

GARY L. WILLIAM
ATTORNEY AT LAW

269 WEST LAURENS STREET
LAURENS, SOUTH CAROLINA 29360

(864) 984-0061

April 19, 2013

RECEIVED

APR 23 2013

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

S.C. SUPREME COURT

Re: Brian K. Stephens
Appellate Case No. 2013-000528

Dear Mr. Shearouse:

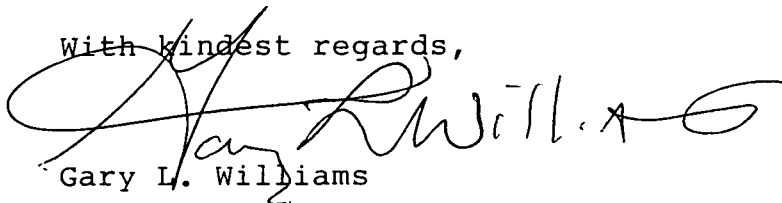
This letter is in response to your April 17, 2013 letter seeking clarification of a date.

I received a copy of the judgment in the matter on or about April 2, 2012 when it was mailed to me by the Clerk of Court, Lynn W. Lancaster. (see Exhibit A) I mailed a copy of the judgment to Mr. Stephens on April 9, 2012. (see Exhibit B) I inadvertently stated in my March 30, 2013 letter that Mr. Johnson had mailed me the letter.

I must have received the filed copy of the Order of Dismissal on or about April 28, 2012. I mailed a copy of the Order to Mr. Stephens on April 29, 2012. (see Exhibit C)

I hope this letter clarifies the date.

With kindest regards,



Gary L. Williams

cc: Sally W. Elliott, Esquire

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-30-407

BRIAN K. STEPHENS LYNN W. LANCASTER

State of South Carolina

PLAINTIFF(S)

2012 APR -2 P 2:54

DEFENDANT(S)

Submitted by: LAURENS COUNTY CLERK OF COURT

Attorney for Plaintiff Defendant Self-Represented Litigant

Disposition Type (Check One)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; 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 (formal order to follow) Statement of Judgment by the Court: This matter came before the court for a hearing on March 14, 2012. After a complete review of the record, consideration of the testimony presented at the hearing, and a review of the applicable law, the Court finds that Applicant's petition for post-conviction relief should be denied. [I note that the court agreed to delay ruling until Monday, March 19th to allow Applicant to consider whether he desired to withdraw his PCR, per Applicant's request. The court informed Applicant that the court would delay ruling, and only if the court received word from Applicant's counsel that Applicant wanted to withdraw would the court forego ruling. No communication was received indicating a desire to abandon PCR, hence this ruling.] As to Applicant's assertion that Mr. Mayer became a witness when Applicant informed Mr. Mayer of a purported 15 year sentence, said contention has no basis in law or reason. Similarly, Mr. Mayer was not ineffective for failing to inform the judge of a 15 year deal when there was no such deal. The court has reviewed the transcript and concludes that Applicant's plea was not involuntary simply because Applicant may have hoped for a lesser sentence. As to allegations of coercion and insufficient time to discuss case with trial counsel, I find no merit to this contention. I find all other allegations were abandoned by Applicant. Accordingly, the court finds Applicant's petition for PCR should be denied. Rutledge Johnson is to prepare a more formal order.

Order Information

This order ends does not end the case.

Additional Information for the Clerk : _____

Complete if judgment requires payment of a sum of money or affects title to real or personal property		JUDGMENT AGAINST PLAINTIFF:		JUDGMENT AGAINST DEFENDANT:	
Judgment Amount	\$ _____	Judgment Amount	\$ _____	Judgment Amount	\$ _____
Taxable Costs	\$ _____	Taxable Costs	\$ _____	Taxable Costs	\$ _____
Attorney's Fees	\$ _____	Attorney's Fees	\$ _____	Attorney's Fees	\$ _____
Interest	\$ _____	Interest	\$ _____	Interest	\$ _____
Other	\$ _____	Other	\$ _____	Other	\$ _____
Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____

Applicable description of property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interests or costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge
TRUE COPY OF ORIGINAL
Lynn W. Lancaster
Lynn W. Lancaster
Judge Code 2159
Date 3/30/12

Laurens County CCEP & GS
For Clerk of Court Office Use Only

This judgment was entered on the 2nd day of April, 2012 and a copy mailed first class this 2nd day of April, 2012 to attorneys of record or to parties (when appearing pro se) as follows:
✓ Gary Williams, Esq.
✓ Rutledge Johnson, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Lynn W. Lancaster
CLERK OF COURT
Ⓢ

EXHIBIT B

GARY L. WILLIAMS
ATTORNEY AT LAW
269 W. LAURENS ST.
LAURENS, SC 29360
864-984-0061

4/9/12

Mr. Brian Stephens # 131066
Broad River Correctional Institution
4460 Broad River Road
Columbia, S C 29210

Dear Mr. Stephens:

Enclosed is the Judge's decision concerning your
post trial conviction relief.

