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July 30, 2013

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: State of South Carolina, Respondent, v. William Sheroid Camp Appellant
Case No: 2011-CP-11-00777

Dear Mr. Shearouse:

Please be advised that I was appointed to represent Mr. Camp for the above referenced action. Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the Proof of Service of the Notice of Appeal on the Respondent and a copy of the Order that is being appealed. I am enclosing an extra copy of the proof of service and the Notice of Appeal. Please send me copies in the self-addressed envelope enclosed.

The Appellant, Mr. William Camp, hereby has advised the Court that he wishes to appeal the attached order, and to claim indigent status in light of his inability to pay for an appeal. I was appointed as counsel for Mr. William Camp by Order of Brandy McGee, Clerk of Court, dated December 1, 2011. I have attached the order to this letter. Given Mr. Camp's claim of indigency, I am therefore perfecting the filing of this Notice of Appeal and forwarding a copy of these materials to the South Carolina Appellate Defense as notice of Mr. Camp's desire to appeal.

In advance, thank you for your attention and cooperation.

Yours very truly,
Harrison, White, Smith & Coggins, P.C.

Tom A. Killoren, Jr.
Tom@spartanlaw.com
Licensed in SC, NC, and GA

TAKJr/snf
Enclosures
cc: Suzanne H. White
Assistance Attorney General
Post Office Box 11549
Columbia, SC 29211
Attorney for Respondent

The Honorable Brandy McBee
Cherokee County Clerk of Court
P.O. Box 2289
Gaffney, SC 29342

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2011-CP-11-00777

State of South Carolina, Respondent,

v.

William Sheroid Camp, Appellant.

NOTICE OF APPEAL

William Sheroid Camp appeals the order of the Honorable J. Derham Cole, dated July 10, 2013, which denied appellant's motion for post-conviction relief. Appellant received written notice of entry of this order on Thursday, July 18, 2013.

July 30, 2013

Harrison, White, Smith & Coggins

By: _____

Thomas A. Killoren, Jr., Esq.
178 West Main Street
Post Office Box 3547
Spartanburg, South Carolina 29304
(864) 585-5100
Attorney for Appellant

Other Counsel of Record:
Suzanne H. White
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

William Sheroid Camp, Circuit Court Judge

Case No. 2011-CP-11-00777

State of South Carolina,

Respondent,

v.

William Sheroid Camp,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the South Carolina Attorney General's Office, as Attorney for Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on July 30, 2013, addressed to the Attorney of Record, Assistant Attorney General, Suzanne White Post Office Box 11549, Columbia, South Carolina 29211-1549.

Thomas A. Killoren, Jr. (S.C. Bar No. 69490)
Harrison, White, Smith & Coggins
178 West Main Street
Post Office Box 3547
Spartanburg, SC 29304
(864)-585-5100
Attorney for Appellant

July 30, 2013
Spartanburg

cc: South Carolina Office of Appellate Defense
P.O. Box 11433
Columbia, South Carolina 29211

Mr. William Camp
SCDC # 00240141
Trenton Correctional Institute
84 Greenhouse Rd.
Trenton, SC 29847

STATE OF SOUTH CAROLINA)	**IN THE COURT OF** (*Select one.*)
COUNTY OF Cherokee)	☑ **COMMON PLEAS** ☐ **FAMILY COURT**
)	Seventh **JUDICIAL CIRCUIT**
William Sheroid Camp,)	**CASE NO.:** 2011-CP-11-777
Plaintiff(s),)	**APPOINTMENT OF COUNSEL OR GAL**
-vs-)	(*Select one.*)
State of SC,)	☑ **ORDER**
Defendant(s).)	☐ **AMENDED ORDER**

TYPE OF CASE/PROCEEDING: (*Select one.*)

☑ Post-Conviction Relief (PCR)/habeas case	☐ Adoption	☐ Juvenile
☐ SVP case	☐ Custody and/or Visitation	☐ Abuse and Neglect
☐ Minor Name Change	☐ Other:	

It appears that William Sheroid Camp, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (*Select one.*)

☑ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.

☐ counsel/guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or GAL based on: _____

☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.

☐ court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.

☐ Other: _____

Therefore, it is ordered that Thomas A. Killoren, hereby is appointed as (*Select only one.*)

☑ counsel ☐ lead counsel (*if capital PCR case*) ☐ guardian ad litem

for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (*If Death Penalty PCR Case*) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.
2011 DEC 1 PM 3 34
BRANDY MCBEE

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 1 DAY OF December, 2011.

