she told Applicant about the threats from the police.

Ineffective Assistance of Counsel / Involuntary Guilty Plea

The Applicant alleges that he received ineffective assistance of counsel and that his guilty plea was not entered freely or voluntarily. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the 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 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation

5/11
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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, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). 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) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea

6/11
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may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that the testimony of Mr. Peper and Mr. Davis is credible. This Court finds that Mr. Peper and Mr. Davis are trial practitioners with extensive experience in the trial of serious offenses. Mr. Peper conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. This Court finds that the record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he understood the nature of the charges and the possible punishments. He told the court that no one had threatened him or promised him anything to get him to plead guilty. Applicant told the court that he understood that all charges from Berkeley County and Dorchester County would be dismissed in exchange for this negotiated plea. He also admitted guilt at the hearing. Applicant told the plea court that he was satisfied with Mr. Peper's representation. This Court finds that it was Applicant's decision to plead guilty.

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 that Applicant's attorneys demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds Mr. Peper adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. Mr. Peper obtained a favorable negotiated sentence for Applicant. This Court finds that

7/11
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counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that Mr. Peper was not ineffective for failing to request that the State stipulate to the "gentleman's agreement" that the proffer would not be used against Applicant at trial. Mr. Peper testified that he had an informal meeting with Assistant Solicitor Nathan Williams a few days before trial. Mr. Peper was surprised and upset that the solicitor changed his mind and asked the court to admit the proffer at trial, but there was no binding agreement between the Applicant and the State to suppress the proffer. Mr. Peper testified that they did not get far enough at trial for the solicitor to stipulate that the proffer would not be used against Applicant. Counsel objected to Judge Jefferson's ruling to admit the proffer, thus preserving the issue for appeal had Applicant continued to trial.

This Court finds that Mr. Peper properly advised Applicant of the consequences of the plea. Although counsel could not recall specifically telling Applicant that he could not appeal the proffer ruling if he pled guilty, he advised Applicant that he was waiving his right to a jury trial and that he would receive a negotiated sentence of thirty (30) years. Mr. Peper testified that he told Applicant that he could appeal the proffer ruling if he proceeded to trial and was convicted. Ultimately, Applicant decided to plead guilty and accept the negotiated sentence.

This Court finds that counsel was not ineffective for failing to file a written explanation on appeal showing that an issue was preserved for appeal. Counsel filed a timely Notice of Appeal on Applicant's behalf, but he was not retained for the appeal and did not know of any arguable basis for appeal. Counsel sent letters to Applicant and his family regarding his appeal rights and deadlines, but Applicant failed to respond to counsel or file a *pro se* written explanation with the Court of Appeals. Mr. Peper testified that he notified the Court of Appeals that he did not know of any arguable basis for appeal.

8/11
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In State v. Thrift, 378 S.C 70, 661 S.E.2d 373 (2008), the Supreme Court of South Carolina noted that Rule 203(d)(1)(B)(iv), SCACR, set out a new procedure to deal with appeals from guilty pleas and would be effective May 1, 2008. Rule 203(d)(1)(B)(iv), SCACR, reads as follows:

If the appeal is from a guilty plea, an Alford plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed.

This Court finds that Rule 203(d)(1)(B)(iv), as amended in 2008, requires a written explanation following a guilty plea *if* there is an issue preserved for appeal. Counsel filed a Notice of Appeal as required, but he testified that he notified that Court of Appeals that he did not know of any arguable basis for appeal. Moreover, at the PCR hearing, Applicant failed to show that any issue from his plea or sentencing was preserved for appeal. The direct appeal was ultimately dismissed for failure to show an issue was preserved for appeal. Therefore, Applicant was not prejudiced by counsel's failure to file a written explanation.

This Court finds that Applicant waived his right to challenge the proffer when he pled guilty. A guilty plea must be unconditional. State v. Peppers, 346 S.C. 502, 552 S.E.2d 288 (2001). Conditional pleas are not recognized in South Carolina. State v. Truésdale, 278 S.C. 368, 296 S.E.2d 528 (1982). "The basis for this rule is, of course, the settled doctrine that a guilty plea constitutes *waiver* of all prior claims of constitutional rights or deprivations thereof." Id. Generally, a knowing and voluntary guilty plea waives all non-jurisdictional defects and defenses, including claims of constitutional violations. State v. Snowden, 371 S.C. 331, 638

9/11
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S.E.2d 91 (Ct. App. 2006); Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); see also State v. Munsch, 287 S.C. 313, 314, 338 S.E.2d 329, 330 (1985) (holding that a guilty plea “leaves open for review only the sufficiency of the indictment and waives all other defenses”).

Nonetheless, this Court finds that Mr. Davis was not ineffective for failing to attend the interview in which Applicant gave a proffer. Mr. Davis testified that he wanted to be present for the proffer, but he was unavailable at the time that Applicant was transported to the police station. Mr. Davis asserted that he informed Applicant that he needed to be completely honest and completely forthright in giving the proffer. He also made Applicant aware that the proffer provided limited protection for him. This Court finds that Mr. Davis properly advised Applicant with respect to the proffer. Judge Jefferson ultimately ruled that Applicant was not completely truthful in his statement and she admitted the proffer at trial.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel’s performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel’s performance. Applicant’s complaints concerning counsel’s performance are without merit and are denied and dismissed.

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, including the claim of due process violation, this Court finds the Applicant failed to present any evidence regarding such allegations.

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Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

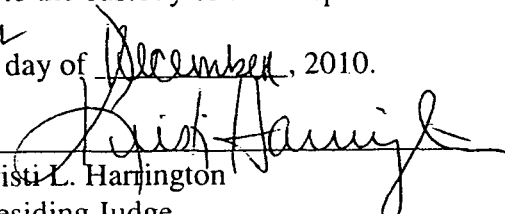
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR 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 written notice of entry of this Order 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 served and filed.

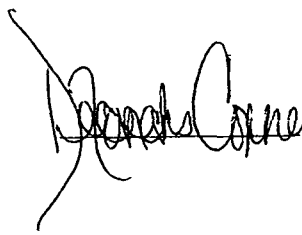
IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15th day of December, 2010.

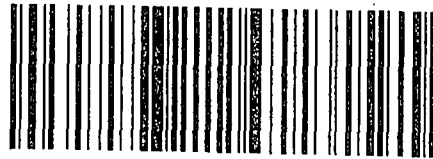


Kristi L. Harrington
Presiding Judge
9th Judicial Circuit

 South Carolina.

Elizabeth Hutto, Esq.
639 Fair Spring Drive
Charleston, SC 29414

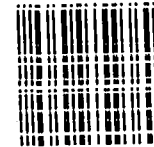
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*James S.
Blanding*

The Honorable Daniel E. Shearouse
Clerk of Court
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