

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

James R. Barber, III Circuit Court Judge

Case No. 2012-CP-28-00901

Henry R. Woods, SCDC # 314307, Appellant

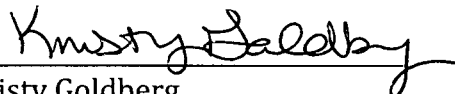
v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant Henry Woods hereby appeals from the Order of the Honorable James R. Barber, III presiding Judge for the 5th Judicial Circuit, filed July 17, 2013 and received by counsel for the Applicant on July 19, 2013 in the matter of Henry Woods v. State of South Carolina, Case No. 2012-CP-28-0901.

August 4, 2013


Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
Phone (803) 252-2299
kristy@kristygoldberglaw.com

RECEIVED

AUG 07 2013

S.C. SUPREME COURT

Other Counsel of Record:

Assistant Attorney General, Megan Harrigan
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

James R. Barber, III Circuit Court Judge

Case No. 2012-CP-28-00901

Henry R. Woods, SCDC # 314307, Appellant

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes
and states:

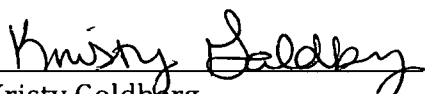
She is the counsel of record for Applicant;

Service by mail is proper in this instance; and

She has served the NOTICE OF APPEAL on the following party on August 4, 2013 by
depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Megan Harrigan
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

August 4, 2013


Kristy Goldberg

Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
Phone (803) 252-2299
kristy@kristygoldberglaw.com

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012-CP-28-00901

Henry R. Woods

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(b), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

FILED FOR RECORD
 2013 JUL 17 AM 10:32
 JOYCE McDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 17th day of July, 2013, and a copy mailed first class or placed in the appropriate mail, direct or certified 17th day of July, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

CPFORM4Cm
 SCCA SCRPC Form 4C (Revised 3/2013)

ATTEST True, Correct & Certified
 Copy of Original on File in this
 Court.

Joyce McDONALD
 Clerk of Court Kershaw County

Kristy Grafton Goldberg 1720 Main Street, Suite 301
Columbia, SC 29201

Megan E. Harrigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Joyce McDonald

Court Reporter

Joyce McDonald - Clerk of Court

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Henry Woods, #314307,)
)
Applicant,)

Case No. 2012-CP-28-0901

v.)

ORDER OF DISMISSAL

State of South Carolina,)
)
Respondent.)

FILED FOR RECORD
2013 JUL 17 AM 10:32
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed October 24, 2009. The Respondent made its Return on November 13, 2012. Thereafter, Applicant, through his counsel, amended his application on April 22, 2013 and again on May 1, 2013. An evidentiary hearing into the matter was convened June 4, 2013, at the Richland County Courthouse. The Applicant was present at the hearing and was represent by counsel, Kristy Goldberg, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. Applicant was indicted during the November 2006 term of the Kershaw County Grand Jury for Murder (2006-GS-28-0421) and during the March 2009 term of the Kershaw County Grand Jury for Lynching in the Second Degree (2009-GS-28-0358). Applicant was represented by Cornelius J. Riley, Esquire. On July 26, 2010, the Applicant appeared before the Honorable J. Ernest Kinard, Jr., and pled guilty pursuant to North Carolina v. Alford¹ to the lesser included offense of Voluntary Manslaughter and as indicted to Lynching in the Second

¹ 400 U.S. 25, 91 S. Ct. 160; 27 L. Ed. 2d 162 (1970).

ATTEST True, Correct & Certified
Copy of Original on File in this
Court.

Joyce McDonald
Clerk of Court Kershaw County

Degree. Judge Kinard sentenced Applicant to twenty-two years imprisonment for Voluntary Manslaughter and to twenty years imprisonment for Lynching in the Second Degree, with the sentences to be served concurrently. Applicant filed a timely motion to reconsider his sentence, which was heard and denied by the plea court on August 26, 2010.

A notice of appeal was filed and an appeal was perfected on Applicant's behalf. Following the submission of briefs, the South Carolina Court of Appeals affirmed Applicant's guilty plea and sentences. State v. Henry Woods, Op. No. 2012-UP-102 (Ct. App. filed Feb. 22, 2012). The Remittitur was sent on March 12, 2012.