Brandy McBee

☐ Circuit Judge ☑ Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

SCCA/267 (03/07)

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JUL 16 PM 1 28
BRANDY W. MCBEE

JUDGMENT IN A CIVIL CASE

CASE NO: 2011CP1100777

William Sheroid Camp *vs.* **State Of South Carolina**

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.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **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; ☐ Statement of Judgment by the Court:

Order of Dismissal

Dated at Gaffney, South Carolina, this the 16th day of July, 2013.

Court Reporter:

s/ J. Derham Cole

PRESIDING JUDGE - J. Derham Cole

This judgment was entered on the the 16th day of July, 2013, and a copy mailed first class this the 16th day of July, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Thomas A. Killoren Jr. PO Box 3547 Spartanburg, SC 29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

Alan McCrory Wilson PO Box 11549 Columbia, SC 292111549

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee

Brandy W. McBee - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	
240141	)	
William Sheriod Camp #345172,	)	2011-CP-11-0777
	)	
Applicant,	)	
	)	
v.	)	**ORDER OF DISMISSAL**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JUL 16 AM 11 17
BRANDY M. MCBEE

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 15, 2011. The Respondent made its Return on or about August 22, 2012. An evidentiary hearing into the matter was convened on January 9, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Thomas A. Killoren, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Ricky Harris, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted at the May 2009 term of the Cherokee County Grand Jury for distribution of crack cocaine, third offense (09-GS-11-0578), and distribution of crack cocaine within one-half mile of

a school/park (09-GS-11-0579). He was represented by Ricky Harris, Esquire. On January 26, 2011 the Applicant pled guilty as indicted. He was sentenced by the Honorable Roger L. Couch to confinement for a period of twelve (12) years for distribution of crack cocaine, and ten (10) years for distribution of crack cocaine within one-half mile of a school/park, to run concurrent.

A timely Notice of Appeal was filed on behalf of the Applicant. Pursuant to the provisions of Rule 203(d)(1)(B)(iv) SCACR, an Explanation of Grounds, dated February 8, 2011, was filed on behalf of the Applicant. The South Carolina Court of Appeals dismissed the appeal by written Order dated April 19, 2011. Upon information and belief the Remittitur was issued on January 19, 2012.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel, in that;
   a. Counsel "failed to investigate my 1997 plea bargain agreement and erroneously advised me that Distribution of Crack Cocaine could legally be treated as a 3rd offense when, in fact, my January 13, 1997, plea bargain were all 1st offenses, in violation of my 6th and 14th Amendment rights under the U.S. Constitution;"
2. "The State breached the 1997 plea bargain agreement where my January 13, 1997, plea agreement to indictment number (1996-GS-11-0938, -0939, -0940, -0941, -0942, -0943) were all for 1st offenses and prior to the subject matter guilty on indictment (209-GS-11-0578), I was informed by counsel that some of these charges in my January 13, 1997, plea were now treated as 2nd offenses in violation of my 5th and 14th Amendment rights under the U.S. Constitution;"
3. Involuntary guilty plea; in that,
   a. "Counsel and trial court explained the maximum sentence for an erroneous 3rd offense when, in fact, my prior record of offenses were all for 1st

offenses, in violation of the 6th and 14th Amendment rights under the U.S. Constitution."

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

This Court notes that the Applicant informed this Court that he would be proceeding on the allegations of ineffective assistance of counsel and involuntary guilty plea based upon the premise that Counsel provided incorrect advice to Applicant regarding his the enhancement of his charges.

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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). 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).

Applicant testified that he originally proceeded to trial on these charges before pleading guilty pursuant to a plea agreement in 2011. Applicant testified that he was told that a 1996 possession of marijuana charge was being counted against him for enhancement purposes. However, Applicant believes that the marijuana charge was too old to be used against him. Applicant testified that all of his other prior drug charges were first offenses and the sentences were run concurrently.

Applicant testified that he also pled guilty to a proximity charge, but only had two to three minutes to discuss that particular charge with Counsel at the guilty plea. Applicant acknowledged that he was aware of the indictment for proximity the entire time, but did not know that he would have to plead guilty to that charge as well until the actual plea. Applicant testified that he did discuss serving eighty-five percent of his time before parole with Counsel.

