

# The Brooks Law Office, LLC

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August 2, 2013

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

**RECEIVED**

RE: Antonio Hair v State of South Carolina  
Case No. 2011-CP-38-0059

AUG 07 2013

Dear Sir or Madam:

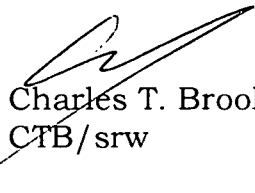
**S.C. SUPREME COURT**

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III  
CTB/srw

Enclosed as stated

Cc: Megan E. Harrigan, Office of Attorney's General  
South Carolina Office of Appellate Defense  
Antonio Hair, 248402

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
Honorable Edgar W. Dickson, Circuit Court Judge

Case No: 2011-CP-38-0059

Antonio Hair.....Appellant  
S.C.D.C. 248402  
v.  
The State.....Respondent

NOTICE OF APPEAL

Antonio Hair, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Edgar W. Dickson, July 1, 2013, which I, Charles T. Brooks, III, received on August 1, 2013.

**RECEIVED**

AUG 07 2013

**S.C. SUPREME COURT**

  
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(803) 418-5708  
Attorney for Appellant

Other Counsel on Record:  
Megan E. Harrigan, Esquire  
Assistant Attorney General  
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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
Honorable Edgar W. Dickson, Circuit Court Judge

Case No: 2011-CP-38-0059

Antonio Hair.....Appellant  
S.C.D.C. 248402  
v.  
The State..... Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 5<sup>th</sup> day of August, I served the foregoing **Notice of Appeal, Order of Dismissal** , as well as **Certificate of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on August 5, 2013, addressed to the following as indicated below:

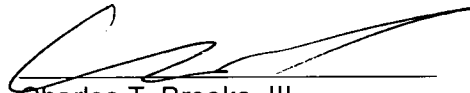
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29211-1589

Office of Attorney's General  
Attn: Megan E. Harrigan, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Antonio Hair, 248402  
Lieber Correctional Institution  
Post Office Box 205  
Ridgeville, South Carolina, 29472

Dated: August 5, 2013

  
Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
(803) 418-5708

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Antonio Hair, #248402, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Case No. 2011-CP-38-0059

**ORDER OF DISMISSAL**

2011  
MAY 13 10 58 AM  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an application for post-conviction relief filed January 14, 2011. Respondent made its Return May 3, 2011. Thereafter, Applicant amended his application on May 13, 2013. An evidentiary hearing into the matter was convened May 21, 2013, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, 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 Orangeburg County Clerk of Court. Applicant was indicted during the May 2010 term of the Orangeburg County Grand Jury for Kidnapping (2010-GS-38-0708) and Armed Robbery (2010-GS-38-0709). Applicant was represented by Robert D. Mellard, Esquire. On June 16, 2010, the Applicant appeared before the Honorable Roger Young and pled guilty as indicted. Pursuant to negotiations between Applicant and the State, Judge Young sentenced Applicant to fifteen years imprisonment on each charge, with the sentences to be served concurrently.

**ATTEST: TRUE COPY**

*Wingie B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

*to*

A notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal by written Order dated August 13, 2010. The Remittitur was sent on August 31, 2010.

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully based on the following grounds:

1. Lack of evidence: "no physical evidence to place defendant at crime scene"; and
2. Ineffective assistance of counsel for failure to present evidence in defendant's case.

In its Return, Respondent moved to dismiss the first allegation as an improper ground for post-conviction relief.

In his amendment, Applicant alleged the following additional allegations of ineffective assistant of counsel:

"Applicant feels that his case should be overturned as trial counsel did not review his case thoroughly. Applicant was place in a "hand of one hand of call" case with reference to the strong arm robbery and Judge stated he was guilty by association. Applicant feels he was treated unfairly. Applicant also informed counsel that he wanted to go to trial, however, counsel was only concerned with a plea. Counsel took it upon himself to have other attorneys talk to Applicant as well as contact his mother in order to persuade him into taking a guilty plea."

At the evidentiary hearing, Applicant proceeded forward on the grounds raised in his amended application.

