

# The Supreme Court of South Carolina

Darnell Getter,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Jeffrey Young  
Sumter County  
Trial Court Case No. 2009-CP-43-01167

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## ORDER

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The request for an extension until May 2, 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



Clerk

Columbia, South Carolina

April 2, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter  
Assistant Attorney General Mary S. Williams



# 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

April 2, 2012

RECEIVED

APR 02 2012

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

(

S.C. Supreme Court

Re: Darnell Getter 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 Mary S. Williams, 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: Mary S. Williams



# SCCID

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

February 1, 2012

RECEIVED

FEB 01 2012

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.

Darnell Getter v. State of South Carolina

2/1/2012

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Loriene French  
Legal Services Coordinator



# SCCID

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

October 27, 2011

RECEIVED

NOV 29 2011

Ms. Margaret T. Sullivan  
Circuit Court Reporter  
504 Henderson Street  
Sumter, SC 29150-3167

S.C. Supreme Court

Dear Ms. Sullivan:

Please provide us with the following transcript:

Darnell Getter v. State of South Carolina                      Case #:                      09-CP-43-01167

County: Sumter    Date of Trial: April 25, 2011

Presiding Judge: William Jeffrey Young

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,

  
Lorlene French  
Legal Services Coordinator

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

# The Brooks Law Offices, LLC

---

**Charles T. Brooks, III**  
**Attorney**

309 Broad Street  
Sumter, South Carolina 29150  
Post Office Box 3512, Sumter, SC 29151  
Post Office Box 291226, Columbia, SC 29229  
OFFICE: (803) 418-5708  
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Email: [cbrooks@ctbrooks.com](mailto:cbrooks@ctbrooks.com)

**Irma R. Brooks**  
**Attorney**

October 4, 2011

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

RE: Darnell Getter v State of South Carolina  
Case No. 2009-CP-43-1167

**RECEIVED**

OCT 07 2011

**S.C. SUPREME COURT**

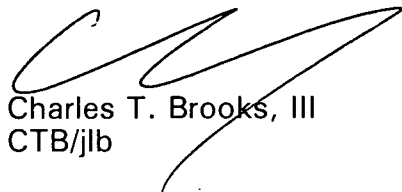
Dear Sir or Madam:

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

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

With kind regards, I am

Sincerely,



Charles T. Brooks, III  
CTB/jlb

Enclosed as stated

Cc: Mary S. Williams, Office of Attorney's General  
South Carolina Office of Appellate Defense  
Darnell Getter, 308791

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas  
Honorable W. Jeffrey Young, Circuit Court Judge

---

Case No: 2009-CP-43-1167

Darnell Getter, . . . . . Appellant  
S.C.D.C. No.: 308791

v.


The State . . . . . Respondent

---

NOTICE OF APPEAL

Darnell Getter appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable W. Jeffrey Young on September 26, 2011, which I, Charles T. Brooks, III, received on October 4, 2011

October 4, 2011



---

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

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

**RECEIVED**

OCT 07 2011

S.G. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas  
Honorable W. Jeffrey Young, Circuit Court Judge

---

Case No: 2009-CP-43-1167

Darnell Getter..... Appellant  
S.C.D.C. No.: 308791

v.  
The State..... Respondent

---

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 4<sup>th</sup> Day of October, 2011 I served the foregoing Notice of Appeal, Order of Dismissal, as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on October 4, 2011, addressed to the following as indicated below:


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

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

Office of Attorney's General  
Attn: Robert Corney, Esquire  
For Mary Williams  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Darnell Getter, 308791  
Evans Correctional Institution  
610 Highway 9 West  
Bennettsville, South Carolina, 29512

Dated: October 4, 2011



---

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

RECORDED

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMTER 2011 SEP 30 AM 11:52 FOR THE THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

2009-CP-43-1167

Darnell Getter, #308791,

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL**

CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
*Maria L. Hoff*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 18, 2009, and amended May 26, 2009, and July 19, 2009. An evidentiary hearing into the matter was convened on Monday, April 25, 2011, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Arthur Wilder, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Sumter County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted at the December 2008 term of the Sumter County Grand Jury for three counts of Burglary 2<sup>nd</sup> Degree – Violent (Counts 1, 2 & 11), seven

counts of Breaking & Entering Auto (Counts 3-9) and one count of Forgery (Count 10) (2008-GS-43-0439). Applicant was represented by Arthur Wilder, Jr., Esquire. On February 26, 2009, the Applicant pled guilty before the Honorable George C. James, Jr. Applicant was sentenced as follows:

- For Burglary 2<sup>nd</sup> Degree – non-violent (Count 1), Applicant was sentenced to eight (8) years imprisonment.
- For Burglary 3<sup>rd</sup> Degree (Count 2), Applicant was sentenced to five (5) years imprisonment.
- For Breaking and Entering a Motor Vehicle, Applicant was sentenced to five (5) years imprisonment.
- For Forgery (Count 10), Applicant was sentenced to five (5) years imprisonment.
- For Burglary 3<sup>rd</sup> Degree (Count 11), Applicant was sentenced to five (5) years imprisonment.

