

RECEIVED

Apr 12 2023

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHEROKEE COUNTY
Court of Common Pleas

The Honorable Brian M. Gibbons, Post-Conviction Relief Judge

Case No. 2022-CP-11-0329

Richard Wayne Davis,Respondent,

v.

State of South Carolina,Petitioner.

NOTICE OF APPEAL


The State of South Carolina appeals the Honorable Brian M. Gibbons' order granting post-conviction relief, filed March 28, 2023 and received by the State on April 3, 2023. A copy of the order is attached.

April 12, 2023,

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
S.C. Bar No. 100108
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: 
Attorneys for the Petitioner

Other counsel of record:
Beattie B. Ashmore
Beattie B. Ashmore, P.A.
650 E. Washington Street
Greenville, South Carolina 29601-2931
(864) 467-1001
beattie@beattieashmore.com
Attorney for Applicant Richard Wayne Davis

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2022CP1100329

Richard Wayne Davis		State Of South Carolina	
---------------------	--	-------------------------	--

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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. See Page 2 for additional information.
- 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: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment to the Court

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY S.C.
 2023 MAR 28 A 11:56
 BRANDY W. MCBEE

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)
N/A		

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/Brian M. Gibbons	2168	3/28/2023
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on 03/28/2023, and a copy mailed first class or placed in the appropriate attorney's box on 03/28/2023, to attorneys of record or to parties (when appearing pro se) as follows:

Richard Wayne Davis
Beattie B. Ashmore 650 E. Washington Street Greenville, SC
29601-2931

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee

Court Reporter

Brandy W. McBee - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
)
)

Richard Wayne Davis,
Applicant,

) Case No.: 2022-CP-11-0329
)
)

v.

State of South Carolina,
Respondent.

)
)
)
)
)
)
)
)
)
)

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2023 MAR 20 A 8:41
BRANDY W. MCBEE

This matter is before the Court on Richard Wayne Davis’s Application for Post-Conviction Relief. On February 14, 2023, the Court held a hearing in this matter (“the PCR Hearing”). The State of South Carolina was represented by Attorney Chelsey Marto, and Richard Wayne Davis (“the applicant”) was represented by Attorney Beattie B. Ashmore. The applicant’s trial/plea counsel E. Joshua Schultz (“trial counsel”) testified on behalf of the State. The applicant, his wife Eileen Davis, and stepson all testified on behalf of the applicant. After review and deliberation in this matter, the Court grants the applicant relief.

“To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance.” *Thompson v. State*, 423 S.C. 235, 239, 814 S.E.2d 487, 489 (2018) (citing *Strickland v. Washington*, 466 U.S. 668, 687–88, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989)).

“To establish prejudice, the applicant must prove ‘there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Thompson*, 423 S.C. at 239, 814 S.E.2d at 489 (quoting *Cherry*, 300 S.C. at 117-118, 386 S.E.2d at 625). “The Due Process Clause requires guilty pleas be entered into voluntarily, knowingly, and intelligently.” *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000) (citing *Boykin v.*



Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.E.2d 274 (1969)). A defendant is entitled to effective assistance of counsel in deciding whether to accept a plea offer. *Padilla v. Kentucky*, 559 U.S. 356, 364, 130 S.Ct. 1473, 1480-81, 176 L.Ed.2d 284 (2010). The Court finds that the applicant has met his burden.

On May 17, 2021, the applicant pled guilty to assault and battery, first degree. (Indictment No. 2021-GS-11-650). The charge of criminal sexual conduct with a minor, third degree, was dismissed. (Case No. 2019A11110100337). Pursuant to a negotiated plea, the applicant was sentenced to 10 years imprisonment suspended upon time served, followed by 5 years of supervision, with credit for 775 days served and sex offender registration. His trial counsel was very forthright and admitted that he told the applicant that he would not need to undergo counseling while on the Registry. The applicant admitted Exhibit One, which was a one-page motion to reconsider the negotiated sentence which evidences the confusion of the matter. That motion was later withdrawn.

At the PCR Hearing, the applicant testified that his trial counsel advised him that a plea to assault and battery, first degree, would not require sex offender counseling. He testified that his trial attorney further advised him that during the plea and sentencing hearing, he had to agree with everything the Judge asked. The applicant entered a guilty plea based on this advice and agreed with everything that the Judge asked. The Court finds the applicant's testimony to be more credible, and trial counsel admitted that he affirmatively gave the applicant erroneous advice. This induced the applicant's plea. *See, e.g., Strader v. Garrison*, 611 F.2d 61, 65 (4th Cir. 1979) ("Though parole eligibility dates are collateral consequences of the entry of a guilty plea of which a defendant need not be informed if he does not inquire, when he is grossly misinformed about it by his lawyer, and relies upon that misinformation, he is deprived of his constitutional right to

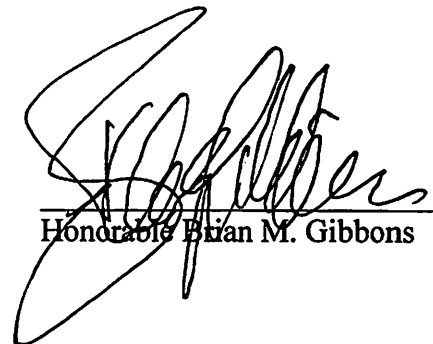
A handwritten signature in black ink, consisting of a stylized, cursive script that is difficult to decipher but appears to be a personal name or initials.

counsel. When the erroneous advice induces the plea, permitting him to start over again is the imperative remedy for the constitutional deprivation”); *Jackson v. United States*, 463 F. App’x 833, 835 (11th Cir. 2012) (remanding to district court to determine if trial counsel affirmatively misadvised the applicant regarding sex offender registration); *Beavers v. Saffle*, 216 F.3d 918, 925 (10th Cir. 2000) (“Gross misadvice concerning parole eligibility can amount to ineffective assistance of counsel”); *Bauder v. Dep’t of Corr.*, 2009 WL 10710447, at *11 (S.D. Fla. Nov. 6, 2009), *report and recommendation adopted sub nom. Bauder v. McNeil*, 2010 WL 11639783 (S.D. Fla. Jan. 20, 2010), *aff’d sub nom. Bauder v. Dep’t of Corr. State of Fla.*, 619 F.3d 1272 (11th Cir. 2010) (finding that counsel’s affirmative erroneous advice regarding the inapplicability of the collateral consequence of involuntary commitment under the Jimmy Ryce Act resulted in a plea that was not voluntarily or intelligently entered). But for counsel’s advice, the applicant would not have accepted the plea deal, and he would not have pled guilty.

It is therefore hereby ORDERED that Richard Wayne Davis’s Application for Post-Conviction Relief is hereby GRANTED. Richard Wayne Davis’s plea is withdrawn and his conviction is VACATED.

SO ORDERED!

This 7 day of March, 2023



Honorable Brian M. Gibbons