#### **SUMMARY OF TESTIMONY PRESENTED**

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from plea counsel, Robert D. Mellard, Esquire (herein "Counsel"). This Court also had before it Applicant's guilty plea transcript, the records of the Orangeburg County Clerk of Court,

Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Applicant testified that Counsel was court-appointed to represent him and that he met with Counsel "no more than five times" prior to his guilty plea. He testified that he reviewed discovery materials with Counsel prior to his guilty plea, including statements given by his co-defendants. He testified that he reviewed possible defenses and his version of the facts giving rise to these charges with Counsel, including that he had no knowledge that his co-defendant planned on using a weapon during the crime. He testified that Counsel informed him of the theory of "hand of one, hand of all" and its application on his case. He testified that he gave Counsel potential witnesses and leads to investigate, but "nothing checked out to help" with his defense. He testified that Counsel informed him that the State offered to allow him to plead guilty for a negotiated fifteen year sentence. He testified that he originally wanted to go to trial, but that "after everything was shown [to him]," he wanted to accept the State's plea offer rather than risk being convicted at trial and receiving a harsher sentence.

He recalled telling the plea court that he was guilty and agreeing with the facts presented by the State at his plea. He also testified that he understood he was waiving his constitutional rights by pleading guilty and recalled telling the plea court that he was satisfied with Counsel's representation. He testified that he is guilty of kidnapping, but that he is only guilty of *strong armed* robbery, not armed robbery. He testified that he intended to take property from the victim, but was unaware that his co-defendant was going to use a weapon. He acknowledged that he gave a written statement confessing his guilt to law enforcement. Applicant testified that his co-defendant pled to strong armed robbery and that he felt he should have been able to plead



to strong armed robbery. He also acknowledged that he has a lengthy record and is familiar with the criminal justice system. Applicant testified that he was aware this plea was pursuant to negotiations and he understood he would receive a fifteen year sentence if the plea court accepted his plea. He also testified that he recalled the plea court advising him regarding the law of "hand of one, hand of all" and its impact on his case.

Following Applicant's testimony, Counsel testified. He testified that he has been a member of the South Carolina bar since 1997 and that he was appointed to represent Applicant. He testified that at the time of his representation he was employed with the Orangeburg Public Defender's office, where he remains employed presently. He testified that he recalled this case and reviewed his file in anticipation of this hearing. He testified that he recalls meeting with Applicant approximately twelve times. He testified that he recalled reviewing discovery with applicant, as well as Applicant's version of the facts and possible defenses. He testified that Applicant told him he intended to rob the victim, but that he did not know his co-defendant was going to use a weapon. He elaborated that Applicant informed him that he tried to dissuade his co-defendant from using a gun. He testified that he advised Applicant regarding "hand of one, hand of all" and explained to him the impact it would have on his case. He testified that the Court also advised Applicant regarding "the hand of one, hand of all."

He testified that Applicant originally wanted to proceed to trial and on June 15, 2010, he filled out a request for trial form. He testified that in anticipation of trial, he interviewed potential witnesses, employed a private investigator, and informed Applicant of the results of such investigation. He testified that if Applicant would have proceeded to trial, he would try to convince the jury that Applicant was only guilty of the lesser included offense <sup>of</sup> ~~or~~ strong armed robbery, but that he did not think Applicant had a viable defense for kidnapping. He testified

that he tried to get the State to make a plea offer for strong armed robbery, but the prosecuting assistant solicitor refused to make such an offer. He testified that the State did make a plea offer, allowing Applicant to plead guilty to both offenses as indicted for a negotiated term of fifteen years imprisonment. He testified that he advised Applicant of this offer from the State and that he advised Applicant it was in his best interest to accept the plea offer. He testified that Applicant decided to accept this plea offer from the State. He testified that he reviewed a guilty plea checklist with Applicant, which was entered into evidence as State's Exhibit #1. He testified that it was ultimately Applicant's decision to plead guilty.

### **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), SCRPC; 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). An 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, Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is more credible than Applicant's testimony. The uncontroverted testimony reveals that Applicant elected to take advantage of a favorable negotiated plea offer from the State following a thorough investigation by Counsel which failed to yield any positive defenses. Counsel and Applicant both testified that Counsel and the plea court advised Applicant regarding "hand of one, hand of all" law and its impact on his case. Applicant testified that he decided to plead guilty to avoid a harsher sentence if convicted at trial and that he understood if his plea was accepted, he would receive a sentence of fifteen years. Applicant testified that he was guilty of kidnapping and had no viable

defenses to this charge, as well as that he intended to take property from the victim by force. This Court finds that Counsel demonstrated a normal degree of skill, knowledge and professional judgment that is expected of an attorney who practices criminal law. Additionally, this Court finds that Applicant has not met the burden of proof with respect to the prejudice requirement. Therefore, this Court finds this application 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), SCRCP, 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 15 day of July, 2013.



EDGAR W. DICKSON  
Presiding Judge  
First Judicial Circuit

Orangeburg, South Carolina.

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