

PS#-1

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

---

RECEIVED

JUL 10 2013

S.C. Supreme Court

APPEAL FROM LAUREN COUNTY  
COURT COMMON PLEAS  
CLIFTONS B. NEWMONS, CIRCUIT COURT JUDGE

---

APPELLATE CASE NO: 2013-001195  
LOW COURT CASE NO: 2011-CP-30-00308

---

THIS IS A MOTION FOR EVIDENTIARYS  
HEARING:

BEN NABORS VS. THE STATE, S.C.

---

Pg ~~11~~ = 2

PLEA IT THIS MOSTS HONORABLE  
COURT SUPREME COURT OF S.C.

COMES NOW THE APPELLANT  
IN THIS MOTION FOR AN

EVIDENTIARY HEARING, BEN NABORS  
(THE MOVER OF THIS MOTION.)

WHO SWEARS ON PENALTY OF  
ALL OF PERJURY THAT HE CAN AND  
WILL SHOW GOOD CAUSE SHOWN

AT AN EVIDENTIARY HEARING BEFORE  
THIS COURT IF IT WOULD ONLY

GRANT HIM A CHANCE TO DO  
SO, THAT DUE TO EXCUSABLE  
NEGLECT MISTAKE, AND HARM  
FUL ERROR OF P.C.R. COURT

PS ~~###~~-3

IN ITS FAILURES TO  
FOLLOW SCRCP RULE 71.1 (F)  
IN ITS FILING OF ORDER  
OF DISMISSAL SIGNED BY THE  
HONORABLE JUDGE CLIFTON B.

NEWMON ON 4-25-13  
AND DUE TO OTHER EXCUSABLE  
EXTRIGENT CIRCUMSTANCES, SUCH  
AS THE PRO SE APPELLANTS  
HAVING BEEN MENTALLY DISTRAUGHT,  
AFTER A 5-12-13, SEXUAL  
ATTACK ON HIS PERSON BY A  
HIS ROOMMATE ANTONY  
GILBERT, WHILE HOUSED  
AT B.R.C.I. IN ROOM  
MCT. #1035-B, ON  
5-12-13, WHICH DID

PS ~~###~~ = 4

Require Hospitalization  
treatment in outside prison  
medical facility p/metro

Regional on 5-12-13  
hear in Columbia S.C.

That also due to also a  
(fact) that the prose  
appellant was improperly

served by the attorney  
generals office J. Rutledge

Johnson E&S, S.C. on  
about 5-21-13 with an  
(unfiled) and (untrue)  
copy of original order of  
dismissal of P.C.R. application

2011-CP-30-308, signed  
by court on (4-25-13)

pg. ~~XXXXX~~ = 5

and improperly delivered  
NOT to the clerk of Lauren  
county common plea clerk.

CYN W. LANCASTER,  
according to SCRCP 71.1- (F),  
but instead it was delivered  
directly to J. Rutledge JOHNSON  
EQS. of S.C. Attorney General's  
office, who then withheld  
such order of dismissal  
for a month, before it  
forwarded such to the  
clerk of court common pleas  
court 8th Cir. CYN. W.  
LANCASTER. AS well as  
sending an (unfiled) and  
(untrue) copy of such

~~PS-11111~~ = 6

ORDER OF P.C.R. application  
dismissed to the pro se  
appellant, BEN NABORS,

who then, while on  
lockup (P.H.D.) after  
5-12-13 sexual rape attack  
he suffered due to S.C.D.C.

ignoring his pleas for protection  
and help from his roommate,  
ANTONIO GILBERT, also an

S.C.D.C. inmate, and with  
out his legal books on S.C.R.C.P.,  
S.C.R.A.P. RULES, procedures of  
courts to aid him, and while  
under impression of the

Attorney General's office  
of S.C. Cause of improper

89 ~~XXXXXX~~ = 7

having been served with such  
(improper) (INCORRECT)  
copy of (UNFILED) p.c.R.  
order of Dismissal, by S.C.  
Attorney General's Office  
ON or about 5-21-13,  
and while suffer from  
pituitary and paranoid  
Schizophrenia, improperly  
medicated, etc. This pro  
se appellant attempted to  
file his 59(e) motion  
and notice of appeal  
AT SAME (9/23/13) and did  
file and serve such

~~P 5~~ 8

59 (e) motion correctly  
on all party's on 5-25-13  
which he can easily prove  
by introducing evidence of  
cunch such as motioned  
for evidentiary hearing he  
now humbly prays this court  
to grant him. ALSO,  
This prose party will  
show by preponderance  
of evidences that the  
Lower p.c.R. court (Did NOT)  
correctly serve him with  
(true & filed copy) of  
p.c.R. court's order of dismissal

PG. ~~XXXXXXXXXX~~ = 9

UNTL (5-31-13) of  
there about.