Best regards,


Gary L. Williams

EXHIBIT C

GARY L. WILLIAMS
ATTORNEY AT LAW
269 W. LAURENS ST.
LAURENS, SC 29360
864-984-0061

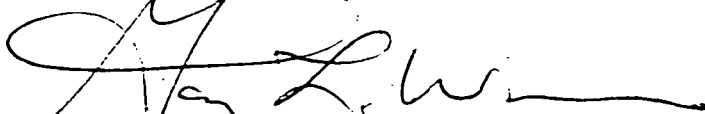
4/29/12

Mr. Brian Stephens # 131066
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Stephens:

Enclosed is the Judge's filed Order concerning
your post trial conviction relief.

Best regards,

A handwritten signature in black ink, appearing to read 'Gary L. Williams', written over a horizontal line.

Gary L. Williams

FORM 4

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

JUDGMENT IN A CIVIL CASE

Brian Keith Stephens,
131066,

CASE NO. 2011 -CP- 30 - 407
State of South Carolina,

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; 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 _____

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

Order of Dismissal

Dated at _____, South Carolina, this _____ day of _____, 20_____.

PRESIDING JUDGE

This judgment was entered on the 26th day of April, 2012, and a copy mailed first class this 26th day of April, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Gary L. Dilleama, Esq.

J. Beutledge Johnson, Esq.
D. C. Spinkert, Atty. General

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lynn M. Lancaster
CLERK OF COURT *(ch)*

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Brian Keith Stephens, #131066,)
Applicant,)

2011-CP-30-0407

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 27, 2011. The Respondent made its Return on August 22, 2011. An evidentiary hearing into the matter was convened on March 14, 2012, at the Greenwood County Courthouse.¹ Gary Williams, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Bill Mayer, Esquire, also testified. This Court also had before it a copy of the records of the Laurens County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Laurens County. He was indicted by the Laurens County Grand Jury for Felony DUI, Death Results (2009-Gs-30-1585), Hit and Run with

¹ I note that the Court agreed to delay ruling until Monday, March 19, 2012, to allow the Applicant to consider whether he desired to withdraw his PCR, per the Applicant's request. The Court informed the Applicant that the Court would delay ruling, and only if the Court received word from the Applicant's PCR counsel that the Applicant wanted to withdraw, would the Court forego ruling. No communication was received indicating a desire to withdraw

Death (2009-GS-30-1586), Possession ~~of~~ Stolen Vehicle (2009-GS-30-1587), Felony DUI with Great Bodily Injury (2010-GS-30-0460), Hit and Run with Great Bodily Injury (2010-GS-30-0461), and Hit and Run with Minor Personal Injury (2010-GS-30-0493). He was represented by Bill Mayer, Esquire. On January 26, 2011, he appeared before the Honorable Eugene C. Griffith, Jr., and pled guilty as indicted to all of the aforementioned charges with a negotiated cap of twenty-five (25) years. He received the following sentences, all concurrent: twenty-five (25) years and a \$10,100.00 fine for felony DUI with death; twenty-five (25) years a \$10,000.00 fine for hit and run with death; five (5) years for possession of a stolen vehicle; fifteen (15) years and a \$10,100.00 fine for felony DUI, great bodily injury; ten (10) years for hit and run with great bodily injury; and one (1) year, or time served, for hit and run with minor personal injury. He did not appeal his convictions or sentences.

In his application for post-conviction relief, the Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel
2. Conflict of interest
3. Involuntary plea
4. Inadequate defense

At the PCR hearing, the Applicant proceeded on the ineffective assistance of counsel claim.

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

PCR, hence this ruling.

pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges 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) (citing Rule 71.1(e), SCRPC). 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 v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and



would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Conflict of Interest/ Plea Offer

The Applicant claims Counsel became a witness when he informed Counsel of a purported fifteen-year sentence offer. He also claims Counsel was ineffective for not presenting this 'offer' to the plea court.