Applicant also testified that he was offered a plea to distribution second offense for ten years, but the plea sheet had the wrong CDR code on it and Applicant testified that because he questioned the CDR code, the plea was revoked.

Counsel testified that he was retained to represent the Applicant several months prior to the scheduled trial. Counsel testified that he met with the Applicant at least three to four times prior to trial. Counsel testified that the Applicant did raise the issue of all previous charges being first offenses several times, but Counsel testified that he explained to Applicant that it was the separate offenses that mattered, not whether or not the charges were listed as first offense. Furthermore, Counsel testified that he reviewed the Applicant's record and the Applicant had pled to numerous distribution charges in the 1990s and then pled to several distribution charges on March 27, 2000. Counsel testified that all of those charges could count as priors for enhancement purposes. Counsel also testified that he discussed whether or not the marijuana charge could be used, but because of the number of other charges, it made no difference.

Counsel testified that the plea was entered prior to trial began, but after the pre-trial motions had been made. Counsel testified that included in the pre-trial motions was a motion to enforce the prior plea agreement for ten years. Counsel testified that the State did originally offer a second offense ten year plea, but the Applicant refused to sign the sentencing sheet with an incorrect CDR code and when the Assistant Solicitor reviewed the sheet, she indicated that she was revoking the offer because she did not want to offer a parole eligible plea. However, Counsel testified that he explained the concept of detrimental reliance to the Applicant and the fact that the Applicant had not offered any benefit to the State for the plea offer.

Counsel testified that he reviewed with the Applicant the elements of each charge, possible sentence, and evidence that the State had against him prior to the trial. Counsel testified

that the Applicant agreed to plead to distribution third offense for twelve years and when they went in to sign the sentencing sheet, the sheet for the proximity charge was there as well. Counsel acknowledged that the Assistant Solicitor was insistent that the Applicant plead to the proximity charge at the plea, but Counsel testified that he had discussed the charge fully with the Applicant.

This Court finds the testimony of Counsel to be more credible that the testimony of the Applicant. The Applicant's allegations that Counsel failed to fully investigate his prior record and properly advise him regarding the possibility of the charge being enhanced are without merit. Following testimony and review of the record, it is clear that Counsel had advised the Applicant about the charges he was facing and the fact that his prior convictions qualified to enhance his charge to a third offense. Additionally, this Court finds that Counsel fully reviewed the proximity charge with the Applicant prior to his guilty plea. This Court finds no deficiency on Counsel's behalf and finds that the Applicant failed to show any prejudice that may have resulted from Counsel's alleged deficiencies. Accordingly, this allegation is dismissed.

Involuntary 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, 52 L.Ed.2d 136

(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).

Counsel testified that the Applicant was an experienced criminal litigant, who had even previously had a conviction overturned on post-conviction relief. Counsel felt confident that the Applicant knew exactly what he was doing when he pled guilty. Counsel also testified that the Applicant was never satisfied with any answer he received to any question and indicated at times that he believed Counsel was in cahoots with the State. Counsel testified that he advised the Applicant to retain another attorney if he was not satisfied with Counsel, but Applicant chose to proceed with Counsel.

Counsel testified that he was never concerned with the voluntariness of Applicant's plea, even during the plea when Applicant asked some questions. Counsel testified that he does not believe in any way that the plea was involuntary or unknowing, especially in light of the fact that Counsel reviewed all discovery materials with Applicant, including pictures and video evidence.

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). This Court finds that the Applicant has failed to meet his burden of proof as to this claim. Following a review of the transcript and testimony presented at the hearing, this Court finds that the Applicant pled guilty freely and voluntarily, with full knowledge of the charges he was pleading guilty to, as well as the potential sentence he faced on each. This Court finds that the Applicant was advised by Counsel as to his potential to win at trial and that Counsel reviewed all discovery materials with the Applicant. Therefore, this claim is denied and dismissed.

Summary

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, Counsel's testimony is more credible than the Applicant's testimony. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

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. See Frasier *supra*. Therefore, this allegation is 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 cautions 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 this 10 day of July, 2013.

J. Derham Cole
Presiding Judge

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JUL 16 AM 11 18
BRANDY W. MCBEE

HWS&C
HARRISON, WHITE, SMITH & COGGINS,

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The Honorable Daniel E. Shearouse
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