PLEASE ~~SEE~~ ALL  
ATTACHMENTS  
THE ENVELOPES WHICH THE  
ATTORNEY GENERAL S.C. MAILED  
IMPROPER UNFILED UNLOCKED  
COPY OF ORDER OF DISMISSAL  
OF P.C.R. APPLICATION SIGNED BY  
P.C.R. CONTON 4-25-13,  
TO ME. "ALSO INCORRECTLY  
ADDRESSED AND SENT TO WRONG  
INSTITUTION".

PS ~~\*\*\*\*\*~~ = 10.

ALSO ~~SEE~~ the envelope  
FROM LOWER COURT CLERK  
COURT, LYN W. LANCASTER,

8th. Cir. CAUSEN COUNTY  
S.C., which she mailed the  
correctly clocked filed version  
copy of such order of dismissal  
to me on 5-22-13. The  
S.C.D.C. make room (did not)  
receives share UNTIL 5-28-13  
AND THIS pro se party (did not)  
(Sign for, actually receive)  
UNTIL 5-31-13.

AS THIS pro se party  
SWEARS his 59 (e) was  
correctly filed with lower court,

PS ~~XXXXXXXXXX~~ = 11

AND CORRECTLY SERVED ON  
ALL PARTYS, THE P.C.R JUDGE,  
CLIFTON B. NEWMAN, THE ATTORNEY  
GENERAL, J. RUTLEDGE JOHNSON  
AESO. AND THE CLERK OF BOTH  
THE U.S. APPEALS COURTS, 4TH CIR.  
RICHMOND, VA, AS WELL AS THE  
8TH CIR. COURT COMMON PLEAS COURT  
CLERK OF COURT CYN W. LANCASTER,  
AS WELL AS THE CLERK OF  
APPEALS COURT, S.C. FANYA, Bee,  
ALL ON 5-25-13.

THIS PRO SE APPELLANT,

BEN NABORS, IS  
ASSERTING SWEARING THAT

PS. ~~XXXXXXXXXXXX~~ = 12

He can, at an evidentiary  
Hearing, prove by a  
preponderance of

evidences, factual

evidence, supported by  
factual documentation,

and witnesses testimony

That his 59(e) motion  
should be allowed to be

filed, and addressed  
in lower court at once,  
and to deny such,

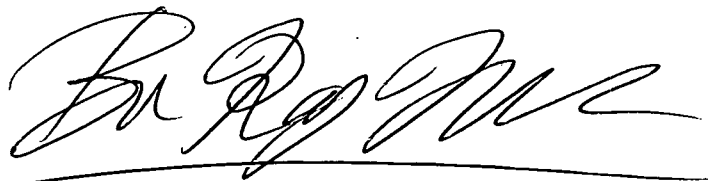
would be a great  
miscarriage of justice

PG. ~~XXXXXXXXXX~~ = 13

This pro se party respectfully  
prays that this court clocked  
file, put on court's docket  
for evidentiary hearing roster,  
and return true copy of  
this pro se motion back  
to the mover of such motion,  
pro se appellant, BEN NABO PS.

Respectfully submitted

7-5-13  
DATS



BEN NABO PS A233844  
B.R.C.I. MLT. 1101-A  
4460 BROADSIVERS ROAD S  
CUL, S.C. 29210

CC: ATTORNEY GENERAL S.C.,  
RUTLEDGE JOHNSON ELES  
LYN. WILCANCASTER LOWER COURT CLERK N. CO. 8TH-CIT.

A of B

PROF OF SERVICE

THE STATE OF SOUTH CAROLINA  
IN COURT APPEALS  
IN SUPREME COURT, S.C.

APPEAL FROM LAUREN COUNTY  
COURT COMMON PLEA  
CLIFTON B. NEWMONS, CIRCUIT JUDGE

Appellate case no: 2013-001195  
LOW COURT case no: 2011-CP-30-00308

MOTION FOR EVIDENTIARY  
HEARING.

PROSE. BEN NABORS VS STATE S.C.

This pro se party swears  
he did correctly serve copy of this  
motion for evidentiary hearing  
concerning lower court's denial of his  
SD (P) motion, ON 7-5-13.

BoFD

By placing such in  
Prison mail system at  
R.P.C.T. ON 7-5-13

By placing such, addressing  
Such to:

\* DANIEL E. SHAROUSE  
CLERK S.C. SUPREM COURT  
P.O. BOX 511330  
CUL. S.C. 29211

and serving copies of such  
motion on all parties  
Attorney General, S.C.

J. Rutledge JOHNSON, G.S.

<sup>and</sup>  
P.C.R. COURT, C.B. NEWMON.

