

6-19-13

NOTES TO RECEIVED

JUN 20 2013

S.C. SUPREME COURT

D. E. SHEMAROUSE,

HONOURABLES

SUPREME COURT, S.C.

FROM: BIN NABORS #23894

DEEL CLEAN YOUR HONOR.

THIS WHY MY PAPERS  
SABERS ON CEPTCHES

CAUSE SEC. D.C.

REFUSE TO GIVE

INMATES HEAT AND ~~EVERY~~

WHERE ELSE PROPER SIZED

PAPER. WE GOT HOT

TEAR IT TOO FIT IT.

got so many problems! SO AM I  
ON ALL FRONTS. JUST WITH ME!

SEE ATTACHE  
COPY OFF WITH  
CRAZY!  
HAPPY  
IN  
CONG

INDEX FOR ENCLOSES  
MOTIONS UNDER SCAR 241, 205

---

BEN NABORS VS STATE  
IN THE  
SUPREME COURT S.C.

APPEAL FROM LAUREN COOTIE  
C. B. NEWMAN, JUDGE  
CIR. COURT, 8TH CIR.

APPEAL NO: 2013-001195

COURT CASE # 2011 CP 30-308

MOTIONS TO ALLOW  
LAUREN 8TH LOWER COURT  
JURISDICTION UNDER  
SCAR 241, 205

---

CONTENTIONS:

6-14-13  
DAYS

\* = (1) - CONVICTION TO HONORABLE COM. P. 1 - \*  
\*\* = (2) - PAGES

AND TRANSCRIPTION P.C.R. RECORD  
FOR 11-14-12 - JUDGE F. P. ADY.  
TELLS COURT CLERK DON'T FILE  
NO MORE PRO SE MOTIONS.

pg #=4

6-14-13 5  
DAYS

COL HONORABLE D.E. SHEAROUSE  
CITIZEN CONT

RECEIVED

JUN 20 2013

SUPREME COURTS S.C.  
P.O. BOXES 1330 CUL SU 29211

S.C. SUPREME COURT

FROM: BENNABORS #233844  
B. RCI SA 1148 A pod  
4460 Broadsmithers Road  
CUL SU 29212

RE: Appeal case # 2013-001195  
AND ENCLOSED MOTION 241(C)(2)  
ABOUT BENNABORS VS STATE

LOWER CASE # 2011 CP-30308  
PERMISSION FOR LEAVE TO NITTS  
OF SUPERSEDES SCRA 205 241  
DEED IN LOWER COURT  
SCACR 205 (AFFECT OF  
APPEAL) ISSUE S.

6-14-13 and

DEER CLEAN CONT;  
OVER IT THIS MOST HONORABLES  
CONT HIGHEST CONT plea

PS. ~~2~~ 2

GRANT THIS REQUESTS  
YOU HAVE LEAVE TO  
ASK THAT LOWER KNOWN  
COURT 8TH. CIR COMMON  
PLEASE MAINTAIN  
JURISDICTION YOU  
ENTERTAINS MY PROSE

PETITIONS FOR WRITS OF  
SUPERSEDAS AS  
PROVIDES BY SCACR  
205 (AFFIDAVIT OFF OPEN)

PLEASE ALSO SEE PRESIDENTS

MCDONALD V. PALMETO

THEATERS (1941) 196

SC 38, 115 E2d 444

TO SUPPORT THIS MOTION.

PS ~~XXXX~~ = 5  
COMES RIGHTS SCHEDULES  
AND ~~Q~~ SUPREME COURT ON HILL  
SWORN RIGHT NOW THAT

THIS ALL TRUE  
→ MY RIGHT WAS ON HILL  
ISSUE IS MY <sup>SO PLEA</sup> ALSO MY LIFE & DEATH  
# 59 (e) HAS BEEN

REFUSED AND SENT BACK  
FOR ME ALSO, BUT IT  
WAS CORRECTLY FILED AND  
SERVED <sup>ON</sup> ALL PARTYS ALSO I  
~~Q~~ DID NOT GET JUDGES  
NEWMAN'S TRUE (FILED)  
COPY FROM 8TH. LOWER COURT  
UNTIL MY CEORAL MAIL  
IS ALL STAMPED ON

PG ~~XXXX~~ = 6

(5-28-13) FROM  
LYN CASATIANS CLEAN  
COVER CONT AND WAS NOT ACTUALLY  
GIVE TO ME BY S.O.D.C MAKE  
ROOM ZOOM ZOOM SIGN BY  
ME FOR HIT (5-31-13)

SO HOW SHE GOIN TO  
REFUSE TO FILE IT  
WHEN IT WAS REASON

(GOOD CAUSE  
CAN BE SHOWN)

WHY IT WAS CORRECT  
BY RULES S.O. COURTS  
① MADE IT ON ABOUT (5-25-13)!

PG # = 1 off ~~7000~~ = 5

THE STATES OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from Laurens County  
CLIFFORD B. NENMAN,  
Circuit Court Judge  
Cover case # 2011-CP-30-308

BEN NABORS ———— Appellant

vs.

State S.C. ———— Respondent

Motion under SCA 241  
(c) (2) <sup>#4</sup>, appeal case  
No: 2013-001195  
Cover case No: 2011-CP-30-308

BEN NABORS  
4460 Broadmeads Road  
Columbia, SC 29210

Attorney for Appellant  
P/O SC at (923)

63 →

pg # = 2 OFF ~~####~~ = 5

RUTLEDGE JOHNSON Esq.

