

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

April 19, 2012

Isiah T. Smith #333407
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Smith, Isiah T. v. The State

Dear Mr. Smith:

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 April 18, 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,

Daniel E. Shearouse
35

CLERK

DES/jj

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Robert D. Corney

The Supreme Court of South Carolina

Isiah T. Smith,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable James R. Barber
Richland County
Trial Court Case No. 2009-CP-40-08926

ORDER

For good cause shown, the request for an extension until April 18, 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

March 20, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Robert D. Corney

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

James R. Barber, III, Circuit Court Judge

RECEIVED

MAR 19 2012

S.C. Supreme Court

ISIAH T. SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

(3)

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

The undersigned counsel would respectfully request a **final thirty-day extension, until April 18, 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 is working on and plans to file the petitions for writ of certiorari and accompanying appendices in the cases of Sylvester Toomer v. State and Lenson Clyburn, Jr. v. State in the Supreme Court on March 28, 2012. Additionally, Counsel is preparing for an oral argument in the case of Brian Gebhard v. State in the Court of

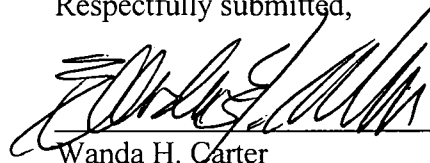
Appeals on March 29, 2012. Counsel had an oral argument in the case of State v. Lewis Williams in the Court of Appeals on March 12, 2012. Counsel had an oral argument in the case of State v. Otis Lamar Bland in the Court of Appeals on February 29, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Sherinette Wannamaker v. State in the Supreme Court, and the initial brief of appellant and designation of matter in the case of State v. Lawrence Brown in the Court of Appeals on February 27, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Henry Belton v. State in the Supreme Court on February 24, 2012. Counsel had an oral argument in the case of Benjamin Green v. State in the Supreme Court on Thursday, February 23, 2012. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Tony Drayton v. State and William Hickman v. State with the Supreme Court on February 16, 2012. Counsel had an oral argument in the case of State v. James Babb in the Court of Appeals on February 14, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of John E. Prigmore v. State with the Supreme Court on February 6, 2012. In January, 2012, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of James Blanding v. State, Trenton Bennett v. State, Bobby Gibson v. State and Jorge Rodriguez v. State.

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.

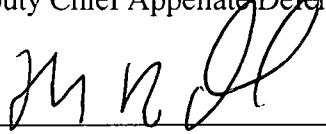
4. As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final thirty-day extension, until April 18, 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,



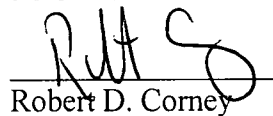
Wanda H. Carter
Deputy Chief Appellate Defender



Robert M. Dudek
Chief Appellate Defender

March 19, 2012

I DO NOT OPPOSE:



Robert D. Corney

The Supreme Court of South Carolina

Isiah T. Smith,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable James R. Barber
Richland County
Trial Court Case No. 2009-CP-40-08926

ORDER

For good cause shown, the request for an extension until March 19, 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 *Dwanda J. Shealy*
Clerk

Columbia, South Carolina

February 17, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Robert Corney

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

James R. Barber, III, Circuit Court Judge

RECEIVED

FEB 16 2012

S.C. Supreme Court

ISIAH T. SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

(2)

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:

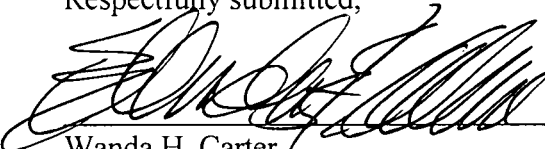
1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.
2. Counsel is filing the petitions for writ of certiorari and accompanying appendices in the cases of Tony Drayton v. State and William Hickman v. State with this Court on today, February 16, 2012. Counsel is also preparing for an oral argument in the case of Benjamin Green v. State in the Supreme Court on Thursday, February 23, 2012. Counsel had an oral argument in the case of State v. James Babb in the Court of Appeals on February 14, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of John E. Prigmore v. State with the Supreme Court on February 6,