At the evidentiary hearing, Applicant proceeded forward on the following grounds as set forth in his second amended application for post-conviction relief:

1. Ineffective Assistance of Counsel for failure to prepare Applicant for trial and failure to provide Applicant with information regarding exculpatory evidence including but not limited to the existence of gunshot residue on the victim;
2. Ineffective Assistance of Counsel for failure to adequately prepare Applicant for trial including but not limited to discussing available defenses;
3. Ineffective assistance of counsel for failure to propel investigate witnesses Vincent Bracey as a witness for trial;
4. Ineffective assistance of counsel for failure to advise Applicant about his rights during trial regarding his right to testify; and
5. Ineffective assistance of counsel for coercing applicant to plead guilty.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Vincent Bracey and Maurice Chisholm. Respondent presented testimony from plea counsel, Cornelius J. Riley, Esquire (herein "Counsel"). This Court also had before it Applicant's guilty plea transcript, motion for reconsideration transcript, the transcript of the plea,

proffered testimony and sentencing of the Applicant's co-defendants, the records of the Kershaw County Clerk of Court, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

Testifying first on Applicant's behalf at the evidentiary hearing was Vincent Bracey (herein "Bracey"), who is currently incarcerated at the Lee Correctional Institute (SCDC # 320786) for Voluntary Manslaughter, Assault and Battery of a High and Aggravating Nature, and Strong Arm Robbery. Bracey testified that he was present at the incident location and was involved in the altercation giving rise to these charges. Bracey testified that he had known Applicant prior to the altercation and that he was at the home of Applicant's child's mother with the victim at the time of the altercation or death of the victim. He testified that he was unaware that Applicant's commonly known nickname is "Smurf."

Bracey testified that he never gave a written statement to law enforcement and does not recall ever speaking with any investigators regarding the altercation. Bracey testified that the signed, written statement to law enforcement that identifies Applicant as the shooter was not written by him. Bracey elaborated that he had never seen the statement before this hearing. Bracey testified that he was unable to identify the shooter because the shooter's back was to him. He testified that he never saw the shooter's face, but did state that the Applicant was near the victim when he heard gunshots. He testified that the shooter's build from behind was different from Applicant's build, but acknowledged that he does not know who shot the victim.

Bracey testified that he never spoke with Applicant's counsel prior to Applicant's guilty plea. He testified that he has been incarcerated in the South Carolina Department of Corrections since early 2007, more than three years before Applicant's guilty plea. Bracey testified that he

was asked to testify for the State if Applicant proceeded to trial and did not agree to testify. However, he was aware that he was on the State's list of potential witnesses.

Testifying next on behalf of the Applicant was Maurice Chisholm (herein "Chisholm"), who is currently incarcerated at the Kershaw Correctional Institute (SCDC # 311039) for Voluntary Manslaughter and Armed Robbery. Chisholm testified that he has never met Applicant and was not present during the altercation giving rise to these charges. He testified that he spoke with Bracey while he was incarcerated at Lee Correctional Institute and that Bracey told him that "Smurf" did not shoot the victim, although he also said that Bracey may not have used the name "Smurf" during this conversation. He elaborated that Bracey told him that he did not know who shot the victim. Chisholm testified that the conversation took place in either "late 2006 or early 2007" and that he could not recall any specific details regarding the conversation. He testified that he has never spoken with law enforcement or Applicant's Counsel regarding his conversation with Bracey. He testified that he was not aware he was subpoenaed as a potential defense witness for Applicant's trial.

Applicant testified next on his own behalf. Applicant testified that he is currently incarcerated at the Lee Correctional Institute. He testified that he pled guilty pursuant Alford and still denies that he shot the victim. He testified that he was originally charged with murder, which he understands carries a mandatory minimum sentence of thirty years, which must be served day-for-day, and a maximum sentence of life imprisonment. He testified that the altercation arose from a dispute between himself and his child's mother over her refusal to allow him to see his child.

He testified that he was arrested shortly after the shooting and was in jail for approximately six months before he was released on bond. Applicant testified that he only met

with Counsel once before trial. He acknowledged that he never contacted Counsel and did not speak with Counsel, respond to Counsel's correspondence and calls, or provide Counsel with an updated address or phone number. He testified that he was aware Counsel moved to be relieved as counsel due to Applicant's refusal to meet with him or discuss the case.

