

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 28 2013

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

S.C. SUPREME COURT

Civil Case Number: 2012-CP-43-1293

Calvin Coolidge Sharp, IIIRespondent,

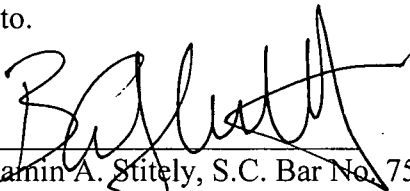
v.

State of South Carolina Petitioner.

NOTICE OF INTENT TO APPEAL

Calvin Coolidge Sharp, III appeals the Order issued by the Honorable R. Ferrell Cothran, Jr., dated May 7, 2013, denying the Order Dismissing Applicant's Motion for Reconsideration of the PCR ruling. A copy of said Order is attached hereto.

May 24, 2013


Benjamin A. Stitely, S.C. Bar No. 75339
Williams, Hendrix, Steigner & Brink, P.A.
200 East Main Street
Post Office Box 849
Lexington, South Carolina 29072
(803) 359-1550

Other Counsel of Record:

Megan E. Harrigan, Asst. Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

Civil Case Number: 2012-CP-43-1293

Calvin Coolidge Sharp, III Respondent,

v.

State of South Carolina Petitioner.

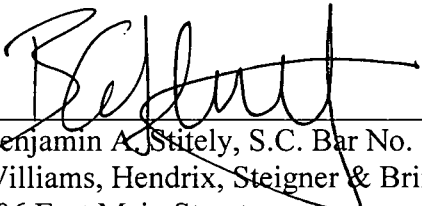
PROOF OF SERVICE

I certify that on May 24, 2013, I have served the within **Notice of Intent to Appeal** upon the individual(s) named below by placing a copy of same in the United States Mail, postage prepaid and return address clearly indicated to the address(es) below:

Megan E. Harrigan, Asst. Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

I further certify that all parties required to be served have been served.

Dated: May 24, 2013



Benjamin A. Stutely, S.C. Bar No. 75339
Williams, Hendrix, Steigner & Brink, P.A.
206 East Main Street
Post Office 849
Lexington, SC 29072
(803) 359-1550

FORM 4
RECORDED

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

2013 MAY 14 PM 1:31

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP4301293

JAMES O. CAMPBELL
CLERK OF COURT
SUMTER COUNTY

South Carolina State of

Calvin Coolidge Sharpe III

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James O. Campbell
DEPUTY CLERK OF COURT
SUMTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: 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.

See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the 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 interest or additional taxable 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.**

	2144	5/14/2013
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

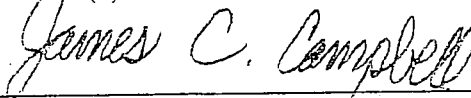
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin Allen Stitely PO Box 849 Lexington, SC 29071

ATTORNEY(S) FOR THE PLAINTIFF(S)

Alan McCrory Wilson PO Box 11549 Columbia, SC
292111549

ATTORNEY(S) FOR THE DEFENDANT(S)



James C. Campbell - Clerk of Court

Court Reporter



RECORDED
2013 MAY 14 PM 1:24
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, SC

ALAN WILSON
ATTORNEY GENERAL

May 13, 2013

The Honorable James C. Campbell
Clerk of Court, Sumter County
141 North Main Street
Sumter SC 29150

Re: Calvin C. Sharp, III, 349922 v. State of South Carolina
2012-CP-43-1293

Dear Mr. Campbell:

Enclosed please find the original **Order Dismissing Applicant's Motion for Reconsideration**, signed by the Honorable R. Ferrell Cothran, Jr., in the above-captioned case, for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,

Megan E. Harrigan
Assistant Attorney General

MEH/lm
Enclosure(s)

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Calvin C. Sharpe, III, 349922,
 Plaintiff

v.

State Of South Carolina
 Defendant.

IN THE COURT OF COMMON PLEAS


RECORDED

2013 MAY 14 PM 1:24

CASE NO.
2012-CP-43-1293

JAMES C. CAMPBELL

CLERK OF COURT
SUMTER COUNTY S.C.
MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Benjamin A. Stitely, Bar No. Address: Post Office Box 849 Lexington, SC 29071 phone: (803) 359-1550 fax: e-mail: other:	Defendant's Attorney: Megan E. Harrigan, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	
Date submitted: <u>March 29, 2013</u>	
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCPP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Date Filed: _____	
Collected by: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

RECORDED

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

) IN THE COURT OF COMMON PLEAS
)
2013 MAY 04 PM 04:10 FOR THE THIRD JUDICIAL CIRCUIT

Calvin C. Sharpe, III, #349922,
Applicant,

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

Case No. 2012-CP-43-1293

v.