P.O. BOX 51154

CA 1 S.C. 29211

Attorney for Respondent

6-14-13

TO: HONORABLE D. E. STEARNOUSE:

PLEASE THIS MOST HONORABLE

COURT THIS PROSE APPLICANT

WITH GOOD CAUSE MOTIONS

THIS SUPREME COURT S.C. DO

PLEASE GRANT HIS ENCLOSED

MOTION UNDER SCACP 241

(c) (2) <sup>PP</sup> FOR A LOWE

APPELLANT BEN NABORS IN

APPEAL CASE # 2013-00119 5

LOWER CASE # 2011-CP 30308

BEN NABORS VS. STATE.

pg. #17 = 3 off #17 = 5

223  
943  
6

BEN NABORS MOTIONS AT  
THIS IS A CONT FORS  
LOWER CONT 8TH COMMON PLEA  
CIT JUDGE C.B. WENMAN  
DO MAINTAIN JURISDICTION  
FOR ENTAIN WRITS OFF  
SUPERSEDES SCRAE 205  
"AFFECTS OFF APPLIC"

~~SC~~ cite president case:  
MCDONALD v. PALMETO THEATERS  
(1941) 196 S.C. 38, 11

SC 22444 AND ALSO  
DO DEER RITE HIS PROSE  
59 (e) he was REFUSED

PT ~~4~~ = 4 OFF ~~5~~ = 5

by lower court either  
COR by honest neglect mistake  
AND SEVERE EMOTIONAL TRAUMA due to  
MY RAPE OR either by previous  
ON 5-11-13 lower court order on  
11-14-12 preventing  
such clean court to  
accept filings from  
such pro se party applicant  
BEN NABORS, by Judge  
FRANK R. ADY JR. order  
such off on 11-14-12,  
SEE STATEMENTS.

PJ ~~XXXX~~ = 5 of ~~XXXX~~ = 5

with good causes, shown  
emergency's concerning  
59 (e) status jurisdiction  
this prose party seeks  
favor off this honorable  
court.

Sincerely,  
Respectfully,

Submissions

on 6-14-13

*[Handwritten Signature]*

6-14-13

DAYS BENJAMIN RAY WARREN  
PRO SE APPLICANT

CANNOT BY CHOICES

need courts help badly

plea don't let me  
continue have due process  
const. civil rights violated  
by LAURENS WARRER  
HELP ME

4-10-13

~~CLERK (OAT)~~

CYNN CANCERS

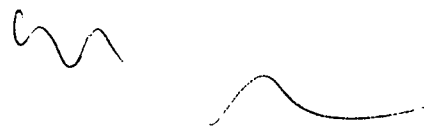
HERE MOTIONS  
to amend expand  
P.C.R. HEARING  
RECORDS FROM 6-5-12  
11-14-12 AND 3-13-13.

PLEASE SEND STAMPS!  
CLOCKED COPIES TO  
JUDGES MENMEN OTHERS  
AND RETURN STAMP  
COPY b/c. 2. ME.

Thanking you.  
Amen.

BL

pg # of



4-20-13

TO: S.C. COIT. ADMIN

DATED 5

1015 SUMMERS ST. SUITES 200  
COLA, S.C. 29201

From: BEN NABORS # 233844

BROADS RIVERS ROADS COMM. INST  
4460 BROADS RIVERS RD.  
COLA, S.C. 29210

RE: CONTEMPT OF COIT ALLEGATIONS,  
AND OBSTRUCTION OF JUSTICE  
ALLEGATIONS, by me, BEN NABORS  
AGAINST THE FOLLOWING PERSONS  
OF ENTITIES.

- (1) 8th. CIR. CLERK OF COIT,  
LYNN W. LANCASTER
- (2) 8th. CIR COIT REPORTER  
APRIL P. HERRON, P.O. BOX  
17675 G'VILLE, S.C. 29606

Pg. ~~17~~<sup>2</sup> of

W

Court Reporter For!

(3.) 8th. Cir. ~~Court~~ ~~Court~~ Court  
Reporter  
Maryann S. Nevels

6609 Satchel Ford Rd.  
Cola S.C. 29206

(4.) 8th. Cir. Court Reporter

Joy E. Holston

118 Sandy Beach Rd.

Prosperity S.C. 29127

5.) 8th. Cir. Court Rpt. Caroline

Hiskell 32 Duxbury Ln


Eastly S.C. 29642

4-20-13

Real Court Admin. office.

ALL of the above persons)  
have we the transcript(s)

The above loves persons,  
officers) of the court have  
refused to provide me with  
transcript(s) for court hearings,  
held on or about 7-18-10 in  
"Family Court" Laurens County, S.C.

4  
p. ~~###~~ of 

AGAIN ON around 2-1-13,  
motion also for same around  
same  $\left(\begin{smallmatrix} 9 \\ 6 \end{smallmatrix}\right)$  mailed to CLERK of  
COURT CYNTHIA W. LANCASTER,

LAURENS COUNTY S.C.

P.O. Box 287 Laurens S.C. 29366

Mrs. Hiskell never responded  
or even acknowledged my  
several written requests to  
her even though ~~it~~  $\odot$  I'd ALL  
CONCERNED PARTIES THAT WITHOUT  
THIS RESTRAINING ORDER TRANSCRIPTS  
AND SEVERAL OTHER TRIAL TRANSCRIPTS  
THAT SUCH DENIAL FOR SUCH  
TRANSCRIPTS & COURT RECORDS OF  
COURT PROCEEDINGS FOR MY  
REVIEW AND MY USE TO PREPARE  
FOR CIVIL ACTION PETITIONS.

5  
P. ~~W. H. H. H.~~ OF W

AND CRIMINAL APPEAL LITIGATION  
IN S.C. COURTS) WHOSE CAUSE  
IRREPARABLES HARM TO MY  
THE FOLLOWING AND CURRENTLY  
IN THE PROCESS OF LITIGATION  
S.C. COURT CASES:

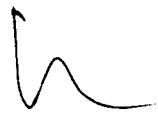
(1) P.C.R. 2011-CP-30-308

(2) U.S.D.C. CASE:

0:12-CV-03301-DCN

WHICH IS CURRENTLY BEING APPEALED  
AND UNTIL I'M SUPPLIED WITH  
THESE COURT TRANSCRIPTS, I WILL  
BE CONTINUED TO BE AFFORDED  
FAIR & FULL HEARINGS)

LITIGATION OF THESE MATTERS  
WHICH ARE CONCERNING ISSUES OF  
WHICH ARE CAUSING AN

A ~~HAZARD~~ OF 

DANGER TO MY LIFE, SAFETY  
AND WELLFARE ~~STRAIN~~ AS HOW  
I'M INNOCENT OF THESE  
CRIMINAL CHARGES FOR

ARMED ROBBERY - J-16-11-033(A)  
AND CARJACKING - J-16-03-1075(B)  
W/A# (C) J-615455 & J-615454

AND AM ~~CO~~ AM A DIAGNOSED  
SCHIZOPHRENIC & OTHER MENTAL  
ILLNESSES BRAIN DAMAGED ETC.