2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of James Blanding v. State with the Supreme Court on January 20, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Trenton Bennett v. State the Supreme Court on January 17, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Bobby Gibson v. State with the Supreme Court on January 9, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Jorge Rodriguez v. State with the Supreme Court on January 3, 2012. In December, 2011, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Jonathan Vick v. State, John Lewis Mills v. State and Mark Daniel Cureton v. State. Additionally, Counsel filed the initial briefs of appellant and designations of matter in the cases of John Henry Stokes v. State and Lewis C. Landreth v. State, as well as the brief of petitioner in the case of Tommy Novack Lloyd v. State in December, 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

February 16, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

James R. Barber, III, Circuit Court Judge

ISIAH T. SMITH,

PETITIONER,

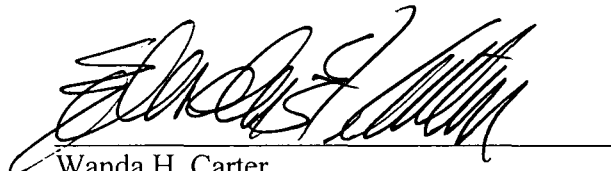
V.

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 Robert Corney, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 16th day of February, 2012.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 16th day of February, 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 2, 2013.

The Supreme Court of South Carolina

Isiah T. Brown, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable James R. Barber
Richland County
Trial Court Case No. 2009-CP-40-08926

ORDER

The request for an extension until February 16, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Brenda J. Shady*
Clerk

Chief Deputy
Columbia, South Carolina

January 18, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Brian T. Petrano

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

January 17, 2012

RECEIVED

JAN 17 2012

S.C. Supreme Court

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

Re: Isiah T. Smith v. State of South Carolina

C

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 Brian Petrano, 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: Brian Petrano



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

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

November 18, 2011

RECEIVED

NOV 18 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.

Isiah T. Smith v. State of South Carolina

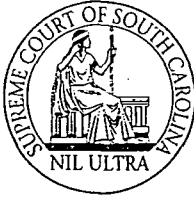
11/18/2011

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



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

October 27, 2011

Isiah T. Smith #333407
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Smith, Isiah T. v. The State

Dear Mr. Smith:

This responds to your letter dated October 21, 2011. The Division of Appellate Defense has agreed to represent you for purposes of this appeal. They have ordered the transcript from the Court Reporter and it is our understanding that once the transcript is delivered, then they will assign an attorney to your case and that attorney will then be in contact with you.

Any concerns you have about this matter should be raised to the Division of Appellate Defense. The address for that Office is P.O. Box 11589, Columbia, SC 29211, and their phone number is 803-734-1343.

Very truly yours,

CLERK

DES/jj

cc: Appellate Defense
Assistant Attorney General Brian T. Petrano

October 21, 2011

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

RE: Isaiah Thomas Smith (333407) v. State of South Carolina
Case No.: 2009-CP-40-8926

Dear Mr. Shearouse:

I pray that my correspondence finds you in the best of spirits and health. I am writing to seek your assistance in understanding who my attorney is for my Appeal filed with this court. My appeal is for a PCh case that was dismissed on August 23, 2011. Mr. Robert L. Brown, from Butler, Brunel & Butler, L.L.P., filed the Appeal on my behalf in August 25, 2011 and contacted you around the same time. So if you could be so kind as to see if I have been appointed legal counsel, and if so, forward me his/her contact information, I would surely appreciate it.

I apologize for any inconvenience this may have caused you, and I look forward to hearing from you shortly.

Yours very truly,

Isiah Smith

Isiah Smith (333407)

SMU North Room #9

Lee Correctional Institution

990 Wisnuck Highway

Bishopville, South Carolina 29610

Isaac Smith # 333407
S.W. North Main # 9
Lee Commercial Institution
990 W. Sweeney Highway
Bishopville, South Carolina 29010

AMS

The Honorable David E. Shreve
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

LEGAL MAIL ONLY



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

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

RECEIVED

September 14, 2011

SEP 14 2011

S.C. Supreme Court

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

Dear Ms. Helms:

Please provide us with the following transcript:

