

7-2-13  
DATS

PS #1

C/O HONORABLES D.E. SHEAROUSE

P.O. Box 11330, CUL. SC. 29202

**RECEIVED**

FOMS: BEN NABORS #233844

JUL 08 2013

BR. CT. 4460 Board's Movers Road

S.C. SUPREME COURT

CUL. S.C. 29216

RE: my appeal of Judge Clifton  
B. Newmons dismissal of my  
P.C.R., and his failure to  
address or rule on certain  
Federal Constitutional Right(s)  
of my Federal Const. Right(s)  
which were violated by the  
L.C.S.D., the L.C.D.C., and also  
trial counsel Alex R. Stalvey, E.O.S.  
and the 8th. Cir. Sol. Office as  
well as the 8th. Cir. Court,  
BEN NABORS v. State.

Appellate case no. 2013-001195

Lower Court case no. 2011-CP30-00308

Pg. ~~17~~ = 2

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DEPT HONORABLES SHEAROUSE,

PLEASE GRANT ME AN  
EVIDENTIARY HEARING BEFORES  
THIS MOST HONORABLES SUPREMCANT  
JUDGES SO THAT I MAY  
PETITION SUCH CONT FOR  
CONT TO GRANT ME DISCOVERY  
TOO (FINALY) GET ACCESS TO MY  
TRIAL CASE RECORDS WHICH THE  
STATE OF S.C. HAS THUS FAR  
(SUPPRESSED), ALONG WITH THE  
(L.C.S.D. NARCOTICS UNIT) OFFICERS  
OF (ACTUAL AUTHORITY) WHO  
ALL HAVE CONSPIRED TO PREVENT  
ME, THE PRO SE APPELLANT IN  
THIS APPEALS, TO PRESENT THE  
DEFENSES OF BOTH INSAINTY,  
G.B.M.I, AND ACTUAL, OF  
PUBLIC AUTHORITY, AT BOTH

PT. # ~~111~~ = 3

7-2-13  
DAYS

My triad for catfacking  
and Armed Robbery on or  
abouts routes 10-18-10, in the  
8th Cir. General Sessionsing Court  
Lauren Sees County S.C.

Also my, "all" my previous  
Court appointed lawyers (both)  
at trial and p.c.R. levels  
including, but not limited too,

(\*) Alex R. Stalvey, E.O.S. and  
(\*\*\*) Rodney W. Richey, E.O.S. (ALL)  
my Court appointed lawyers have  
NOT UNDERSTOOD my attempts too  
INSTRUCT, COMMUNICATE too THEM,  
HOW ~~to~~ have wanted them too  
REPRESENT me at trial, OR  
p.c.R. or appeal levels "

EXPERT PSYCHIATRIST have  
(who have) for many years  
both diagnosed and have treated S

PJ #0000=4

7-2-13  
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me for paranoid  
 Schizophrenic and other  
 mental diseases illnesses  
 have NOT been called forth  
 to testify, or contradict  
 the states mental health  
 examination report (which  
 found me mentally fit and  
 criminally responsible at  
 (6) off crime) 6-10-09  
 as (6) did instruct all court  
 appointed lawyers to challenge  
 such mental health report  
 by the D.M.H., both my  
 court appointed lawyers at  
 trial and p.c.r. level.  
 (9) LAWYERS TOTAL)

P1 ~~WV~~ = 5

7-2-13

~~DAT~~

~~⊙~~ was thus denied a  
Blair hearing, and ~~⊙~~

(have been) denied effective  
trial and p.c.R., and probably  
will also be denied (effective)  
appellate counsel, by the  
COURTS appointment too

(CORRECT THESE SERIOUS)

VIOLATIONS OF MY DUE PROCESS  
AND STATE AND FEDERAL CONSTITUTIONAL  
CONSTITUTIONAL STATE AND FEDERAL  
RIGHTS WHICH SUCH VIOLATIONS  
AT BOTH PRE-TRIAL TRIAL  
POST-TRIAL AND P.C.R. CIVIL  
REVEALS, HAVE MOST CERTAINLY

P 9. ~~AAAAA~~ = 6 7-2-13

DATS

been responsible for

causes, and prejudices

which have resulted

in these illegal convictions

and sentences which I am

suffering great harm

both mentally, physical,

(irreparable harms) as a

direct result of the

(State malicious prosecution)

of me for the carjacking and

arm robbery charges which

I was wrongful convicted of

and sentenced to 45 years in  
state prison S.C. for.