AND ~~CO~~ WAS FORCED BY L.C.S.D.  
TO BE THEIR UNDERCOVER NAME  
AGENT AND AS DIRECT RESULT  
~~CO~~ WAS OVER EXPOSED TO TOXIC  
METH CHEMICALS ON 6-10-02  
DEN. CO. AD. ADMIN OFFICE

~~XXXXXXXXXX~~ (7) W

ALL THESE COURT COURT SORT  
REPORTERS AND THE CLERK  
OF COURT. LYNN LANCASTER  
HAVE WITH HELD VERY IMPORTANT  
COURT RECORDS, COURT TRANSCRIPTS  
OF MY COURT HEARINGS, AND  
MY COURT PROCEEDINGS,  
I'M DIAGNOSED MENTAL ILL  
AND NO ONE GIVE DAM ABOUT  
MY CONST. CIVIL OR DUE  
PROCESS RIGHTS HAVING  
BEEN CONSTANTLY REPEATEDLY  
DENIED VIOLATED PRIOR TO  
AND EVER SINCE MY ARREST  
ON 6-10-09 IN  
LAURENS COUNTY, S.C.

A ~~XXXXXXXXXXXX~~ - 4 = (8) W

NOW THE UNITED STATES  
COURT OF APPEALS FOR THE  
4TH. CIRCUIT TELLING ME  
I GOT TO HAVE FILED WITH  
THEM BY 5-10-13 MY

INFORMAL OPENING BRIEF

PURSUANT TO LOCAL  
RULE 34 (b) AND THIS  
CAN NOT BE DONE

BECAUSE I NEVER  
RECEIVED THESE TRIAL  
TRANSCRIPT(S) AND

P.C.R. HEARING TRANSCRIPTS  
NOT HAVE I EVER BEEN  
PROVIDED DISCOVERY FROM

~~XXXXXXXXXX~~

Q W

LYNN LANCASTER CLERK OF  
FORT LAUDERDALE COUNTY REFUSES  
TO SEND ME WHAT @  
SAY @ CAN NOT BE  
AFFORDED JUSTICE BY THE  
S.C. COURT'S UNLESS I'M  
GIVEN ACCESS TO COPIES  
OF I PLEASE DON'T

TELL THESE COURT  
PEOPLE TO PROVIDE ME  
WITH MY TRIAL TRANSCRIPTS  
AND P.R.R. HEARING TRANSCRIPTS  
AND TELL COURT CLERK LYNN  
LANCASTER OF LAUDERDALE

1. ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ =  
Pia

COUNTY TO SEND ME A  
COPY, <sup>via</sup> CERTIFIED MAIL,  
OF MY ENTIRE CASES  
FILES.

I'm indigent they told they  
lots @! please stamp clock  
and return to me a  
true copy on a form of this  
formal motion commands, etc.

- CC: Lynn W. Lancaster
- CLERK COM. CAUTIONS, SR.
- X 8th Cir. Reporter's
- April P. Helton
- X Mary Ann S. Nevers
- X Joy E. Holston
- X Caroline Hickell

Thank you.  
Sincerely  
9-20-13  
BEN  
BEN NABORS

*Lynn W. Lancaster*  
*Laurens County Clerk of Court*  
*P. O. Box 287*  
*Laurens, SC 29360*

June 3, 2013

Ben Nabors #233844  
Broad River Correctional Institution  
Saluda 148-A  
4460 Broad River Road  
Columbia, SC 29210

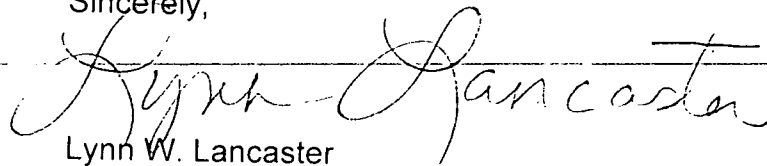
RE: Benjamin Nabors vs. State of South Carolina  
2011-CP-30-308

Dear Mr. Nabors:

I am returning your motion for Rule 59(e) unfiled due to the fact that you filed a Notice of Appeal in the above captioned matter several days prior to the receipt of this filing. This court no longer has jurisdiction to rule on your motion.

As you no longer have a pending matter in front of this court, there is no need to correspond further. This is my final response.

Sincerely,

  
Lynn W. Lancaster

/lwl  
Enclosures

STATE OF SOUTH CAROLINA  
COUNTY OF LAURENS

) IN THE COURT OF COMMON PLEAS  
) EIGHTH JUDICIAL CIRCUIT  
)  
)

Benjamin Ray Nabors, #233844,

) 2011-CP-30-0308  
)

) Applicant,  
)

) **ORDER OF DISMISSAL**  
)

) v.  
)

) State of South Carolina,  
)

) Respondent.  
)  
)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 30, 2011. Respondent made its Return on August 25, 2011. An evidentiary hearing into the matter was convened on March 13, 2013, at the Greenwood County Courthouse. The Applicant proceeded *pro se* after having Rodney Richey, Esquire relieved as counsel. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. Alex Stalvey, 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, the guilty plea transcript, a report from the Department of Mental Health and numerous articles on the subject of methamphetamines and addiction, which were introduced by the Applicant.

**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. The Applicant was indicted at the October 2009 term of the Laurens County Grand Jury for Carjacking (2009-GS-30-

1276), and Armed Robbery (2009-GS-30-1387). He was represented by Alex Stalvey, Esquire. On October 18, 2010, the Applicant pled guilty as indicted to both charges. The Honorable J. Derham Cole sentenced the Applicant to incarceration for a period of twenty-five (25) years for armed robbery, and twenty (20) years suspended with five (5) years' probation to run consecutively. He did not appeal his convictions or sentences.

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

1. "I have a long history of mental illness and was not allowed to plea guilty but mentally ill, was abused by guards"
  - a) "Long history of illness, earlier incident on day in question was evidence of mental illness at that time"

In his amended application filed by Rodney Richey, Esquire on January 15, 2013, the Applicant alleged numerous issues including ineffective assistance of counsel.

At the hearing, Applicant proceeded on the ineffective assistance of counsel and involuntary guilty plea claims.

### **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 (2003).

#### **Ineffective Assistance of Counsel**

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).

