

TO: clerk of Court

7-13-13

I was move to another prison. As you  
can see by the stamp envelope inside,  
I received the letter on June 12 2013  
and was send back June 14 2013.

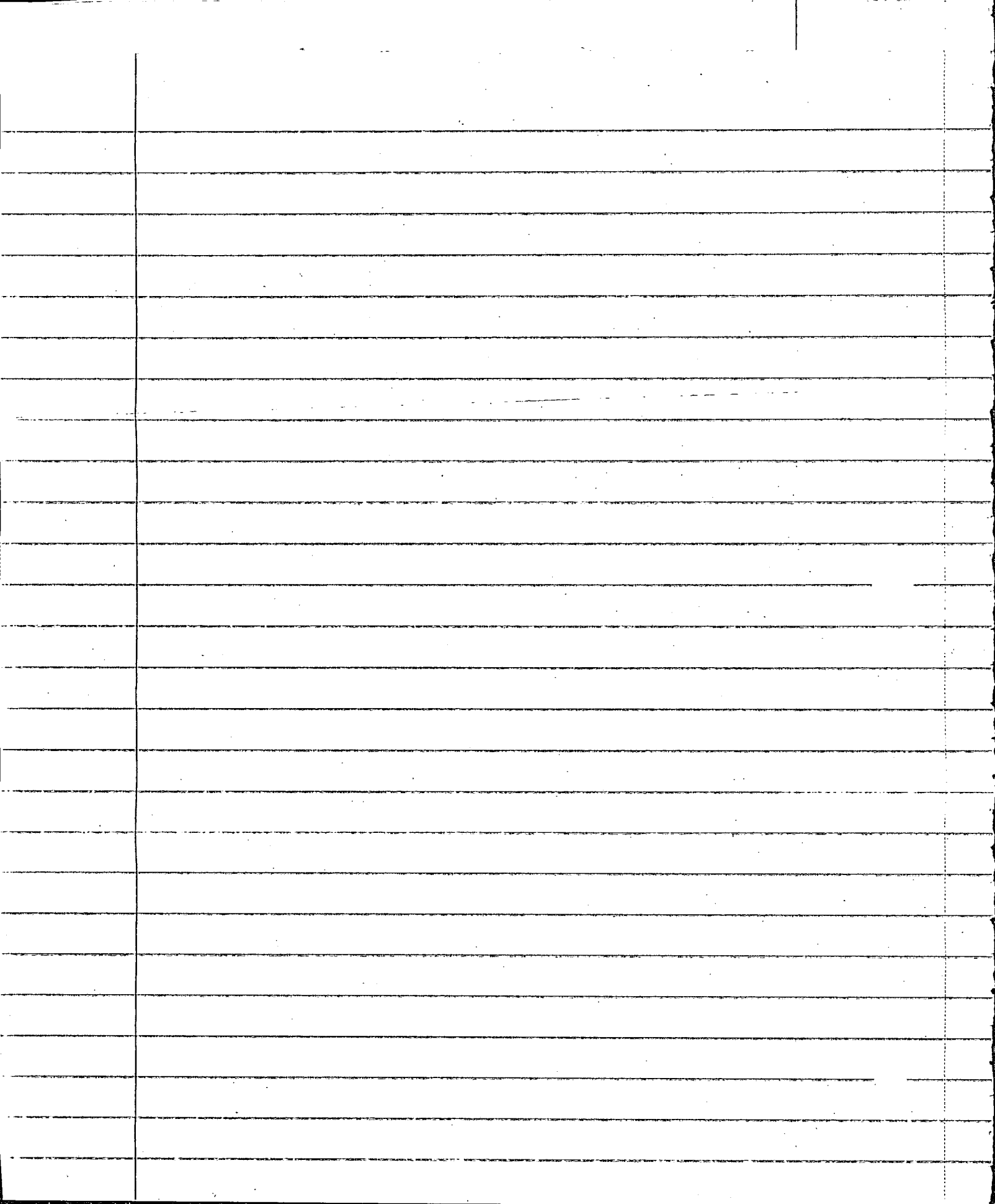
Thank you

James Prather

**RECEIVED**

JUN 18 2013

**S.C. SUPREME COURT**



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE, CLERK OF COURT

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

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JUN 12 2013

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ACI

F-2-B4  
Ollendore  
BWB0004B

James Prather, # 315663  
McCormick C/I F-2-B  
386 Redemption Way  
McCormick, South Carolina, 29899