**ORDER DISMISSING APPLICANT'S
MOTION FOR RECONSIDERATION**

State of South Carolina,

Respondent.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James C. Saittell
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of Applicant's "Motion for Reconsideration" of the Order dismissing his application for post-conviction relief. Applicant filed his application for post-conviction relief on June 27, 2012 and the State made its Return on October 9, 2012. An evidentiary hearing into this matter was convened on December 12, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Benjamin A. Stitely, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Garryl Deas, Esquire ("Counsel"). This Court had before it the records of the Sumter County Clerk of Court, the guilty plea transcript, Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

On February 14, 2013, this Court issued an Order denying and dismissing Applicant's application for post-conviction relief with prejudice. This Order was filed on February 21, 2013 and was received by Applicant's counsel on February 27, 2013.

On March 1, 2013, Applicant filed a Motion for Reconsideration Rule 52 59, SCRCF, in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction

relief. The State made its Return to this motion on March 29, 2013, asking that the motion be denied.

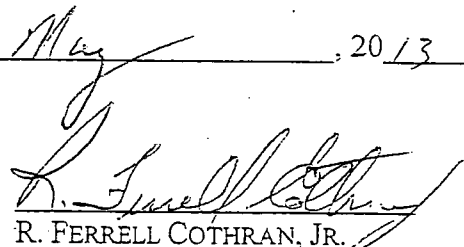
This Court has reviewed Applicant's motion, the State's return and the record in this matter and finds the following:

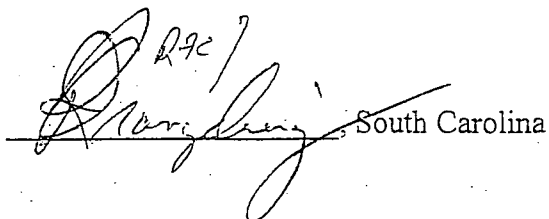
The Order of Dismissal dated February 14, 2013, and filed February 21, 2013, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRPC. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of the Applicant's motion and supporting testimony, this Court is not persuaded to alter, amend, or reconsider the judgment.

IT IS THEREFORE ORDERED that the Applicant's Motion for Reconsideration is **DENIED**.

AND IT IS SO ORDERED this 7 day of May, 2013.


R. FERRELL COTHAN, JR.
Presiding Judge
Third Judicial Circuit


South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

ORIGINAL

CALVIN SHARPE, III

CIVIL ACTION COVERSHEET

Plaintiff(s)

2012-CP - 43- 1293

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: Benjamin Stitely
Address: PO Box 849, Lexington, SC 29072

SC Bar #: 75339
Telephone #: 803-359-1550
Fax #: 803-359-4543
Other:
E-mail: bstitely@whsblawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20__-CP-__, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm: (990), Employment Security Comm (991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

[Handwritten Signature]

Date: 3-1-13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Calvin Sharp, III

PETITIONER,

VS.

STATE OF SOUTH CAROLINA,

RESPONDENT.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2012-CP-43-01293

**NOTICE AND MOTION
FOR RECONSIDERATION
OF DENIAL OF PCR**

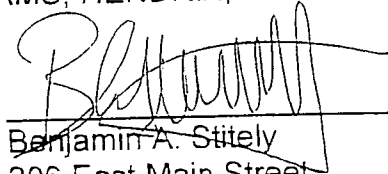
Comes now the Petitioner in response to the Order Denying PCR application filed on February 21, 2013, and received on February 27, 2013, and respectfully requests this Court to grant a hearing to reconsider its ruling. In support of his motion the Petitioner avers the following:

1. That the Court should reconsider the prejudicial impact suffered by the Petitioner through ineffective assistance of counsel, specifically:
 - A. The fact counsel had the case only 1 day prior to trial and was unable to properly prepare.
 - B. Counsel had insufficient time to review any possible defenses to the charges to include but not limited to interviewing and subpoenaing potential witnesses, reviewing the scene, review invoices in the possession of the Defendant, etc.
2. That the Petitioner did meet the burdens required for granting a PCR application.
3. That it would be in the interests of justice that this matter be scheduled for a reconsideration hearing.