Isiah T. Smith v. State of South Carolina Case #: 09-CP-40-08926

County: Richland Date of Trial: June 6, 2011

Presiding Judge: James R. Barber, III

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

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

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

Sincerely,

Sharon A. Graham
Administrative Coordinator

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



BAKER RAVENEL BENDER

ATTORNEYS AT LAW

August 25, 2011

RECEIVED

AUG 29 2011

S.C. SUPREME COURT

D. CRAVENS RAVENEL

*JAY BENDER

S. MARKEY STUBBS

CATHARINE GARBEE GRIFFIN

**WILLIAM PEARCE DAVIS

KIRBY D. SHEALY III

BRADLEY L. LANFORD

SAMUEL M. MOKEBA

SUSAN DRAKE DUBOSE

ROBERT L. BROWN

JENNY A. DRAFFIN

ELIZABETH A. BLACKWELL

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

RE: Isiah Thomas Smith (333407) v. State of South Carolina
Case No.: 2009 -CP-40- 8926
Our File: 10557.11

CHARLES E. BAKER
(1935-2010)

*OF COUNSEL

**ALSO ADMITTED IN GEORGIA

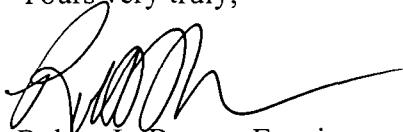
Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal on behalf of the above-captioned Post-Conviction Relief matter, along with a Proof of Service. I have included extra copies of each which I would much appreciate your clocking in and returning to me in the envelope provided. Inasmuch as I was court-appointed in this matter, I will now be turning this file over to the South Carolina Office of Appellate Defense for perfection of this appeal. I would note that Judge Barber issued a written Order of Dismissal on this case which was filed with the Richland County Clerk of Court's Office on August 23, 2011. I received written notice of the entry of judgment on August 25, 2011.

By copy hereof, I am serving the notice on counsel for Respondent. I am providing two copies of the notice to The Honorable Jeanette McBride and would appreciate a clocked copy being returned to me in the envelope provided.

With my thanks for your assistance in this matter, as always, I remain,

Yours very truly,



Robert L. Brown, Esquire

RLB:tfk

Enclosures

cc: The Honorable Jeanette McBride (w/enclosures)
Brian T. Petrano, Esquire (w/enclosures)

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable James R. Barber III, Presiding Judge, Fifth Judicial Circuit

Case No. 2009-CP-40-8926

Isiah Thomas Smith, 333407Appellant

vs.

State of South CarolinaRespondent

NOTICE OF APPEAL

Isiah T. Smith appeals the Order of the Honorable James R. Barber III, dated August 17, 2011, (filed August 23, 2011). Appellant received notice of the entry of the Order ruling upon Appellant's post trial motions on August 25, 2011.



Robert L. Brown
Baker Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorney for Appellant

August 25, 2011

RECEIVED
AUG 25 2011
BY:

Robert L Brown
Baker Ravenel Bender
P.O. Box 8057
Columbia, SC 29202

RECEIVED
AUG 29 2011
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable James R. Barber III, Presiding Judge, Fifth Judicial Circuit

Case No. 2009-CP-40-8926

Isiah Thomas Smith, 333407Appellant

vs.

State of South CarolinaRespondent

PROOF OF SERVICE

I, Robert L. Brown, attorney for the Appellant, do hereby certify that I have served copies of the **Notice of Appeal** dated August 25, 2011 upon counsel for Respondent and The Honorable Jeanette McBride, Richland County Clerk of Court, by depositing them in the United States Mail, postage prepaid, on August 25, 2011, addressed as shown below:

Brian T. Petrano, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Attorneys for Respondent

The Honorable Jeanette McBride
Richland County Clerk of Court
Richland County Judicial Center
Post Office Box 192
Columbia, South Carolina 29202-0192



Robert L. Brown
Baker Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorney for Appellant

August 25, 2011

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2009CP4008926

Isiah Thomas #333407 Smith

vs.