PJ ~~XXXXXXXXXX~~ = 7

7-2-13  
DATE

If I am too be  
afforded actual Fairness  
and Justice, then stresses  
RASS this pro se mentally ill's "thepay"  
appellants humbly prays for  
and will need THIS COURT'S  
intervention, help, in  
order too obtain what he's  
for (over 4-years) now been  
denied the assistances  
of, and THATS,

# = 1. Investigative services,  
P.I. - COURT appointed funded  
investigator services which  
this pro se party has sought  
for the COURT'S too appoint  
funds for for over 4-years

~~pg 11111111~~ = 8

7-2-13

NOW, ~~I~~ (have) <sup>DATE</sup> INSTRUCTED  
(all) COURT appointed trial  
and P.C.R. COUNSEL, INCLUDING  
(Alex R. Stalvey - E.O.S., as well)  
has (Rodney W. Richey - E.O.S.)  
too petition the trial and  
P.C.R. COURT, "FOR GOOD CAUSES  
SHOWN" FOR FUNDS TO BE  
RE-APPOINTED FROM THE O.I.D.  
FOR ME TO BE GRANTED \$  
FOR MY DEFENSE(S) OF BOTH  
CRIMINAL & CIVIL LITIGATION  
IN DIRECT RELATIONS TO MY  
CONSTITUTIONAL FEDERAL AND STATE  
STATE & FEDERAL CONSTITUTIONAL  
CHALLENGES OFF THESE

PJ. ~~XXXXXXXXXX~~ = 9

7-2-13  
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ILLEGAL UNCONSTITUTIONAL

CONVICTIONS & SENTENCES  
IN WHICH I NOW AM  
IT'S MY SWORN ASSERTATION  
BEING TREATED UNFAIRLY ON  
FOR, BY THIS APPEALS COURT  
(SO FAR) IN MY ATTEMPTS  
"MY UNEDUCATED & PRO SE"

ATTEMPTS TO CHALLENGE  
THE P.C.R. COURTS RECENT  
COURT ORDER AND AND IT'S  
DENIAL TOO ALLOWS ME TO  
FILE A 59(e) TOO  
SEEK ACKNOWLEDGMENT AND

PJ. ~~XXXXXXXXXX~~ = 10

7-2-13  
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address on my  
(several) real and  
very worthy P.C.R. claims,  
issues, that it (P.C.R.  
COURT) failed to do or  
acknowledges of address in  
it's order of dismissal dated  
on 4-25-13, signed by  
(Judge Clifton B. Newmon) and  
"forwarded directly to the  
state attorney general's  
office of S.C., in stead  
of the clerk of court of

~~PG #11~~

7-2-13  
DATE

The 8th Cir. common pleas,  
CYN. W. CANCELLAS as  
COURT RULES call for  
S. C. R. C. P. 71.1 (G)  
OR 71.1 (F), ~~THANK~~ IS  
CORRECT RULE FOR JUDGES  
TO FOLLOW WHEN FILING PROCESSINGS  
THAT ARE COURT DECISIONS OR ORDERS,  
N.E. WAYS, THE A.G. DID  
NOT MAKE THE ORIGINAL (COURTS)  
MATTER, OUT, TIL ON AROUND  
5-22-13, AND THEN THE  
A.G. "RUTLEDGE JOHNSON, E.C.S."  
SENT ME "APPLICANT, APPELLANT"  
AN (UNFILED) COPY, WHICH  
SUCH CRUCH APPELLANT MISTAKINGLY  
MISSTOOK AS COPY ORIGINAL, AND  
THUS, WHILE APPELLANT WAS BOTH

~~PHOTOGRAPHED~~ = 12

7-2-13  
DAYS

At the <sup>(12)</sup>863 he did attempt 59(c) filing  
notice of appeal, suffering from P.T.S.D. severe  
mental anguishes ON P.T.D. WAS  
ON "LOCKUP" after he "me" was

placed attacked sexually assaulted by  
his roommate ON 5-12-13

ANTONIO GILBERT IN MLT-1035-B  
AT B.R.C.I. <sup>(12)</sup>863 WAS AT <sup>(12)</sup>863 OF