I SO MOVE

WILLIAMS, HENDRIX, STEIGNER & BRINK, P.A.

By:



Benjamin A. Stitely
206 East Main Street
Post Office Box 849
Lexington, South Carolina 29071
(803) 359-1550

Attorney for the Defendant

Lexington, South Carolina
March 1, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER 2013 FEB 21 PM 1:17

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Calvin C. Sharpe, III, #349922)
C. W. JELL)
CLERK OF COURT)
Applicant, SUMTER COUNTY) S.C.

Case No. 2012-CP-43-1293

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Dorinda L. Gabelman
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 June 27, 2012. The Respondent made its Return on October 9, 2012. An evidentiary hearing into the matter was convened on December 11, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Benjamin A. Stitely, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

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. Applicant was indicted during the January 2011 term of the Sumter County Grand Jury for Distribution of Counterfeit Goods and Possession of Marijuana, Less than One Ounce (2011-GS-43-0151). He was represented by Garryl L. Deas, Esquire. On February 28, 2012, Applicant proceeded to a trial before the Honorable W. Jeffrey Young and a jury. On February 29, 2012, in the middle of trial, Applicant pled guilty as indicted. Judge Young sentenced Applicant to ten years imprisonment and a \$1,000.00 fine suspended upon the service of seven years imprisonment and three years' probation for Distribution of Counterfeit Goods

and one year imprisonment Possession of Marijuana, Less than One Ounce. All sentences were to be served concurrently.

A Notice of Appeal was filed with the South Carolina Court of Appeals. An Order of Dismissal was issued on August 1, 2012 after Applicant notified the Court of his desire to withdraw the appeal. The Remittitur was issued on September 11, 2012.

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

1. Ineffective assistance of trial counsel, which caused great prejudice and made the entry of guilty plea not freely, not voluntarily, and not intelligently made.
 - a. Trial counsel presented the applicant with a plea agreement indicating that the sentence to be given would be 60 days incarceration. Where the applicant maintains still his innocence, the plea was only made in accordance with the promise of a 60 day sentence. Additionally, Counsel made representations that he was unprepared to continue with the trial and that a plea was the only choice for the applicant.
2. Ineffective assistance of trial counsel in failing to properly prepare for the defense of the applicant's case.
 - a. Trial counsel was hired the day before the applicant's case was called to trial. The applicant was assured by trial counsel that the matter would not be called for trial and they would have an opportunity to prepare for trial accordingly. The applicant was notified by counsel that his case would be up for trial at 8:30 am the day the trial actually began. Prior to trial, counsel did no preparation for the calling of the case, failed to investigate facts, failed to properly review discovery items, failed to question witnesses, and generally failed to adequately prepare for trial.
3. Ineffective assistance of trial counsel, in failing to properly object to conflicts of interest between the trial counsel and the prosecuting officer.
 - a. Counsel failed to properly address several conflicts of interest involving parties to the case. One such conflict being that the Trial Judge's son played on the basketball team coached in part by the prosecuting officer. Additionally, the applicant is aware now of conflicts between trial counsel and the prosecuting officer as well as the assistant solicitor who tried the case.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from plea counsel Garryl Deas, Esquire ("Counsel"). This Court also had before it a copy of the

Applicant's trial and guilty plea transcript, the records of the Sumter County Clerk of Court, Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

Applicant called Counsel to testify first at the evidentiary hearing. Counsel testified that he has been practicing law since 1997 and he has a general practice, including criminal defense. Counsel testified that Applicant retained him on the Friday prior to Applicant's trial and that Applicant was aware that his case was being called to trial on early the following week. Counsel testified that Applicant was previously represented by David Sullivan, a Sumter County Public Defender. Counsel testified that Applicant's wife was also charged for the same activity and was represented by Michael Jordan, Esquire. Counsel testified that he previously practiced law with Jordan and that Jordan referred Applicant to him shortly before the case was to be called to trial. Counsel stated that he was aware of the time constraints of Applicant's case, particularly that the State intended to call the case for trial the following week, but that he felt comfortable representing Applicant because he planned to try the case alongside Jordan.