State of South Carolina

Plaintiff

Defendant

CHECK ONE:

RECEIVED
2011 AUG 23 AM 9:28
JEANETTE W. ABRIDE
CLERK OF COURT

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other:
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other:

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

- Affirmed;
- Reversed;
- Remanded;
- Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 23 August 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Robert L Brown
Isiah Thomas #333407 Smith

Brian T Petrano

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. Abride

Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Isiah T. Smith, #333407,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2009-CP-40-08926

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2011 AUG 23 AM 9:24
JEANETTE W. McBRIDE
C.C.P. & C.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 21, 2009. The Respondent made its Return on July 23, 2010. An evidentiary hearing into the matter was convened on June 6, 2011 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Robert L. Brown, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Tivis C. Sutherland, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently incarcerated at the South Carolina Department of Corrections ("SCDC") pursuant to order of commitment of the Clerk of Court for Richland County. He was indicted for murder during the June 2008 term of the Richland County Grand Jury. At the time of his indictments, Tivis C. Sutherland, Esquire represented Applicant. On February 26, 2009,

Isiah T. Smith, Order of Dismissal (2009-CP-40-08926)

Page 1 of 11

SCANNED

Applicant pled guilty to voluntary manslaughter. The Honorable J. Michelle Childs sentenced Applicant to confinement for a period of eighteen (18) years. There was no appeal.

In the PCR application, 2009-CP-40-08926, Applicant alleges:

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

- (a) Ineffective Assistance Counsel
- (b) Constitutional Violation State and United States
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9).

- (a) In aduherent
- (b) _____
- (c) _____

18. State clearly the relief you seek in filing this application.

Sentence and conviction reversed or vacated

to state correctly and in the same order the facts which support each of the grounds set out in (9).

(A) Ineffective Assistance Counsel

1. unprofessional investigation of case

A) Proper investigation of case like evidence resulted in a different outcome with the plea bargain.

1. Failure to examine statements

2. Failure to conduct private investigation

B) Failure to file motions upon clients request

1. Failure to file motions to suppress inadmissible evidence

2. No motions for bond hearings that attorney the time of clients incarceration (721 days)

2. Failure to inform client of appeals

A. Motion to Vacate

B. Post Conviction Relief

3. Change of plea bargain

A. Plea bargain was changed upon arriving to court from a negotiated 15-22 years to a negotiated 18-19 years

(B) Constitutional Violation State and United States

1. Violation of Miranda Rights

A. Failure to stop interrogation after being advised of the defendants (Isiah Smith 333467) level of incarceration

B. Failure to restrict rights after periods of questioning

C. Failure to file motions within allowed time limit

However, at the hearing the Applicant only went forward with his allegations of ineffective assistance of counsel based on an involuntary guilty plea, a constitutional right violation, and an allegation that he was unaware of his right to appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Applicant testified that plea counsel was appointed and they had met more than three (3) times. The Applicant testified that he and his plea counsel did go over his rights. He told this Court that he was comfortable with the original plea of fifteen (15) to twenty two (22) years and was led to believe that he could get fifteen (15) years if he got a good judge. He said that the plea turned into eighteen (18) to nineteen (19) years and he did not discuss this new range with plea counsel until he was in the visiting area before trial. Applicant explained that he was unhappy with the new plea but he did not feel like he had an option to not plea.

The Applicant testified that he was mirandized but he was intoxicated when he gave his statement and didn't understand that he was waving his rights due to his intoxication. He testified that he did not know what his right to appeal was. He said that he was intoxicated on marijuana while at school. The Applicant testified that he signed the sentencing/plea sheet prior to going upstairs and that he wants to start over.

Plea counsel Tivis Sutherland, Esquire testified that he met with Applicant "fifteen (15) or so times." He said that he told the Applicant he was asking for ten (10) to fifteen (15) years with fifteen (15) tops and the State came back with an offer of fifteen (15) to twenty two (22) years. Plea counsel testified that the Applicant knew he was shooting for fifteen (15) tops but he had not control over it. He said that they ended up with eighteen (18) to nineteen (19) years. Plea counsel further testified that the State wanted twenty (20) to thirty (30) years, and that he thought eighteen (18) to nineteen (19) was safer than fifteen (15) to twenty two (22). Plea counsel testified that he still believes that eighteen (18) to nineteen (19) years was the safest deal.