He testified that Counsel never reviewed his discovery with him, including a SLED Gunshot Residue Report that analyzed himself and the victim; however, he testified that he recalled being tested for Gunshot Residue and that he recalled seeing the Report prior to his guilty plea. He testified that he never reviewed possible defenses with Counsel; however, he did acknowledge that he informed Counsel of potential witnesses that could be used in his defense, including Maurice Chisholm. He testified that Counsel did review potential witnesses for the State with him and he was aware that his child's mother Ebony Danzey, her sister Sanasia Danzey, and Vincent Bracey were subpoenaed to testify for the State. He testified that he was aware that both Danzey sisters would testify that he was the shooter. He testified that he did not request that Counsel subpoena Bracey to testify at trial, but he was aware that Bracey would be present at trial and Counsel could call him as a defense witness as well.

Applicant testified that he was aware that several of his co-defendants proffered testimony for the State and that he was not present for this hearing. He did acknowledge that he was initially present, but that the court removed him from the hearing due to concerns that the co-defendants were being improperly influenced and threatened. He acknowledged that Counsel was present during this hearing, but testified that Counsel did not review any notes from this hearing with him prior to trial and did not obtain a copy of the transcript for Applicant to review. He testified that he was aware that all co-defendants were listed as potential State witnesses and that he was aware of the testimony each co-defendant would likely provide at trial. Particularly,

he testified that he was aware that co-defendant Jeanette Haile proffered testimony that he had a gun and fired a gun during the altercation.

Applicant testified that he never asked Counsel to negotiate a favorable plea on his behalf and that he would have proceeded to trial if he had reviewed all discovery prior to his guilty plea. He acknowledged that the plea was a "good deal" compared to the possibility of serving a mandatory minimum of thirty years in prison if he had been convicted of murder at trial. He testified that Counsel advised him that this voluntary manslaughter was a non-parole sentence that would require him to serve at least eighty-five percent before being eligible for community supervision. He testified that prior to his guilty plea, Counsel reviewed his constitutional rights with him and acknowledged that he reviewed and signed an advisement of rights form (introduced into evidence at the hearing), including that he could testify at trial.

Applicant testified that he received a significantly longer sentence than any of his co-defendants; however, he acknowledged that he was the only person charged with murder. He testified that Counsel filed a motion to reconsider on his behalf, arguing that the court should reduce his sentence due to the disparities between his sentence and those received by his co-defendants. He testified that he was present for a hearing on this motion, which was denied by the court. Additionally, he testified that Counsel filed a notice of appeal and necessary documentation to perfect an appeal based on the sentence disparities between himself and his co-defendants.

Following Applicant's testimony, Respondent presented testimony from Counsel. Counsel testified that he was appointed to represent Applicant in December of 2007 and that he was Applicant's third attorney. He testified that he repeatedly tried to contact Applicant and had "extreme difficulty" contacting Applicant. He testified that Applicant failed repeatedly to

provide him with an updated address or telephone number and failed to keep scheduled appointments. He testified that he even reached out to Applicant's family members and pled with them to have Applicant contact him so that they could discuss the case. He testified that he eventually moved to either have the case continued or be relieved as counsel due to Applicant's complete refusal to meet with him or cooperate in his defense.

Counsel testified that following this motion, he was able to have a long meeting with Applicant. He testified that during this meeting, he was able to review the indictments, charges Applicant was facing, potential sentences, and elements the State would be required to prove at trial with Applicant. He testified that he discussed Applicant's version of events and possible defenses with Applicant during this meeting, as well as potential witnesses to call at trial. He testified that he reviewed the discovery with Applicant, including statements from Vincent Bracey, Jeanette Haile, Shanasia Danzey, and Ebony Danzey. Counsel elaborated that all of these statements implicated Applicant as the shooter. He testified that he told Applicant that all four would be called as witnesses for the State at trial and reviewed the State's potential witness list with him, which listed Vincent Bracey. He testified that he informed Applicant that all of his co-defendants would likely testify against him at trial and reviewed notes with him from the hearing where testimony was proffered. Counsel testified that he also reviewed the SLED Gunshot Residue Report with him. Counsel testified that the report showed that Applicant did not have any gunshot residue on him, but that the victim did have gunshot residue. Counsel testified that he did not find this particularly helpful, as Applicant was arrested hours after the incident and would have had ample time to wash off any potential gunshot residue by the time of his arrest, and the shooting occurred during a chaotic altercation between more than a dozen individuals. Counsel testified that he would have liked to have more time to review discovery

and prepare a defense with Applicant, but that he was significantly hindered by Applicant's refusal to cooperate in his defense or communicate with him.