All sentences were to be served concurrently. Applicant did not appeal his conviction and sentence.

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

1. “Court lack subject jurisdiction matter.”
  - a. “Improper indictment didn’t have the proper elements to the offense.”
2. “Brady violation.”
  - a. “The solicitor withheld information that caused me to lack knowledge to my defense.”
3. Ineffective assistance of counsel.
  - a. “[Counsel] fail to investigate to prepare for defense. It took 18 month for indictment.”

## 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).

### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief 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), SCRCP). 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).

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.

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). In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

*Failure to Investigate and Failure to Object to Brady Violation*

The allegations made in the application and at the hearing all come down to the claim of ineffective assistance of counsel. Applicant has alleged that his plea was not entered voluntarily and knowingly as counsel failed to properly investigate his case to prepare a defense, failed to object to an erroneous and untimely indictment, and failed to bring a Brady violation by the solicitor to the plea court's attention. As stated above, an Applicant in PCR that pleads guilty on counsel's advice may only collaterally attack the voluntary and knowing nature of his guilty plea by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe, *supra*. Therefore, this allegation is essentially a claim of ineffective assistance of counsel that rendered a guilty plea involuntary.

At the PCR hearing, Applicant testified that counsel told him that if he entered a plea, it would be to a lesser included charge. Applicant went on to say counsel never showed him a copy of the indictment charging him with the commission of a burglary at night, and that on the record during the plea it was stated the robbery took place at eleven o'clock in the morning, not in the evening. Applicant added that he asked counsel to appeal his plea, but that an appeal was never filed on his behalf.

Counsel testified that after being appointed to represent Applicant in December of 2007, he immediately set to work getting Applicant's bond reduced, which was accomplished. Counsel went on to state he met with Applicant several times in prison before the bond hearing and several more times at the public defender's office after that, during which counsel advised Applicant of a plea offer from the state with an eight-year cap sentence. Counsel testified that during those meetings, he reviewed the indictments with Applicant including the state's burden

of proving each element of each crime contained therein. Counsel articulated that based on those discussions and his inclination that a conviction was likely at trial, Applicant decided to enter an Alford plea and accept the state's offer. He went on to say there was an issue during the plea as to whether Applicant had two prior charges from out-of-state as listed on his rap sheet, but that in the end, the charges that Applicant pled to were appropriate based on his criminal history.

Counsel finished by stating that in the end, it was ultimately Applicant's decision to enter the plea and that he did so after being fully advised by counsel as to the plea offer and charges he was facing.

I find that counsel's performance was not deficient under the circumstances. Further, I find Counsel's testimony to be credible. Conversely, I find Applicant's testimony to not be credible. Counsel advised Applicant of all relevant issues regarding the charges he was facing, including the facts giving rise to the charges, the indictments, the elements of the offenses, potential sentences he was facing, and the consequences of rejecting this plea to proceed to trial. Additionally, counsel gave Applicant all the information and advice to make an intelligent and voluntary decision on whether to enter this plea. Applicant has failed to demonstrate what additional investigation would have yielded and that any such evidence would have affected his decision to enter this advantageous guilty plea. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (no prejudice where claim of failure to investigate is supported only by mere speculation as to the result). Further, Applicant did not present any testimony regarding an alleged Brady violation or indictment issue that would support this court providing the relief sought. Counsel reviewed the indictments and elements of each offense with Applicant prior to the entry of his plea, and while there was some testimony presented regarding an issue with Applicant's prior criminal charges used for enhancement, in the end Applicant pled to the

appropriate charges based on this allegation. Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective in his representation. Further, I find that Applicant's guilty plea was entered knowingly and voluntarily after being fully and adequately advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases.

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 in its entirety.

### 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.

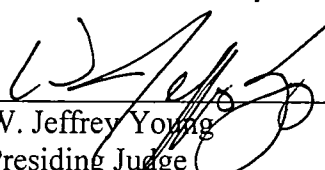
Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them, including the allegation in his application regarding counsel's failure to file a direct appeal. A waiver is a voluntary and intentional 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 advises 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.

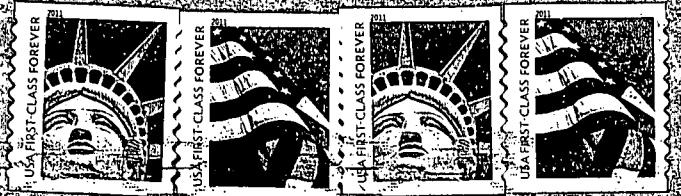
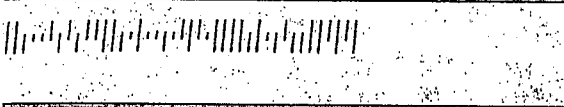
**IT IS THEREFORE ORDERED:**

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** this 26 day of Sept, 2011.

  
\_\_\_\_\_  
W. Jeffrey Young  
Presiding Judge  
Third Judicial Circuit

Sumter, South Carolina.



RECEIVED  
MAR 10 11 10 AM '11

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*Darnell Better,  
Cientes S. Wells*

South Carolina Supreme Court  
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Columbia, SC 29211