Plea counsel testified that the offer turned from fifteen (15) to twenty two (22) into eighteen (18) to nineteen (19) after a few weeks went by. He also testified that he is sure he told the Applicant that no one can make him plea.

Mr. Sutherland testified that the police statement said "weed two (2) hours ago" but that is not overwhelming. He said that if the case went to trial, it would be the Applicant's word against Investigator Gaffrey's (Sic).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating 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." Cherry, 300 S.C. at 117, 385 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. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. 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. This Court also finds Applicant has failed to prove the second prong of Strickland that he was prejudiced by counsel's performance.

This Court finds that Applicant's testimony was not credible. The Applicant's ineffective assistance of counsel allegation is that his plea was involuntarily entered because he felt he could not back out of the new plea that was offered when he arrived at court. This Court finds that this allegation is conclusively refuted by the record. The Applicant testified that he was not under the influence of any alcohol or drugs. (Plea transcript p. 7, l. 16). Judge J. Michelle Childs informed Applicant of the consequences of pleading to voluntary manslaughter (Plea transcript p. 13, l. 17), and informed him of his right to remain silent as well as his right to a jury trial and other associated jury trial rights. (Plea transcript p. 15, l. 13). Applicant subsequently affirmed that he was guilty (Plea transcript p. 7, l. 5), and that no one promised him anything or threatened or mistreated him in order to get him to plead guilty. (Plea transcript p. 11, l. 16). Applicant stated that he was pleading guilty on his own free will (Plea transcript p. 11, l. 22), and that he was satisfied with the services of his lawyer. (Plea transcript p. 12, l. 11). Further, at the PCR hearing plea counsel credibly testified that he is sure he informed the Applicant that nobody can make him plea.

This Court further finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered. The overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Because a guilty plea is a solemn, judicial admission of the

truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977).

Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The Applicant showed no reason why he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. This Court finds the Applicant's testimony at the PCR hearing lacked credibility. Therefore, this Court finds that Applicant's guilty plea was freely and voluntarily entered into.

The Applicant's alleged Constitutional rights violation is without merit. The Applicant did testify that he had smoked marijuana two (2) hours before giving the statement and that he didn't know he was waiving his rights due to his intoxication level, but the Applicant has not alleged that his plea was induced by this statement. Absent some showing that the statement motivated the Applicant's plea, the mere assertion that the confession was coerced will not invalidate an otherwise voluntary plea. McMann v. Richardson, 397 U.S. 759, 90 S.Ct. 1441, 25 L.Ed. 2d 763 (1970); United States v. Callahan, 659 F.Supp. 80 (E.D.Pa. 1987), *aff'd* 826 F.2d 1057. Further, at the plea hearing the court informed the Applicant that, by pleading, he was waiving his right to challenge any evidence that the State has to support their case, including any statements given by the Applicant. (Plea transcript p. 20, l. 1 - 6). Therefore, the Applicant's alleged Constitutional rights violation is without merit.

Finally, the Applicant alleges that he was unaware of his right to appeal. At the plea hearing the court fully and expressly went over the Applicant's right to appeal.

THE COURT: Okay. The Court will accept your plea. And you have ten days to appeal the guilty plea and/or sentence. Do you understand those rights?

DEFENDANT SMITH: Yes, ma'am.

(Plea transcript p. 18, l. 21 - p. 19, l. 3). Statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The Applicant showed no reason why he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. This Court finds the Applicant's testimony at the PCR hearing lacked credibility. Therefore, this court finds the Applicant has not met his burden.

CONCLUSION

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

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

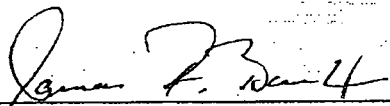
This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71-1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

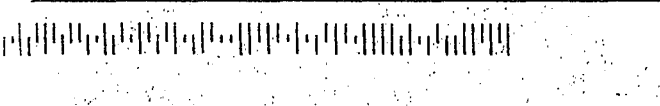
IT IS THEREFORE ORDERED:

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

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


The Honorable James R. Barber, III
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.



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