Additionally, Counsel stated that Applicant's former counsel David Sullivan had moved for a continuance of the matter, filed on February 22, 2012. Counsel stated that he joined in this continuance request on Monday morning and that a hearing on this motion was held on February 27, 2012, before the Honorable George C. James. At this hearing, Counsel was present and informed Judge James that he was recently retained and requested additional time to prepare the case for trial. Counsel testified that Judge James denied his motion for continuance. Counsel stated that although he would have preferred to have additional time, he was prepared for trial once his continuance motion was denied.

Counsel testified that he received a copy of Applicant's discovery and was able to review these materials with Applicant. Counsel elaborated that he also reviewed the charges Applicant was facing, elements of the offenses, and potential sentences with Applicant. Counsel testified that he discussed possible defenses with Applicant and was prepared for trial. Counsel testified that Applicant had previously made a statement to law enforcement and that he moved to suppress this statement in a pre-trial motion. Counsel testified that this motion was denied, as were a motion to suppress goods seized from Applicant's home and a motion to quash the indictments.

Counsel testified that Applicant was interested in pleading guilty to these charges and he entered into plea negotiations with the State. Counsel testified that there was an initial offer from the State to allow Applicant to plead guilty as indicted and the State would recommend a sixty or ninety day sentence. Counsel testified that he believed this offer was in his client's best interest and he encouraged his client to accept the State's offer, particularly once his motions to suppress and quash the indictments were denied. Counsel testified that following jury selection and the empanelling of a jury, Applicant decided to enter a guilty plea. Counsel stated that he informed his client that the State's offer was only a recommendation, not a negotiation, and that Judge Young could sentence him anywhere within the statutory sentencing range. Counsel stated that Judge Young began his plea colloquy with Applicant, but Applicant decided to withdraw his guilty plea once Judge Young informed him he was not bound by the State's recommendation and could sentence him to up to ten years imprisonment for distribution of counterfeit goods and up to one year imprisonment for possession of marijuana. Counsel testified that Applicant's trial resumed at that point.

Counsel testified that before opening statements were made, Judge Young informed all parties on the record that his son was on a YMCA basketball team that was coached by Investigator Trevor Brown, one of the law enforcement officers who involved with Applicant's case. Counsel testified that Judge Young placed this information on the record twice and stated that he did not believe that there was any conflict requiring recusal. Counsel stated that Judge Young elaborated that he did not interact with Investigator Brown outside of this limited contact and that he did not otherwise socialize with him. Counsel stated that he discussed this relationship with his client and that Applicant informed him he did not wish for Judge Young to be recused. Counsel testified that he did not believe there was any basis to move for Judge Young to be recused based on the information provided and that he felt comfortable with the trial proceeding before Judge Young.

Counsel testified that on the second day of Applicant's trial, Judge Young called counsel into chambers and informed all parties that the foreman of the jury told the court that Applicant had attempted to bribe him during the lunch break. Counsel testified that Judge Young placed Applicant and the jury's foreman under oath and questioned each regarding the bribery allegation. Counsel testified that Judge Young found Applicant to be in contempt of court and sentenced him to one year imprisonment. Counsel testified that the foreman was excused from jury service and replaced. Counsel testified that he moved for a mistrial, which was denied by the trial court.

Counsel testified that following this incident, Applicant decided to forego his trial and resume his guilty plea. Counsel testified that he advised his client that this plea would be without any negotiation or recommendation from the State and that Judge Young could sentence him up to him to up to ten years imprisonment for distribution of counterfeit goods and up to one

year imprisonment for possession of marijuana. Counsel testified that Judge Young also advised Applicant that there was no negotiation or recommendation from the State during his plea and Applicant answered that he was aware and wished to continue forward with his guilty plea. Counsel testified that it was ultimately Applicant's decision to plead guilty, although he informed his client that he believed a plea was in his best interest. Counsel testified that applicant had ample time to speak with his family regarding his decision to enter a guilty plea, as well as with Counsel.

Following Counsel's testimony, Applicant testified on his own behalf. Applicant testified that he pled guilty as indicted without any charges dismissed or any reduction in charges. Applicant acknowledged that he was currently on probation for six counts of possession with intent to distribute counterfeit goods at the time of his guilty plea. Applicant testified that he retained Counsel on the Friday before his case was to be called for trial and he was aware that his case was to be called to trial the next week. Applicant testified that Counsel moved for a continuance of his trial to allow additional time to prepare and that Judge James denied this motion.