*Failure to Investigate*

Applicant claims Counsel was ineffective because Counsel failed to properly investigate his case prior to his guilty plea.

“Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

The Applicant alleged Counsel conducted no pre-trial investigation, and the Applicant had witnesses that would have confirmed this allegation. Additionally, the Applicant stated he wanted an independent mental evaluation, separate from the one conducted by the Department of Mental Health. The Applicant further made allegations that he wanted a copy of his discovery, a copy of the guilty plea transcript, a Blair<sup>1</sup> hearing, and an independent psychiatrist’s evaluation. He also claims he was insane at the time of the crime, and Counsel did not investigate any of these issues.

Counsel testified he was appointed by Judge Hill, as the Applicant had several prior attorneys on this case. Counsel stated he met with the Applicant on numerous occasions and even had the Applicant transferred from the Laurens County Detention Center to the Greenville County Detention Center so that he could meet with the Applicant more often. Counsel testified he prepared this case for a jury trial. Counsel stated he has been practicing criminal law for eight years, including five years as an assistant solicitor.

Counsel also testified he received discovery from the State in this case and extensively discussed it with the Applicant. The discovery included, but was not limited to, the incident reports, the Applicant's statement to law enforcement, the victim's statement, the transcript from the Applicant's wife's (also a co-defendant) guilty plea transcript, the evaluation from the Department of Mental Health, which deemed the Applicant competent, the Applicant's medical records, and the Applicant's prior record. Counsel also stated he prepared a defense to the armed robbery charge and was prepared to challenge the State's theory that the Applicant was armed with a knife. Counsel would have attempted to persuade the trial judge to instruct the jury on common law robbery.

Counsel also testified he researched a possible insanity defense. Counsel would have challenged the report from the Department of Mental Health as to its finding of criminal responsibility and the Applicant's mental health status. Counsel testified he researched the medications the Applicant was taking and even had a mental health expert subpoenaed and ready to testify at the trial. However, Counsel admitted the Applicant was criminally responsible as he knew right from wrong.

Further, Counsel testified he prepared for trial and even started the trial. Counsel challenged the Applicant's statement to law enforcement in a Jackson v. Denno<sup>2</sup> hearing. However, the trial judge ruled the statement was admissible. Additionally, both Counsel and the State gave opening statements, and the State even called one witness before the case broke for the day. Counsel testified he spoke with the Applicant the next morning, and the Applicant told Counsel he wanted to plead guilty. Counsel then stated he advised the Applicant that, in his opinion, the Applicant would have been convicted, and the best possible sentence would result from a guilty plea. The Applicant did

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1 State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) (competency to stand trial).

2 378 U.S. 368 (1964).

not tell Counsel he did not understand or that he was against this idea. Counsel lastly testified he felt fully prepared, and based his advice to the Applicant on his experience and the facts of the case.

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. Counsel, based on his experience as a former assistant solicitor and now defense attorney, sufficiently prepared this case for trial. Counsel thoroughly discussed with the Applicant all of the discovery documents on numerous occasions. He researched the Applicant's mental health, even retaining a mental health expert to assist in case preparation and understanding the various medications the Applicant was taking. Counsel also was prepared to challenge the evaluation completed by the Department of Mental Health. The Applicant alleged an independent mental evaluation would have proven Counsel was ineffective for not having him separately evaluated. However, the Applicant failed to provide any evidence that a separate evaluation would have shown any different results than Department of Mental Health's report as to his competency to stand trial.

The Applicant also alleged he had witnesses that would have proven Counsel was ineffective. However, no witnesses testified on the Applicant's behalf at the evidentiary hearing. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992).

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 alleges Counsel coerced him into pleading guilty. The Applicant also testified he pled because he was under the impression that Judge Cole would give him a life sentence and because he was on various medications at the time of his guilty plea.

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Bovkin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

The Applicant's alleges his plea was involuntarily entered. This Court finds that this allegation is conclusively refuted by the record. At the guilty plea hearing, the Applicant testified that he was not under the influence of any alcohol or drugs, other than medications that helped him understand what was occurring around him. (Transcript p. 16 line 5). Judge Cole informed Applicant of the maximum penalty of carjacking and armed robbery (Transcript p. 10 line 14; p. 12 line 15), and informed him of his right to remain silent as well as his right to a jury trial and other associated jury trial rights. (Transcript p. 6 line 5- p. 9 line 14). Applicant subsequently affirmed

that he was guilty of both carjacking and armed robbery (Transcript p. 10 line 10; p. 12 line 11), and he agreed with the facts of the case as stated by the solicitor. (Transcript p. 20 lines 7 and 9). Applicant stated "I just want to get this over with so [victim] ain't got to keep standing over there and getting put through more of it. I'm very shameful for what I have done to her. And I know what I done was wrong. She was just trying to be a good citizen. And I just flipped out. And that's no excuse." (Transcript p. 16 line 24- p. 17 line 4). Not once during the guilty plea did the Applicant explain to Judge Cole that Counsel coerced him into pleading guilty or that he did not understand the proceedings.

This Court further finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered. The overwhelming evidence in the record reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The Applicant showed no reason why he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. This Court finds the Applicant's testimony at the PCR hearing lacked credibility. Therefore, this Court finds that Applicant's guilty plea was freely and voluntarily entered.

*cn*

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

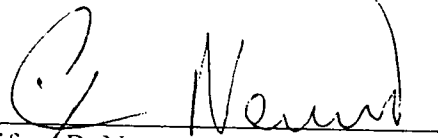
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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), SCRPC, 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!**



Clifton B. Newman  
Presiding Circuit Court Judge  
Eighth Judicial Circuit

April 25, 2013

Lexington, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS

BENJAMIN NABORS, )  
 )  
 APPLICANT, )  
 )  
 -VS- )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 RESPONDENT. )  
 )  
 )

2011-CP-30-00308  
TRANSCRIPT OF RECORD

NOVEMBER 14, 2012  
LAURENS, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY, JR.

APPEARANCES:

ATTORNEY FOR APPLICANT:

CAROLINA HORLBECK, ESQUIRE

ATTORNEY FOR RESPONDENT:

RUTLEDGE JOHNSON  
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
C-1	LETTER FROM MR. NABORS	22	

1 THE COURT: Okay. If we may, we'll go ahead and go on  
2 the record on the matter of Ben Nabors versus the State of  
3 South Carolina. And this is file number 11-CP-30-308. And  
4 this is a PCR matter.