UNCOUNSELED REPRESENTED AND

WITHOUT TRIAL OF P.R. TRANSCRIPTS)  
OF DISCOVERIES, AND WHILE WITHOUT

aid of his LAWBOOKS, LAW LIBRARY  
AND WHILE HAVING BEEN IMPROPERLY

GIVEN SERVED UNSERVED IMPROPER  
ORDER OF P.R. COURTS DISMISSAL

BY THE ATTORNEY GENERAL'S OFFICE  
OF S.C. Rutledge Johnson

EAS. THIS "THEY DO SAY" EXPERTS  
DO SAY "NOT ME"

P) ~~XXXXXXXXXXXXXXXXXXXX~~ = 13 7-2-13  
OATSS

This "NOT" legally represented,  
NOT properly equipped with  
"Legal Supplies," "transcripts,"  
"discoveries" or with at  
that  $\begin{pmatrix} 13 \\ 2 \\ 3 \\ 6 \end{pmatrix}$  UNaided with LAW  
books on COURT RULES procedures  
and while suffering from  
emotional mental trauma.

This pro se party did try  
to file his 59(c), he did  
serve such 59(c) on prison  
authorities on 5-25-13.

Thus the clerk COURT was  
served on 5-25-13. However

PJ: ~~AAAAA~~AAAAA=14

7-2-13  
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This p.c.R. NOT WAS UNFAIR IN  
EVERY SENCE OF THE MEANING,  
SO WAS TRIAL. AND THIS PRO-  
SE APPLICANT (DID NOT) GET  
SERVED BY CLERK OF COURT  
WITH ACTUAL ORIGINAL  
(FILED) (CLOCKED)

COPY OF P.C.R. WATS

SIGNED INTO ORDER DISMISSAL  
ON 4-25-13 (UNTIL)

(5-31-13). SO THIS  
PRO-SE APPLICANT FEELS  
THAT HIS 59(e), SERVED ON

pg ~~#####~~ = 15

CLERK CONT

7-2-13  
DMS

8th. Cir. Lyn. W. Lancaster  
ON COMMON PLEAS, ON  
(5-25-13) Should

have been filed, and  
NOT "rejected and  
returned by such  
CLERK: ALSO,

#- JUDGE CLIFTON B. NEWMAN  
#- A.G. RUTLEDGE JOHNSON,  
AND 4TH. CIR. COURT APPEALS  
RICHMOND VA, ALSO ALL  
RECEIVED SWAS SERVED  
Such copy of same 5/25/13  
ON 5-25-13. as well as

~~PROSE~~ BDD-16 7-2-13  
DASS  
NOTICE OF APPEALS, ETC.

However - This pro se  
party "NOT by choice a  
pro se party" DO  
~~Heady~~ serves the  
respondent, Attorney  
Generals Office of

S.C., Rutledge Johnson

EOS. PROOF OF SERVICE

to my appeal BANNARSU v. STATE SC.  
Appellate case NO. 2013-001195  
COWCOT case NO. 2011-CP-30008

PJ. ~~XXXXXXXXXXXXXX~~ 17

7-2-13

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AND AT THIS <sup>(P3)</sup> ~~(1)~~ DO HUMBLY  
PRAY TO THIS SUPREM COURT S.C.  
FOR COURT APPOINTMENT OF  
(SPECIAL COUNSEL)

LAWYER EQUIPPED TO HANDLE  
DEAL WITH MENTALLY ILL CLIENTS,  
TO ASSIST ME IN MY APPEAL  
OF MY ORDER OF  
DISMISSAL SIGNED BY  
P.C.R. COURT ON 4-25-13.

THANK YOU.

SINCERELY,



7-2-13

DATTS

BIN NABORS

4460 BOARDSMAN'S DR

CUL, S.C. 29212

LYNN W. LANCASTER  
C.C. CHENY COURT

C.C. A.G. S.C. RUTLEDGE JOHNSON

C.C. SUPREM COURT S.C.

PG ~~XXXXXXXXXXXX~~ 18 7-2-13  
DAYS

PROF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
IN THE SUPREME COURT

---

APPEAL FROM LAUREN COUNTY  
COURT OF COMMON PLEAS

CLIFTON B. NEWMON, Judge

---

APPEAL CASE NO. 2013-001195

LOW COURT CASE NO. 2011-CP-30-00308

---

BEN RAY NABORS #233849

APPELLANT  
VS

STATE OF SOUTH CAROLINA  
RESPONDANT

PROF OF SERVICE

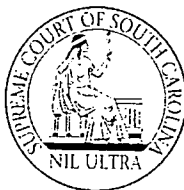
---



P1 ~~XXXXXXXXXXXXXXXXXXXX~~ 20.