Applicant testified that he began a guilty plea before counsels gave opening statements, but he withdrew his guilty plea once Judge Young informed him he was not bound by the State's recommendation for a sixty day sentence and could sentence him to up to ten years for distribution of counterfeit goods and up to one year imprisonment for possession of marijuana.

Applicant testified that during the second day of his trial, he was accused of attempting to bribe the foreman of the jury. Applicant testified that he and the foreman were placed under oath and questioned by the trial court. Applicant acknowledged that Judge Young found his testimony to be untruthful and that Judge Young stated that he believed that Applicant had lied to

the court the day before as well. Applicant acknowledged that Judge Young found him to be in contempt of court and sentenced him to one year imprisonment.

Applicant testified that following this incident, he decided to resume his guilty plea and forego his trial. Applicant testified that he recalled the trial court informing him that by entering a guilty plea, he was waiving all defenses he might have if he continued forward with his trial, including the right to remain silent; Applicant acknowledged that he voluntarily waived these rights so he could proceed with his guilty plea. Applicant testified that he told the trial court that he understood the plea was being entered without any negotiation or recommendation from the State and that he could be sentenced to up to ten years imprisonment for distribution of counterfeit goods and up to one year for possession of marijuana. Applicant acknowledged that he was under oath during his guilty plea and that he admitted his guilt during his plea. However, Applicant testified that he is not guilty and admitted to lying under oath during his guilty plea. Applicant acknowledged that he apologized during his guilty plea. Applicant testified that he told the trial court during his guilty plea that he was satisfied with the services of Counsel. Applicant acknowledged that he informed the trial court that Counsel had done everything he had asked him to do. Applicant testified that he now feels that Counsel did not do enough to prepare for trial and that he wanted Counsel to call witnesses on his behalf. Applicant acknowledged that he did not have any witnesses present at the evidentiary hearing to testify.

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

In a post-conviction relief action, the Applicant has the burden of proving the allegations in his 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).

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).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel was ineffective for misrepresenting to Applicant he would receive a sixty day sentence if he pled guilty

Applicant alleges that Counsel was ineffective misrepresenting to him that he would receive a sixty day sentence if he pled guilty. Counsel testified he informed Applicant that there was no negotiation or recommendation from the State when Applicant decided to resume his guilty plea on the second day of trial. Counsel also testified that Applicant understood that he could receive up to ten years imprisonment for distribution of counterfeit goods and up to one year for possession of marijuana. Counsel testified that Applicant understood this and acknowledged this during the court's plea colloquy. Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of counsel. Applicant acknowledged that he told the trial court he understood his guilty plea was being entered without any negotiation or recommendation from the State and that he could receive a sentence of up to ten years imprisonment for distribution of counterfeit goods and up to one year imprisonment for possession of marijuana. Applicant voluntarily continued forward

with his guilty plea following this exchange with the trial court. This Court holds that the Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

Counsel was ineffective for failing to adequately prepare for trial

Applicant alleges that Counsel was ineffective for failing to adequately prepare for trial. Counsel and Applicant both testified that Counsel was retained on the Friday before Applicant's case was to proceed to trial the following week. Applicant testified he was represented by other counsel and voluntarily retained Counsel knowing the State intended to call his case to trial the following week. Counsel testified that he reviewed all discovery materials with Applicant and began preparing a defense for Applicant's trial on the very day he was retained. Counsel testified that he moved for a continuance, citing that he was recently retained, and this motion was denied by Judge James. Counsel testified that although he would have preferred additional time to prepare this case for trial, he was ready to proceed when the trial began. Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of counsel. Applicant testified that he voluntarily retained new counsel knowing his case was to be called to trial shortly. After more than a day and a half of trial, in which Counsel competently cross examined witnesses and made various motions on Applicant's behalf, Applicant decided to forego his right to a trial and enter a guilty plea. This Court holds that the Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

Counsel was ineffective for failing to properly object to conflicts of interest between the trial court and the prosecuting officer

Applicant alleges that Counsel was ineffective for failing to properly object to conflicts of interest between the trial court and the prosecuting officer. At the evidentiary hearing, Counsel testified that Judge Young informed all parties twice on the record that his son played on a YMCA basketball team that was coached by Investigator Trevor Brown and that other than this limited interaction, he does not associate with Investigator Brown personally or professionally. Counsel testified that he did not believe there was any basis to move for Judge Young's recusal based on the information provided and that he felt comfortable with the trial proceeding before Judge Young. Additionally, Counsel stated that he discussed this matter with Applicant and Applicant told him he wanted to go forward with his trial before Judge Young. Based on the foregoing, this Court finds that Counsel's performance was reasonable and effective in regards to this allegation.