Counsel testified that he was preparing to proceed to trial and that Applicant's case was noticed for trial approximately one week before his guilty plea. Counsel testified that his trial strategy was to convince the jury that Applicant was not the shooter or that he was just acting in self-defense after receiving fire from victim and his associates. Counsel testified that he felt as prepared as he could be to proceed to trial considering Applicant's refusal to communicate with him or assist in his defense. Counsel testified that he negotiated with the State on Applicant's behalf to secure a plea offer. He testified that the State offered to allow Applicant to plead to the lesser included offense of voluntary manslaughter, which "took heavy lifting" on Counsel's behalf. Counsel testified that he informed Applicant of the benefit of this plea offer, including that he would be eligible for community supervision after serving eighty-five percent of his sentence as opposed to the mandatory minimum of a day-for-day thirty year sentence if convicted of murder. He testified that he reviewed Applicant's constitutional rights with him and had him read and sign an advisement of rights form prior to his guilty plea.

Counsel testified that following Applicant's guilty plea hearing and sentencing, he filed a motion to reconsider Applicant's sentence based on the disparities between his sentence and that of his co-defendants. Counsel elaborated that Applicant was sentenced to twenty-two years imprisonment, while most of his co-defendants received a time served or probationary sentence; however, Counsel did acknowledge that none of Applicant's co-defendants were charged with murder. Counsel testified that the court denied his motion following a subsequent hearing. Counsel testified that he filed a notice of appeal on Applicant's behalf and filed a statement pursuant to SCACR 203(d)(1)(B)(vi) that the appeal was meritorious.

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 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony, along with the testimony of Bracey and Chisholm, is not as credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel was ineffective for failing to adequately prepare Applicant for trial and failure to provide Applicant with information regarding exculpatory evidence including but not limited to the existence of gunshot residue on the victim

Applicant asserts that Counsel was ineffective for failing to prepare him for trial and failure to provide him with exculpatory evidence. This Court finds that this allegation is without merit. The uncontroverted testimony presented at the evidentiary hearing is that Applicant refused to contact Counsel to participate in his defense. Counsel testified that he repeatedly tried to contact Applicant and had "extreme difficulty" contacting Applicant. He testified that Applicant failed repeatedly to provide him with an updated address or telephone number and failed to keep scheduled appointments. He testified that he even reached out to Applicant's family members and pled with them to have Applicant contact him so that they could discuss the case. He testified that when he finally met with Applicant, he went over all discovery materials, including the SLED Gunshot Residue Report, with Applicant. Additionally, Counsel testified

that he did not believe the Gunshot Residue Report was particularly exculpatory, as Applicant was arrested several hours after the incident and would have had ample time to wash off any potential gunshot residue by the time of his arrest, and the shooting occurred during a chaotic altercation between more than a dozen individuals. Additionally, Counsel testified that he reviewed the indictments, elements of each offense, and potential sentences with Applicant, as well as possible defenses. Counsel testified that he wanted additional time to prepare the matter with Applicant, but he was significantly hampered by Applicant's complete failure to assist or communicate with him.

Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, the Applicant has shown no actual prejudice from an alleged deficiency of counsel. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Counsel was ineffective for failing to adequately discuss available defenses with Applicant

Applicant asserts that Counsel was ineffective for failing adequately discuss available defenses with him. This Court finds that this allegation is without merit. As discussed above, the undisputed testimony presented at the evidentiary hearing is that Applicant refused to contact Counsel to participate in his defense and that Counsel was significantly hampered in his ability to prepare the case based on Applicant's uncooperativeness. Counsel testified that when he was finally able to meet with Applicant, he reviewed Applicant's version of the facts and possible defenses. Additionally, both Counsel and Applicant testified that Counsel reviewed potential defense witnesses, including Maurice Chisholm and Vincent Bracey, with Applicant.

Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, the Applicant has shown no actual prejudice from an alleged deficiency of counsel. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Counsel was ineffective for failing to properly investigate witness Vincent Bracey and failure to subpoena Bracey as a witness for trial

Applicant asserts that Counsel was ineffective for failing investigate Vincent Bracey as a witness and for failure to subpoena him as a witness for trial. This Court finds that this allegation is without merit. Counsel testified that he received a copy of the State's potential witness list in advance of trial and noted that Vincent Bracey was already subpoenaed to testify on behalf of the State. Counsel testified that he reviewed all discovery materials, including Vincent Bracey's statement to law enforcement, with Applicant. Applicant testified that he did not request that Counsel subpoena Bracey to testify at trial, but he was aware that Bracey would be present at trial and Counsel could call him as a defense witness as well. Additionally, both Counsel and Applicant testified that Counsel reviewed potential defense witnesses, including Maurice Chisholm and Vincent Bracey, with Applicant. As Maurice Chisholm's testimony centered around Vincent Bracey's statement being inaccurate, Counsel was clearly aware of Vincent Bracey's potential testimony on behalf of the defense at trial.

Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, the Applicant has shown no actual prejudice from an

alleged deficiency of counsel. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Counsel was ineffective for failing to adequately advise Applicant about his rights to trial regarding his right to testify

Applicant asserts that Counsel was ineffective for failing advised him of his rights to trial, including the right to testify. This Court finds that this allegation is without merit. Counsel and Applicant both testified that Counsel reviewed his constitutional rights with him prior to his guilty plea, including the right to trial. Additionally, both testified that Applicant reviewed and signed an advisement of rights form, which was introduced into evidence at the hearing, which specifically stated that Applicant was entitled to testify in his defense if he elected to proceed to trial. Additionally, the record reveals that the plea court also advised Applicant of his constitutional rights during its plea colloquy, including his right to testify:

THE COURT: Of court you personally can testify or not, that would be your choice during a trial. And [the State] can't make you testify, they can't keep you from testifying . . .

Tr. P. 7 ln. 25 – p. 8 ln. 3. This Court finds that Counsel adequately reviewed all of Applicant's constitutional rights with him, including the right to testify, with him prior to trial, as evidenced by the advisement of rights form signed by Applicant. Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, the Applicant has shown no actual prejudice from an alleged deficiency of counsel. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Counsel was ineffective for coercing Applicant to plead guilty

Applicant alleges that Counsel was ineffective for coercing Applicant to plead guilty. This Court finds that Counsel's credible testimony reveals that Applicant was fully apprised of the State's plea offer and after receiving competent advice from his attorney, Applicant voluntarily and knowingly pled guilty. Based on the foregoing, this Court finds that Counsel's performance was not deficient in regards to this allegation. Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of counsel. This Court holds that the Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

CONCLUSION

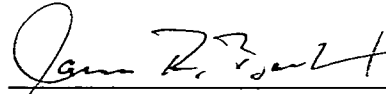
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 9 day of July, 2013.



JAMES R. BARBER, III
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

LAW OFFICE OF
Kristy Grafton Goldberg, LLC
ATTORNEY AT LAW

August 4, 2013

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



RECEIVED

AUG 07 2013

RE: Henry Woods, SCDC # 314307, vs. State of South Carolina
Case No. 2012-CP-28-0901

S.C. SUPREME COURT

Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service and a copy of the court order which is to be challenged on appeal.

I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal so that they may begin representation of Mr. Woods. I am also hereby requesting that Appellate Defense obtain a copy of the court transcript within the time required by this court.

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,



Kristy Goldberg

CC: Megan Harrigan
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

Henry R. Woods, SCDC # 314307
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Joyce McDonald, Clerk of Court
1121 Broad Street
Camden, South Carolina 29020

Office of Appellate Defense
Chief Appellate Defender – Robert Dudek
PO Box 11433
Columbia, SC 29211-1433



LAW OFFICE OF
Kristy Grafton Goldberg, LLC
ATTORNEY AT LAW
1720 MAIN STREET, SUITE 301
COLUMBIA, SOUTH CAROLINA 29201

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