5 Mr. Nabors is present with his appointed counsel, Ms.  
6 Horlbeck. The Attorney General is present. I'll be happy  
7 to hear from you at this point in time.

8 MR. JOHNSON: Yes, sir, Your Honor. Rutledge Johnson.  
9 I represent the Attorney General's Office.

10 Just a little bit of background information on this  
11 case. Mr. Nabors was originally appointed Ms. Elizabeth  
12 Wiygul. She happened to represent one of his co-defendants  
13 in his guilty plea and, therefore, was a conflict. Ms.  
14 Horlbeck was thereafter appointed.

15 This case was continued in June. And now, I believe,  
16 he is here on his motion to relieve Ms. Horlbeck as counsel.  
17 I'll ---

18 THE COURT: All right.

19 MR. JOHNSON: --- turn it over to Ms. Horlbeck, Your  
20 Honor.

21 THE COURT: All right. Ms. Horlbeck, I know that this  
22 matter, I think, had been docketed for the December term of  
23 common pleas non-jury ---

24 MS. HORLBECK: No, sir.

25 THE COURT: --- or this was ---

1 MR. JOHNSON: Scheduled for November 27th at 9:30.

2 THE COURT: Oh, I'm sorry, November. Okay.

3 MS. HORLBECK: That's correct.

4 THE COURT: Close to December. What's your position?

5 MS. HORLBECK: Judge, just two things. I think that --  
6 Mr. Nabors has not raised this in any letters, at least not  
7 in the letters to me. However, I do think it's important,  
8 just given his unhappiness with my representation, I think  
9 it's important to put on the record that Ms. Wiygul did  
10 represent the co-defendant. And at the time she was  
11 representing the co-defendant she and I were actually  
12 working for the same law firm.

13 Now, I don't -- I have not talked to her about her  
14 representation. I have not discussed the case with her at  
15 all. And I have not looked at her old file, but I do think  
16 that the Court needs to be aware of that given Mr. Nabors'  
17 unhappiness with my representation.

18 The other thing, Judge, that I would bring to the  
19 Court's attention is that I've been given a letter that Mr.  
20 Nabors mailed to the AG's Office. I don't know if the Court  
21 wants it marked as a Court's exhibit or if you'd like me  
22 just to hand it up. Mr. -- the -- Rutledge -- Mr. -- I  
23 don't ---

24 THE COURT: Johnson.

25 MS. HORLBECK: --- want to call you Rutledge, but

1 anyway, Mr. Johnson has a copy of it already, Judge. He's  
2 seen it. So I'm happy to proceed however you'd like, but I  
3 do think the Court needs to be aware of it. I'll direct  
4 your attention to page 4.

5 MR. JOHNSON: And just for the record, Your Honor, and  
6 this is as to Mr. Nabors, I know that you have been writing  
7 our office. And as you are a represented party, I have an  
8 oath not to respond. And so every letter I get I have sent  
9 to counsel. And then I have filed it in my file. But just  
10 for Mr. Nabors' information, I cannot respond to his  
11 letters, I can only send it to counsel.

12 (Pause)

13 THE COURT: All right. I've had a chance to review the  
14 letters. And just so that the record is clear, Mr. Nabors  
15 has also written my office on numerous occasions with  
16 general complaints. He has also written the Laurens Clerk  
17 of Court here with numerous complaints and requesting  
18 filings and things of that nature.

19 The matters that he has sent to me, I have directed to  
20 his court appointed attorney because, obviously, I'm in  
21 somewhat of a similar situation as the Attorney General.  
22 It's not proper for me necessarily to respond directly to  
23 him when he has appointed counsel. And in an effort to  
24 avoid any sort of *ex parte* conflicts or *ex parte*  
25 communications, rather, that's the tact that I have taken.

1 But I have had a chance to review the letter that  
2 apparently Mr. Nabors sent. And it was forwarded to Ms.  
3 Horlbeck by Mr. Johnson sometime around November the 7th.

4 MS. HORLBECK: Yes, sir. Judge, I've had discussions  
5 with Mr. Nabors about the proceeding at the end of November.  
6 And I've assured him that I will subpoena whatever witnesses  
7 that he wants me to subpoena.

8 However, I do think that the nature of that letter does  
9 cross the line. And I think the Court is well aware, I have  
10 pretty thick skin when it comes to representing just about  
11 anybody. And I'm happy to proceed however the Court wants  
12 to proceed. I am troubled by the nature -- by the  
13 allegations in that letter.

14 And at this point I would join in Mr. Nabors' motion to  
15 have me relieved. And he may -- he may have a few comments  
16 that he'd like to address to the Court, Judge.

17 THE COURT: All right.

18 MR. NABORS: Yes, I would, Your Honor.

19 THE COURT: I'm happy to hear from you, Mr. Nabors.

20 MR. NABORS: First of all, I'm sorry for bothering  
21 everybody and writing so much, but I didn't even know these  
22 things they call constitutional rights, certain  
23 constitutional rights. I mean, I wasn't even aware of them  
24 at the time that the Laurens County Narcotics Office was  
25 forcing me to go into crack houses and meth labs. And

1 that's how I ended up with these charges.

2 And that was my whole defense I wanted Alex Stalvey,  
3 Bill Mayer, Chip Howe, Mike Turner, Jr. and others to  
4 represent me on. And a couple of them point blank told me,  
5 they said, no. They said, look, they said, your victim's an  
6 ex-police officer, her son's a police officer. As a matter  
7 of fact, he was the one that arrested me hours before I  
8 stole his mama's car while I was exposed to them chemicals.

9 I asked for help. I got a history of being treated  
10 with mental illnesses, but I don't believe there's really  
11 nothing wrong with me. But they say that the people at the  
12 law library's pointed out, they said, you diagnosed as a  
13 schizophrenic anyhow, the cops should have never ever made  
14 you go into crack houses and meth labs and made undercover  
15 buys. They made me wear cameras and all that.