BENABOX #23844  
9460 BOARDSMAN RD  
COL. S.C. 29212

CC: Appellate Court Supreme Court, SC, SHAROUSE,  
RUTLEDGE JOHNSON.  
CHADWICK, 80th Cir. LYN. W. LANCASTER



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA  
29211

1231 GERVAIS STREET  
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

[www.sccourts.org](http://www.sccourts.org)

June 27, 2013

Mr. Benjamin Nabors, #233844  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia SC 29210

Re: Benjamin Nabors v. The State  
Appellate Case No. 2013-001195  
Lower Court Case No. 2011-CP-30-00308


Dear Mr. Nabors:

Mr. Richey has now advised this office that he was relieved as your counsel. Therefore, we are marking our records to reflect that you are currently proceeding *pro se* in this matter. By copy of this letter, I do ask that Mr. Richey contact the clerk of court to correct it records since the public case index for Laurens County still lists him as your counsel.

For this matter to proceed, it will be necessary for you to provide the Court with a proof of service showing that the notice of appeal has been timely served on opposing counsel. This document should be provided within ten days of the date of this order. This proof of service should be substantially in the form specified in

the attached form.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a long horizontal line extending to the right.

CLERK

Enclosure

Form 7- Proof of Service for a Notice of Appeal

cc: Salley W. Elliott, Esquire  
Rodney Wade Richey, Esquire

Exhibit #5



State of South Carolina  
The Circuit Court of the Third Judicial Circuit

Clifton Newman  
Judge

Post Office Box 516  
Kingstree, SC 29556-0516  
Phone: (843) 355-9321  
Ext: 7302  
Fax: (843) 355-1576  
cnewmanj@sccourts.org

June 25, 2013

Benjamin R. Nabors, #233844  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, South Carolina 29210

Dear Mr. Nabors:

This letter responds to all of your correspondences to Judge Newman from March 13, 2013 to June 25, 2013. Judge Newman has received several documents, which include, but not limited to, previous correspondences you have sent to other court officials, attorneys, court reporters, and the clerk of court. Please be advised that Judge Newman cannot assist you with these matters.

Further, this letter is to inform you that Judge Newman only had jurisdiction over your PCR Application. Because the Order of Dismissal of your PCR Application was filed with the Laurens County Clerk of Court on May 22, 2013 and you did not file a Motion to Alter or Amend a Judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure within 10 days of being served with the Order, Judge Newman no longer has jurisdiction over the matter.

Please do not forward anymore correspondences to Judge Newman's office as he will not be able to respond to or address any of your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Sutania A. Radlein".

Sutania A. Radlein  
Law Clerk

Cc: The Honorable Lynn W. Lancaster, Laurens County Clerk of Court  
Rutledge Johnson, Assistant Attorney General



ALAN WILSON  
ATTORNEY GENERAL

May 20, 2013

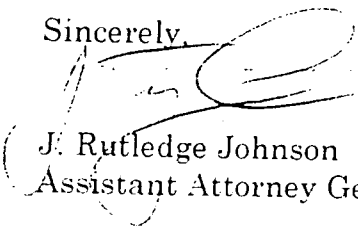
The Honorable Lynn W. Lancaster  
Clerk of Court, Laurens County  
Post Office Box 287  
Laurens SC 29360

Re: **Benjamin R. Nabors v. State of South Carolina**  
**2011-CP-30-0308**

Dear Ms. Lancaster:

Enclosed please find an original and a copy of an Order of Dismissal in connection with the above referenced case. Please file the original and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,

  
J. Rutledge Johnson  
Assistant Attorney General

JRJ:cey  
Enclosures

cc: Benjamin R. Nabors, 233844

STATE OF SOUTH CAROLINA )  
COUNTY OF LAURENS )

IN THE COURT OF COMMON PLEAS  
EIGHTH JUDICIAL CIRCUIT

Benjamin Ray Nabors, #233844, )  
Applicant, )

2011-CP-30-0308

v. )

**ORDER OF DISMISSAL**

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), SCRCP).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler 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).

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*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

---

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

<sup>2</sup> 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. Boykin 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.

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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

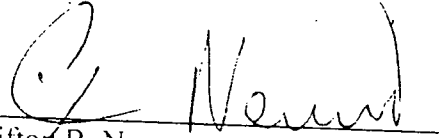
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED!**



Clifton B. Newman  
Presiding Circuit Court Judge  
Eighth Judicial Circuit

April 25, 2013

Lexington, South Carolina,