Counsel testified he was never extended a fifteen-year offer. In fact, Counsel testified when he asked for such an offer, the solicitor blatantly rejected any such offer. Counsel also stated the solicitor would not even agree to a twenty-year plea bargain. Counsel further testified the only plea offer the solicitor was willing to negotiate was a twenty-five year cap.

This Court finds the Applicant's testimony regarding Counsel's conflict of interest and fifteen-year plea offer is not credible while also finding Counsel's testimony is credible. There is no factual or legal basis that Counsel became a witness when the Applicant informed him of a purported fifteen-year plea offer. Similarly, Counsel was not ineffective for failing to inform the plea court of a fifteen-year deal when no such offer existed. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Involuntary Guilty Plea

The Applicant claims his guilty plea was involuntary because Counsel advised him that he would get a lesser sentence than what he received. The Applicant also claims he was coerced by Counsel to plead guilty.

Counsel testified he neither forced nor threatened the Applicant to plead guilty. To the



contrary, Counsel stated it was the Applicant's decision to plead guilty. Counsel testified he informed the Applicant of the charges and penalties in this case and while he did prepare the Applicant for his guilty plea, Counsel did not tell the Applicant how to answer the plea court's questions.

This Court finds the Applicant's testimony regarding the involuntariness of his plea is not credible while also finding counsel's testimony is credible. A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea are conclusive unless the defendant presents reasons why they should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). This Court has reviewed the plea transcript and concludes that the Applicant's plea was not involuntary simply because he hoped to get a lesser sentence. "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997). There is ample evidence in the plea transcript, as well as at the PCR hearing, to find the Applicant's guilty plea was knowingly, voluntarily, and intelligently made. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Insufficient time to discuss case

As to the allegation that the Applicant had insufficient time to discuss the case with Counsel, I find no merit to this contention.

Accordingly, this Court finds the 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 that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

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. 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. 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 notifies Applicant that he must file and serve a notice of appeal within thirty (30)

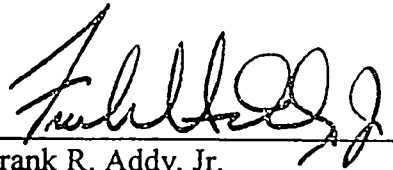


days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), 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. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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.

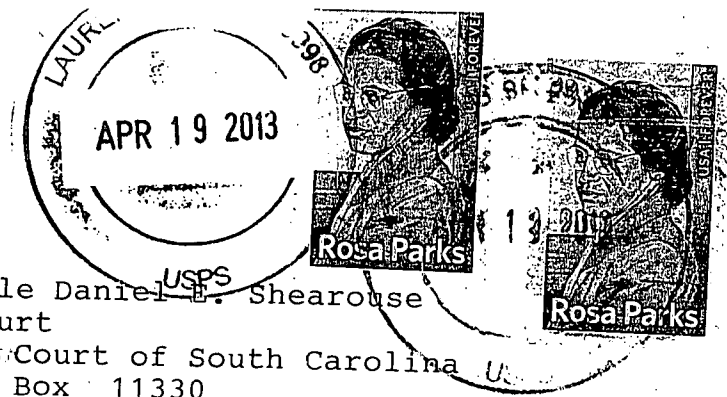
AND IT IS SO ORDERED!



Frank R. Addy, Jr.
Presiding Circuit Court Judge
Eighth Judicial Circuit

April 16, 2012
Breewood, South Carolina

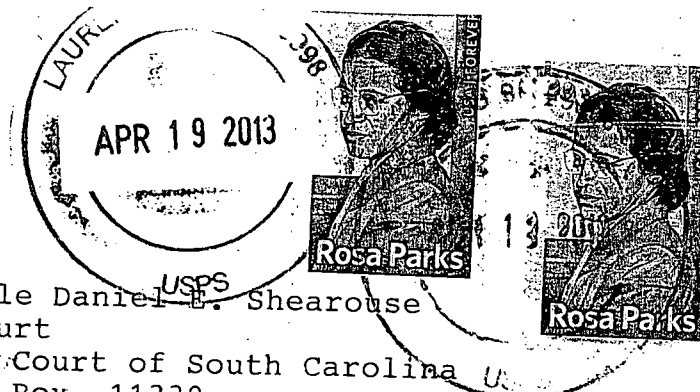
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