BEN NABBS  
SCDC # 233844  
4460 Broad Street Rd  
CUL. S.C. 29210

7-5-13

DATS

Ben N

BEN NABBS

Exhibit 1 (A).

(improper copy) ATTORNEY GENERAL  
J. RUTLEDGE JOHNSON E.O.S.

(UNFILED, UNLOCKED)  
mailed me on about

BUT I DID NOT ACTUALLY

RECEIVE UNTIL (5-24-13)

AND ENVELOPE WHICH  
SUCH FRAUDULENT COPY  
OF P.C.R. COURTS ORDER OF  
DISMISSAL CAME IN, ALSO  
"INCORRECTLY ADDRESSED"



ALAN WILSON  
ATTORNEY GENERAL

May 20, 2013

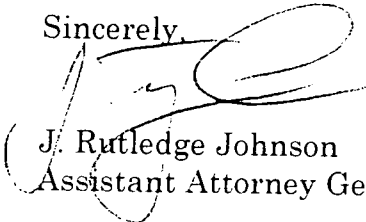
The Honorable Lynn W. Lancaster  
Clerk of Court, Laurens County  
Post Office Box 287  
Laurens SC 29360

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



POST OFFICE BOX 11549  
COLUMBIA, SOUTH CAROLINA 29211-1549

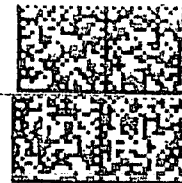
**RECEIVED**

MAY 23 2013

BRCI  
MAILROOM

5148  
BRCI

Benjamin R. Nabors, 233844  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899



Postage

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\$00.660

05/20/2013

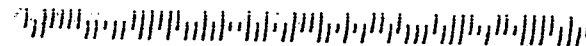
Mailed From 29201

US POSTAGE

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MAIL ROOM

MAY 21 2013

**RECEIVED**



4-25-13

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), 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).

*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> Smith v. Ohio, 277 S.Ct. 329, 275 S.E.2d 526 (1981) (competency to stand trial).

<sup>2</sup> 379 U.S. 359 (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

Page 7 of 10

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.

CW

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

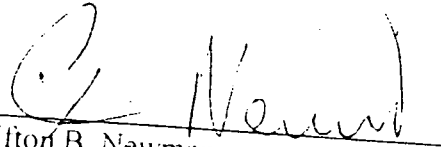
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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,

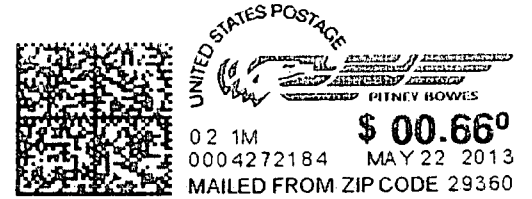
~~Dr. [unclear]~~

EXHIBITS 1 (B)

ENVELOPE THAT LOWER COURT  
CLERK COURT, LYNN W. LANCASTER,  
8TH CIR. COMMON PLEAS, CAUSEN  
COUNTY, S.C. MABEL TRUE, FILED  
COPY OF ORIGINAL JUDGE'S ORDER  
DISMISSAL OF MY P.R. APPLICATION  
WITH PREJUDICE, SIGNED BY JUDGE  
ON (9-25-13) BUT NOT  
ACTUALLY SERVED ON ME  
UNTIL (5-31-13).

JUDGE CLIFTON B. NEWMAN  
VIOLATED S.C.R.C.P. 71.1.(F).

AFTER FIVE DAYS RETURN TO  
**LYNN W. LANCASTER**  
CLERK OF COURT—LAURENS COUNTY  
P. O. BOX 287  
LAURENS, S. C. 29360



50148

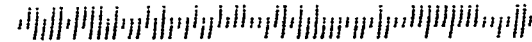
Benjamin Ray Nabors #233844  
Broad River Correctional Institution  
Saluda 148-A  
4460 Broad River Road  
Columbia, SC 29210

**RECEIVED**

MAY 28 2013

BRC  
MAILROOM

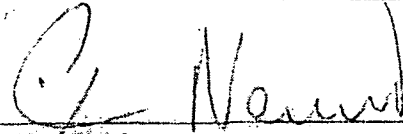
29210404799



**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!**

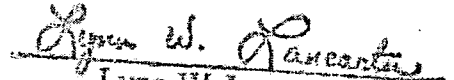


Clifford B. Newman  
Presiding Circuit Court Judge  
Eighth Judicial Circuit

April 25, 2013

Lexington, South Carolina

A TRUE COPY OF ORIGINAL



Lynn W. Lancaster  
Laurens County CCCP & GS

A of B

# PROOF OF SERVICE

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THE STATE OF SOUTH CAROLINA  
IN COURT APPEALS  
IN SUPREME COURT, S.C.