Hasler

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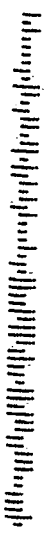
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JUN 06 2013

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29899



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 James Prather, #315663, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2009-CP-02-1417

**RECEIVED**

JAN 18 2012

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JAN 09 2012

*Liz Godard*  
 C.C.C.P. & G.S., Aiken County, S.C.  
 Clerk

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 19, 2009. An evidentiary hearing into the matter was convened on July 15, 2010, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Aaron Walsh, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office. At the conclusion of the July 15 hearing, the record was left open for supplementation of a post-trial hearing transcript. Upon submission of the transcript, the court directed briefing of issues by both parties.

At the hearing, the Applicant testified on his own behalf. Also testifying was Wallis Alves, Esquire. This Court had before it the records of the Aiken County Clerk of Court, the trial transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted

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FILED 119 2012  
*Liz Godard*  
 C.C.C.P. & G.S.  
*Mary S. Williams*  
 Deputy Clerk 8:30am

for Possession with Intent to Distribute Within Proximity of Park (2006-GS-02-0256) and Trafficking in Cocaine (2006-GS-02-0257). Applicant was represented by Wallis Alves, Esquire. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Applicant was found guilty, and on May 26, 2006, Applicant was sentenced to fifteen (15) years imprisonment for Possession with Intent to Distribute Within Proximity of Park and to twenty (20) years imprisonment for Trafficking in Cocaine. Applicant was serving a probationary sentence (2004-GS-02-0039) at the time of his conviction, and two (2) years of the suspended sentence were revoked and probation terminated.

A notice of appeal was filed and an appeal perfected. An Anders brief was submitted on Applicant's behalf, and Applicant submitted a *pro se* brief. The appeal was dismissed. State v. Prather, Op. No. 2008-UP-554 (S.C. Ct. App. filed October 9, 2008). Applicant's *pro se* petition for rehearing was denied on December 19, 2008. The remittitur was sent on January 26, 2009.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel."
2. "Ineffective appeal counsel."

As set forth in his memorandum, Applicant pursues the following issues:

1. Ineffective assistance of appellate counsel.
  - a. Appellate counsel was deficient in failing to raise and argue the legal issues created by the trial court's ruling(s) as to the search warrant and affidavit.
  - b. Appellate counsel was deficient in failing to raise and argue the legal issues created by the trial court's ruling(s) as to the search of the Petitioner's person.
  - c. Appellate counsel was deficient in failing to raise and argue error in the introduction of testimony to the jury about drugs and guns not relevant to the charge being tried.

- d. Appellate counsel was deficient in failing to raise and argue error in the introduction of photo evidence that did not accurately reflect the crime scene.

### ARGUMENTS

A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient and (2) that there was prejudice from appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

In the present case, it is important to note that appellate counsel submitted a brief in accordance with Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Pursuant

to the procedure outlined in Anders, the appellate court “then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.” Id. at 744, 87 S.Ct. 1400. The appellate court may either (a) agree and grant counsel's request to withdraw and dismiss the appeal or (b) “if it finds any of the legal points arguable on their merits (and therefore not frivolous)” the court will direct briefing by the parties. Id. The court undertakes this review with the full transcript, looking for any issue(s) of arguable merit. Jean Hoefler Toal et al., Appellate Practice in South Carolina (2<sup>nd</sup> ed. 2002). See also Gary v. State, 276 S.C. 634, 281 S.E.2d 226 (1981) (reversing on issue presented in Anders brief, noting that the court had “fully reviewed the entire record presented on appeal and conclude[d] that there [were] no other reversible errors at trial or arguably meritorious grounds for appeal.”). A decision in an Anders case is on the merits. State v. McKennedy, 348 S.C. 270, 559 S.E.2d 850 (2002). This Court cannot review the appellate court’s findings, and Petitioner suffered no prejudice from failure to raise any of the preserved issues found in the record.

#### **Other Allegations**

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

#### **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.

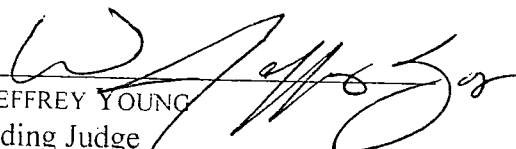
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30)

days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice 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 28 day of Dec, 20 11.

  
W. JEFFREY YOUNG  
Presiding Judge  
Second Judicial Circuit

Sumter, South Carolina.