16 And I was hallucinating. I was exposed to toxic  
17 chemicals at the meth lab. And then they tried to cover it  
18 up and say that they wasn't no meth lab at 836 Hellams  
19 (phonetics) Road, that I made all that up, but yet a couple  
20 of months later the same narcotics officer that made me go  
21 there, Narcotics Officer Moody, he goes back to the meth lab  
22 a couple of months later at 836 Hellams Road and he busts a  
23 meth lab while it's actively spewing out toxic smoke.

24 And he had to rescue two people out of the place where  
25 I got exposed at. One was a paraplegic and was about to

1 die. He had to drag him out of the chemical, two of them.

2 THE COURT: Mr. Nabors, I don't mean to interrupt you,  
3 but we're -- what we're here today on is a very, very  
4 limited question. And that is whether Ms. Horlbeck will  
5 continue to represent you on this particular case. And what  
6 you're talking to me now about goes more to the merits of  
7 your application for PCR.

8 So let me ask you, apparently you've had some issues or  
9 some difficulties with Ms. Horlbeck in your mind. Is that  
10 what I'm hearing?

11 MR. NABORS: Yes, sir. Yes, sir.

12 THE COURT: Okay.

13 MR. NABORS: I believe -- I believe that the -- really  
14 -- she's really trying to keep me -- and she's part of the  
15 cover-up with Laurens County and the State just because I'm  
16 a couple of times loser being in and out of prison and  
17 mental health institutions my whole life, they want -- they  
18 want to keep me locked up because I ain't got no money like  
19 no rich person to get John Gott (phonetics) or whoever to  
20 represent me.

21 So they like, well, he's a piece of shit, white trash,  
22 drug addict, whatever, let's just keep him in jail. Never  
23 mind the fact that they say I had my constitutional rights  
24 violated, that nobody would appoint me an investigator.  
25 I've asked her numerous times for an investigator. She told

1 me that she ain't going to do certain things for me.

2 I said -- was the same problem I had with Alex Stalvey.  
3 is I wanted him to hire an investigator. I got proof that I  
4 tried to get him to hire me an investigator. All my  
5 lawyers, they refused it. And, I think, one judge did give  
6 him money to hire me one, but then he didn't hire me one.  
7 And I can't go out of prison. I can't go out of jail to get  
8 this stuff, Your Honor.

9 THE COURT: I understand. We're going to be dealing --  
10 we're going to be discussing a few things here in the next  
11 five minutes, okay, Mr. Nabors?

12 MR. NABORS: Will I be able to have a copy of this  
13 record, sir? Please, sir? I'm poor. I'm indigent. Mr.  
14 Addy?

15 THE COURT: Mr. Nabors, let me tell you, first thing  
16 that I want to tell you is that I've got no problem based  
17 upon Ms. Horlbeck's representations to me and having read  
18 the letter that has been handed up, which I will make it a  
19 part of the record in this case, I am going to allow her to  
20 be relieved in this particular case. And we will be giving  
21 you another attorney.

22 MR. NABORS: You won't give me a real estate lawyer,  
23 will you, Judge Addy?

24 THE COURT: Mr. Nabors, I can't -- it will be the next  
25 person on the list. It'll be the next person on the list.

1 And that's what -- I'm glad you said that because that's a  
2 nice segue into what I was going to tell you here.  
3 Understand, Mr. Nabors, I realize that you are indigent. I  
4 realize that this case is extremely important to you.

5 MR. NABORS: Yes, it is, Your Honor.

6 THE COURT: And I don't blame you for feeling that way,  
7 but here's the problem. When you have a lawyer representing  
8 you, you need to let that lawyer do the leg work on this,  
9 okay?

10 MR. NABORS: I'm trying.

11 THE COURT: Hear me out. Hear me out. The way you're  
12 going about this is simply not productive. It's not useful  
13 for you to continue to send reams and reams of paper, and  
14 quite honestly, it's a waste of your time and whatever money  
15 is in your Cooper Account for ---

16 MR. NABORS: None.

17 THE COURT: --- you to continue to mail stuff to the  
18 Clerk of Court and ask her to file it and make copies. So  
19 I'm telling her not to do that anymore, okay?

20 You're going to have a lawyer. I'm going to appoint  
21 the next lawyer on the list. And I'm not sure who that is.  
22 We may be able to find that out before you leave today, I  
23 don't know. But that lawyer will then be responsible for  
24 representing you.

25 And that lawyer, he or she, will contact you and will

1 discuss this case with you. The lawyer is responsible for  
2 tactical decisions on this case as far as who the key  
3 witnesses are. You communicate those to him.

4 It'll be his responsibility to determine if those  
5 people need to be subpoenaed because I know in one of the  
6 documents you sent me, you sent me about a list of eighty or  
7 ninety names of people who needed to be subpoenaed. And I  
8 have a hard time believing in all candor that all ninety  
9 individuals needed to be placed under subpoena, Mr. Nabors,  
10 all right? That's something you need to discuss with your  
11 lawyer because if you continue to communicate with the  
12 Clerk's Office and with my office like this, sooner or later  
13 you're going to divulge information that's best left  
14 divulged only to your attorney. Do you understand what I'm  
15 telling you?

16 MR. NABORS: Your Honor, I'm sorry I made you mad at  
17 me.

18 THE COURT: No, I'm not mad. I don't get ---

19 MR. NABORS: And I'm ---

20 THE COURT: --- mad, Mr. Nabors.

21 MR. NABORS: --- sorry I made Ms. Lancaster mad at me.

22 THE COURT: Ms. Lancaster isn't mad either. We've got  
23 pretty thick skins. We're fine.

24 MR. NABORS: She's helped me a lot. And -- but I just  
25 want somebody to understand that they made me go into that

1 methamphetamine lab. And I don't know nothing about the  
2 law. I didn't know anything about a disabled person's --  
3 something about a disable person's got special rights and  
4 all that there. And they -- they was basically forcing me  
5 to do these things.

6 **THE COURT:** And, Mr. Nabors, because you don't know  
7 about the law, that's why you're going to need to trust your  
8 next lawyer, which leads me into my next point, okay? This  
9 is the last lawyer you get. This is the last lawyer you  
10 get. Whoever the next one appointed is, that's the last  
11 lawyer that you're going to receive.

12 If you're unable to work with them, if you're  
13 suspicious about them, I'm sorry. There are ways that you  
14 can waive your right to an attorney on a PCR action. You  
15 understand that?