Furthermore, Applicant failed to meet his burden of showing he was prejudiced by Counsel's alleged deficiency. Applicant voluntarily entered his guilty plea after more than a day and a half into a trial that Judge Young presided over. 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). This Court holds that the Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Calvin Sharp, III

PETITIONER,

VS.

STATE OF SOUTH CAROLINA,

RESPONDENT.

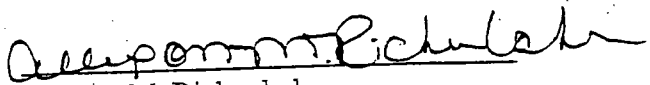
IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2012-CP-43-01293

CERTIFICATE OF SERVICE

I, Allyson M. Rickenbaker, an employee of the law offices of Williams, Hendrix, Steigner, & Brink, P.A., attorney for the Defendant, do hereby certify that I have on this 15th day of March, 2013, served a copy of the foregoing Notice of Motion and Motion for Reconsideration of Denial of PCR, in connection with the above-referenced matter by mailing a copy of the same by United States Mail, postage prepaid, to the following party of record:

Megan Harrigan, Esquire
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211


Allyson M. Rickenbaker

WILLIAMS, HENDRIX, STEIGNER & BRINK, P.A.

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Benjamin A. Stitely
David K. Allen

RECEIVED

MAY 28 2013

May 24, 2013

Megan E. Harrigan, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

S.C. SUPREME COURT

Re: Calvin Coolidge Sharp, III v. State of South Carolina
Civil Case Number: 2012-CP-43-1293

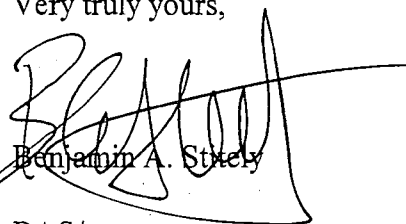
Dear Megan,

Please find enclosed a copy of the Notice of Intent to Appeal in the case noted above which I hereby serve upon you.

If you have any questions, please do not hesitate to contact me.

With kindest regards, I am.

Very truly yours,



Benjamin A. Stitely

BAS/gma

Enclosure

cc: Daniel E. Shearouse, Clerk of Court
Calvin Sharp



WILLIAMS, HENDRIX, STEIGNER & BRINK, P.A.

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David K. Allen
Michelle L. Boykin

May 24, 2013

James C. Campbell
Sumter County Clerk of Court
141 N. Main Street
Sumter, SC 29150

Re: Calvin Coolidge Sharp, III v. State of South Carolina
Civil Case Number: 2012-CP-43-1293

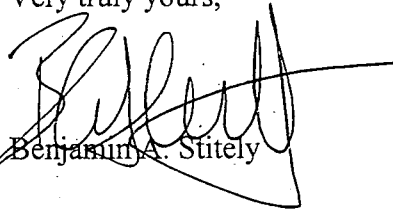
Dear Mr. Campbell:

Please find the enclosed original and one copy of the Notice of Intent to Appeal relative to the case noted above for filing. Please return the clocked copy to this office in the envelope provided.

If you have any questions, please give me a call.

With kindest regards, I am

Very truly yours,



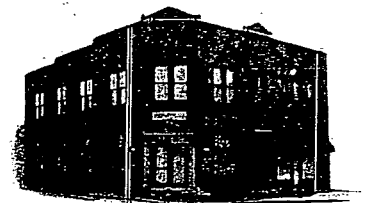
Benjamin A. Stitely

BAS/gma

Enclosures

cc: Daniel E. Shearouse, Clerk of Court
Megan Harrigan, Assistant Attorney General
Calvin Sharp

Located in historic downtown Lexington at 206 East Main Street





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