APPEAL FROM CAUTION COUNTY  
COURT COMMON PLEA  
CLIFTON B. NEWMONS, CIRCUIT JUDGE

APPELLATE CASE NO. 2013-001195  
LOW COURT CASE NO. 2011-CP-30-00308

MOTION FOR EVIDENTIARY  
HEARING.

PROSE. BEN NABORS VS STATE S.C.

THIS PRO SE PARTY SWEARS  
HE DID CORRECTLY SERVE COPY OF THIS  
MOTION FOR EVIDENTIARY HEARING  
CONCERNING LOWER COURT'S DENIAL OF HIS  
SD (e) MOTION, ON 7-5-13.

BofD

By placing such in  
Prison mail system at  
B.P.C.J. on 7-5-13

By placing such, addressing  
Such to:

\* DANIEL E. SHEAROUSE  
CLERK S.C. SUPREM COURT  
P.O. BOX 511330  
CUL. S.C. 29211

and serving copies of such  
motion on all parties  
Attorney General, S.C.

J. Rutledge JOHNSON, SCS

BENNABBS  
SCDC# 233844  
446 Broad Street Rd  
CUL. S.C. 29210

and  
P.C.R. CONT. C. B. NEWMON.

7-5-13

DATS

Bennabbs

BENNABBS

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

June 28, 2013

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

RE: Status of Motions

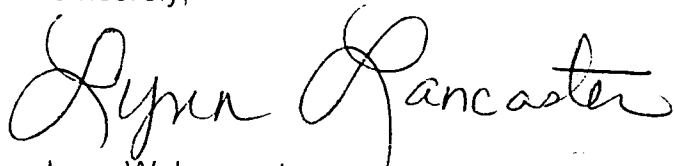
Dear Mr. Nabors:

You repeatedly refer to Rule 52 and 59 motions and ask for the status of the same. You do not have a Rule 59 motion in front of the court because I refused to file the same. Your case is on appeal and this court no longer has jurisdiction to consider that motion.

There may have been another motion filed after the March hearing date; however, according to Judge Newman's recent letter, he is of the opinion that his jurisdiction was concluded with the Order of Dismissal filed on May 22, 2013.

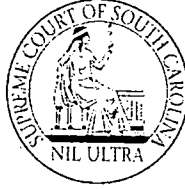
I am only writing to you today because Court Administration asked that I assist you in reference to the recent correspondence you sent to them.

Sincerely,

A handwritten signature in black ink that reads "Lynn W. Lancaster". The signature is written in a cursive, flowing style.

Lynn W. Lancaster

/lwl



# 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.

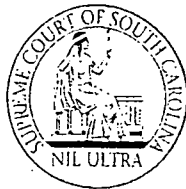
Sincerely,

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

Exhibits  
#4



## 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 13, 2013

Rodney Wade Richey, Esquire  
P.O. Box 10916  
Greenville, SC 29603-0916

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

Dear Counsel:

Enclosed is a *pro se* notice of appeal and letter that has been filed by Mr. Nabors. Since the public case index for Laurens County shows that you are his counsel in this matter, I remind you that under Rule 71.1(g) of the South Carolina Appellate Court Rules (SCACR) that you remain his counsel of record before this Court.

This case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

For this matter to proceed, it will be necessary for you to provide the following within ten (10) days of the date of this letter:

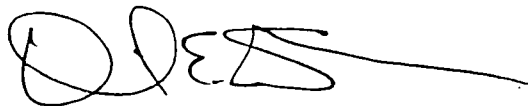
- (1) A proof of service showing that the notice of appeal has been timely served on opposing counsel; and
- (2) A copy of the order(s) to be challenged on appeal.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267, SCACR. The SCACR are available online at [www.sccourts.org/courtreg](http://www.sccourts.org/courtreg). Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

\* The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at [www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm](http://www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm). Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Finally, in the notice of appeal, your client makes reference to the filing of a Rule 59, SCRPC, motion. The public case index does not show that any Rule 59 motion has been filed with the clerk of the lower court.

Very truly yours,

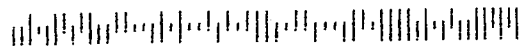


CLERK

cc: Mr. Ben Nabors, 233844  
Salley W. Elliott, Esquire



01 + 2221111



Broad Street P.D.  
Cul. S.C. 29211

RECEIVED

JUL 05 2013



SYSTEM CONT. S.C.  
DANIEL E SHEAROUSE  
P.O. BOX 1133 Q  
CUL. S.C. 29211

NOTICES  
Emergency Motion for Eviction  
Hearing enclosed

MALDON  
76-13  
*[Signature]*

LEGAL MAIL