16 **MR. NABORS:** (Affirmative nod).

17 **THE COURT:** So your job is the next lawyer you get,  
18 that's the one you've got to work with. You understand me?

19 **MR. NABORS:** I'm going to try my best, Your Honor.

20 **THE COURT:** All right. Very good. Very good.

21 **MR. NABORS:** Can I -- can I please have you help me get  
22 a copy of the record from the continuance in June?

23 **THE COURT:** I am ---

24 **MR. NABORS:** And this record here? I can't afford a  
25 hundred and something dollars for a couple of pages of paper

1 for ---

2 THE COURT: All right, Mr. Nabors, ---

3 MR. NABORS: --- a court reporter.

4 THE COURT: --- if your lawyer -- when you get your  
5 lawyer, and if he feels like it's necessary to request that  
6 record, because we're talking about just a continuance, I  
7 believe, back in June. Is that right, Mr. Johnson? Is that  
8 all we've dealt with?

9 MR. JOHNSON: Yes, sir.

10 THE COURT: I'm not even -- I'm not even sure there was  
11 much put on the record back then.

12 MR. JOHNSON: It was put on the record in front of  
13 Judge Russo.

14 THE COURT: I'm sorry?

15 MR. JOHNSON: It was in front of Judge Russo.

16 THE COURT: In front of Judge Russo? Was there any  
17 record -- transcript made of it or was it just a consent?

18 MR. JOHNSON: No, sir.

19 MR. NABORS: Yes, there was. I got -- the lady,  
20 Maryann Nevers, she made a transcript of it. I got paper in  
21 my ---

22 THE COURT: All right.

23 MR. NABORS: --- my legal work with me today. She told  
24 me that it's thirty-two, fifty. And she estimated that it  
25 would be ten pages.

1           **THE COURT:** All right. Talk to your new -- talk to  
2 your new attorney about that. Talk to your new attorney  
3 about that. If he feels that it's necessary for you to  
4 obtain that record, I'm sure that he will be more than happy  
5 to request the funds to do it, okay? But that's his  
6 decision. Now, Mr. Nabors, you understand where we stand  
7 here on this?

8           **MR. NABORS:** I think so.

9           **THE COURT:** Okay. It's not doing you any good to  
10 continue to write the Clerk of Court. It's not doing you  
11 any good to continue to write me. And you've got a  
12 responsibility to cooperate with your lawyer.

13           **MR. NABORS:** So the only person I got to defend me in  
14 all this whole world is a lawyer that's not getting paid  
15 really no money to represent me and is just going to treat  
16 me like a free lunch, like, you know, just a regular crack-  
17 head, which is what I am?

18           **THE COURT:** Well, Mr. Nabors, I can't speak to that. I  
19 am sure whoever is appointed to represent you will represent  
20 you regardless of how much they are getting paid. It's my  
21 experience the people in the -- the people who are appointed  
22 on these cases are exceptional attorneys. And I'm quite  
23 certain that they will do you a very, very, very good job if  
24 you work with them, okay? If you work with them. And  
25 that's the key thing.

15

1 MR. JOHNSON: Your Honor.

2 THE COURT: Yes, sir.

3 MR. JOHNSON: Just for the record, Ms. Horlbeck  
4 actually has been working on his behalf. We ---

5 THE COURT: I know.

6 MR. JOHNSON: --- have had communication, just for the  
7 record. Second of all, if you would also include me in that  
8 Mr. Nabors doesn't write my office anymore because I can't  
9 respond.

10 THE COURT: All right.

11 MR. JOHNSON: Are you granting a continuance ---

12 THE COURT: I will be granting a continuance because I  
13 don't see how it's going to be possible for that lawyer to  
14 get up to speed in three weeks or two weeks. So this ---

15 MR. NABORS: I'll represent myself ---

16 MR. JOHNSON: Just to put on the record, Mr. Nabors,  
17 this will be called the week of March the 11th. And this is  
18 going forward.

19 MR. NABORS: I'm ready to go forward right now. I'll  
20 represent myself right now. Right now, today, right this  
21 second, I will ---

22 MR. JOHNSON: That's in your ---

23 MR. NABORS: --- represent myself.

24 MR. JOHNSON: --- discretion, Your Honor.

25 THE COURT: Mr. ---

1           MR. NABORS: I'm ready. I'm ready. I got everything  
2 here, all the proof, all the documentation to prove  
3 everything. I've written you and everybody else. I even  
4 wrote President Obama and told him about it.

5           THE COURT: Well, he's been busy lately. Mr. Nabors,  
6 let me ask you this. How far did you get in school?

7           MR. NABORS: I dropped out in the ninth grade.

8           THE COURT: Can you read and can you write?

9           MR. NABORS: I can read and write very well, Your  
10 Honor.

11          THE COURT: Okay. You said that you had -- you were  
12 alleging in many of the letters that you sent to me that  
13 you're suffering from a mental illness, which is caused by  
14 substance abuse, is that correct?

15          MR. NABORS: They said something like that. I'm not --  
16 I don't -- I really don't think there's nothing wrong with  
17 me at all. I just think that they just like to pump me full  
18 of these drugs. That day that I got tricked into pleading  
19 guilty, they had me so pumped full of Haldol and stuff, I  
20 didn't even know what I was doing.

21          I was second day of trial, and I wanted a jury trial.  
22 And this man said, look, he's going to give you life if you  
23 don't go out there and plead guilty. I didn't know nothing  
24 about them sentences not carrying life. I took his -- his  
25 advice, Judge Addy.

1 THE COURT: All right. Mr. Nabors, let me ask you,  
2 have you ever been involved in a trial of any case?

3 MR. NABORS: No, sir.

4 MR. JOHNSON: Your Honor, may we put him under oath?

5 THE COURT: That's a good point. Mr. Nabors, I realize  
6 you're shackled. You swear or affirm the testimony you're  
7 about to give is the truth?

8 MR. NABORS: I swear to God, hope to die.

9 THE COURT: All right. Mr. Nabors, all the answers  
10 that you've given me previously, they're truthful?

11 MR. NABORS: Yes, sir, as far as I know, one hundred  
12 percent, they are.

13 THE COURT: All right. You've never been involved in a  
14 trial?

15 MR. NABORS: No, sir, I ain't.

16 THE COURT: And you made it to the ninth grade, but you  
17 can read and you can write?

18 MR. NABORS: They had me in special education all  
19 through school, but I can read real good. I learned to read  
20 in prison.

21 THE COURT: All right. Do you know what your IQ is by  
22 any chance, Mr. Nabors?

23 MR. NABORS: No, sir, I don't.

24 THE COURT: Have you ever been treated for any mental  
25 illness or any substance abuse?

1           MR. NABORS: Well, ever since I was like seven or eight  
2 years old, something like that, I got medical records. It  
3 goes at least all the way back to when I was fourteen or  
4 thirteen.

5           THE COURT: All right. Do you remember what the  
6 diagnosis or what the doctors said ---

7           MR. NABORS: They keep -- they keep saying  
8 schizophrenia. And it runs in my family, they said. But  
9 I've read things about schizophrenia, and I don't agree with  
10 that. I think -- I think what I suffer from is just drug --  
11 I like drugs. I like to get high. I don't feel right  
12 unless I'm high.

13           And I like to drink. And I think maybe I only had  
14 drinking and alcohol problems. And maybe I need to get some  
15 help like the twelve step group or something to address them  
16 issues. I don't want to drink no more. I mean, I've been  
17 doing pretty good. I haven't really had nothing to do as  
18 far as drugs since I've been locked up. A little bit here  
19 and there, but not very much.

20           THE COURT: All right.

21           MR. NABORS: I've been doing pretty good. On the  
22 alcohol, I ain't had nothing.

23           THE COURT: Well, Mr. Nabors, you understand that if  
24 you were to proceed to trial you'd have to obey the same  
25 rules of evidence as any lawyer, a lawyer who's been to law

1 school for three years and practiced for a number of years.  
2 You understand that, sir?

3 MR. NABORS: Can I have like books and stuff with me to  
4 help me out?

5 THE COURT: Well, I don't know logistically how that  
6 would work out because if we're talking about an actual  
7 hearing, understand, Mr. Nabors, I don't know what the  
8 issues are that would be raised in the application. What  
9 I'm telling you is I think you'd be better served to have a  
10 lawyer representing you.

11 MR. NABORS: You -- you really care about me getting  
12 justice served, Your Honor?

13 THE COURT: Mr. Nabors, I care about everybody who  
14 comes in here getting justice. And I would tell you that my  
15 experience is simply this, that if somebody comes into court  
16 and they're representing themselves, more often than not  
17 they're on the losing side just because they're a fish out  
18 of water, just because they don't know what they're doing.  
19 And that's about nine times out of ten at the ---

20 MR. NABORS: I'm gonna go with ---

21 THE COURT: --- very least.

22 MR. NABORS: --- whatever what you say, Judge Addy.  
23 What you think's the best. Just please don't let them give  
24 me somebody that's going to just sell me out like everybody  
25 else has.

1           **THE COURT:** I'm confident that's not going to be the  
2 case, Mr. Nabors. Mr. Nabors, I'm going to appoint you an  
3 attorney to represent you on this case. And we're going to  
4 move forward. It will be continued past the November term.  
5 It will be placed on the docket in March. You understand  
6 you only get one PCR, Mr. Nabors. And so I think it's best  
7 that you have a lawyer representing you.

8           I believe that in all candor Ms. Horlbeck would have  
9 done you an excellent job, but it's clear to me, especially  
10 in light of the correspondence that I've recently seen, that  
11 it's best for all concerned that perhaps we locate you  
12 another attorney. I think that the relationship has broken  
13 down to the point where it's not capable of being  
14 rehabilitated. So ---

15           **MR. NABORS:** I think she was out to get me to start  
16 with.

17           **THE COURT:** Well, I must disagree with you on that  
18 point. I've known her for a number of years. And -- but  
19 that's going to be water under the bridge since we're going  
20 to get you a new lawyer.

21           **MR. NABORS:** (Affirmative nod).

22           **THE COURT:** That'll be the order. It'll be placed on  
23 the docket for May or March. March?

24           **MR. JOHNSON:** 11th.

25           **THE COURT:** 11th. Am I doing that?

1 MR. JOHNSON: It's Judge Newman.

2 THE COURT: Oh, okay. Very good. All righty. Mr.  
3 Nabors, pleasure to make your acquaintance. That'll be the  
4 order. Mr. Thomas, if you will prepare such. Very good.  
5 Thank you.

6 MR. JOHNSON: Thank you, Your Honor.

7 (Whereupon Court's exhibit 1 was marked)

8 (Hearing Ended at 10:26 am)

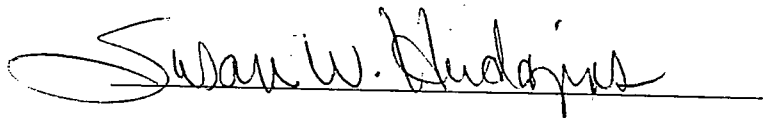
9 (End of Requested Transcript of Record)

1  
Certificate of Reporter

2 I, The undersigned, Susan W. Hudgins, Official Court  
3 Reporter for the Eighth Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate, and complete transcript of record of all the  
6 proceedings had and evidence introduced in the trial/hearing  
7 of the captioned case, relative to appeal, in the Circuit  
8 Court for Laurens County, South Carolina, on the 14th day of  
9 November 2012.

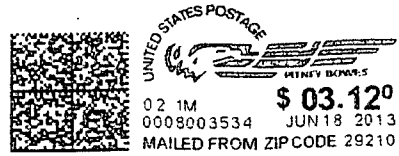
10 I do further certify that I am neither of kin, counsel,  
11 nor interest to any party hereto.

12 November 30, 2012

13  
14 A handwritten signature in cursive script, reading "Susan W. Hudgins", written over a horizontal line.

15 Circuit Court Reporter

BEN NABORS #233849  
BROADS BAYS RIVERS COMM INST S-A 148  
4460 BROADS BAYS ROADS  
CUI-SC-29210



C/O: SUPREME COURT, S.C.  
Honourable D.E. SHAROUSE  
P.O. Box 11330  
C/O S.C. 29211

NOTE.  
ENCLOSED PROMOTION  
UNDER SCRIP 241 205  
WITH ENCLOSURES

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JUN 18 2013  
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MAIL ROOM

Made on  
6-14-13  
[Signature]