

**Richard Warder**

Attorney At Law

August 2, 2013

South Carolina Supreme Court  
P.O. Box 11330  
Columbia, South Carolina 29211

Re: Aaron Winford Collier 319743 vs. State of South Carolina

Dear Court:

Enclosed please find a Notice of Intent to Appeal and Certificate of Mailing in reference to the above captioned case.

Thank you for your cooperation in this matter.

Sincerely,

Richard H. Warder

RHW/tls

*Richard H. Warder*  
Enclosures

Aaron Collier  
Karen C. Raitgan, South Carolina Attorney General Office

**RECEIVED**

AUG 06 2013

S.C. SUPREME COURT

15 Primrose Street

Post Office Box 26133

Greenville, SC 29616

271-9955 Office

232-8045 Fax



THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
COMMON PLEAS COURT

G. EDWARD WELMAKER, CIRCUIT COURT JUDGE  
2011-CP-23-7360

AARON WINFORD COLLIER, 319743.....Applicant,

v.

STATE OF SOUTH CAROLINA.....Respondent.

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NOTICE OF INTENT TO APPEAL

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Aaron Winford Collier, SCDC 319743, appeals the Order of  
Honorable G. Edward Welmaker, dated May 3, 2013.

Respectfully Submitted



Richard H. Warder  
Attorney At Law  
15 Primrose Street  
P.O. Box 26133  
Greenville, South Carolina

August 2, 2013

Other counsel of record:

Karen C. Ratigan  
South Carolina Attorney General Office  
P.O. Box 11549  
Columbia, South Carolina 29211-1549

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Case Number: 2011-CP-23-7360

AARON WINFORD COLLIER     )  
                                  319743     )  
      APPLICANT,             )  
-vs-                             )             CERTIFICATE OF MAILING  
STATE OF SOUTH CAROLINA    )  
      RESPONDENT             )

This is to certify that the undersigned attorney Richard H. Warder, attorney for the APPLICANT did cause a Notice of Intent to Appeal to be served upon the Respondent, by mailing a copy of the same in an envelope addressed as shown below and depositing same in the United States Mail, proper postage affixed thereto, on the 2nd day of August, 2013.

Karen C. Ratigan  
South Carolina Attorney General Office  
P.O. Box 11549  
Columbia, South Carolina 29211-1549

Richard H. Warder  
RICHARD H. WARDER  
POST OFFICE BOX 26133  
GREENVILLE, S.C. 29616  
ATTORNEY FOR APPELLANT

SWORN to before me this  
2nd day of August, 2013  
[Signature]  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: [ ]

**RECEIVED**  
AUG 06 2013  
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2011CP2307360

IN THE COURT OF COMMON PLEAS

Aaron W Collier vs. South Carolina State Of

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), SCRPC:  Rule 41(a).
  - 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: \_\_\_\_\_

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:  
Dated at Greenville, South Carolina, this .

Court Reporter:

\_\_\_\_\_  
PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the 14th day of May, 2013, and a copy mailed first class this 30th day of July, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Richard Harold Warder PO Box 26133 Greenville,  
SC 29616

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Paul B. Wickensimer - Greenville County Clerk Of Court  
- Clerk of Court

**RICHARD WARDER**

**AUG 1 2013**

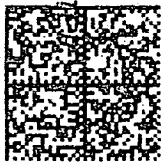
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GREENVILLE COUNTY CLERK OF COURT  
305 EAST NORTH STREET  
GREENVILLE, SOUTH CAROLINA 29601

Richard Harold Warden  
PO Box 26133  
Greenville, SC 29616

RETURN SERVICE REQUESTED

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FIRST CLASS



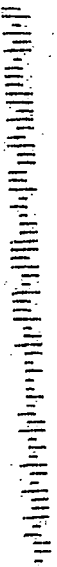
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PCR

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
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 Aaron Winford Collier, )  
 S.C.D.C. No. 319743, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2011-CP-23-7360

FILED  
 GREENVILLE COUNTY  
 2013 MAY 14 PM 3:08

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**ORDER OF DISMISSAL**

**ENTERED COMPUTER**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 4, 2011. The Respondent made its return on March 15, 2012. An evidentiary hearing into the matter was convened on April 17, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Richard H. Warder, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, C. Carlyle Steele, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant for failure to stop for a blue light (2009-GS-23-1719), driving under suspension (DUS) (2009-GS-23-2703), and reckless driving (2009-GS-23-2704). C.

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**SCANNED**

Carlyle Steele, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On November 9, 2010, the Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of five (5) years for failure to stop for a blue light, second offense, six (6) months for DUS, third offense or greater, and thirty (30) days for reckless driving. The Applicant also pled guilty to the charge of possession with intent to distribute (PWID) methamphetamine, second offense (2009-GS-23-6290) and received a concurrent sentence of fifteen (15) years suspended on service of eight (8) years and five (5) years probation. The Applicant also received a probation revocation on the charge of PWID methamphetamine (2005-GS-23-5140) and received a concurrent eight (8) year sentence. The Applicant did not appeal.

### ALLEGATIONS

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

1. Ineffective assistance of counsel:
  - a. “[D]idn’t investigate charges, didn’t proper objections[,] advised to plea, wasn’t prepared to defend client[,] didn’t proper prepare for plea.”

At the PCR hearing, the Applicant stated he was not challenging counsel’s performance at trial. Rather, the Applicant stated he was challenging counsel’s representation at the guilty plea hearing.

### 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).

### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of plea 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

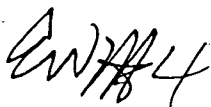
The Applicant stated counsel was hired to represent him on the charges that went to trial. The Applicant stated another attorney represented him on the PWID methamphetamine charge. The Applicant stated that, at the end of trial, both plea counsel and the solicitor asked if he wanted to take care of his pending PWID charge. The Applicant stated he agreed to do so because plea counsel led him to believe he would receive a concurrent five year sentence. The Applicant stated, however, that plea counsel did not promise anything in exchange for the guilty plea. The Applicant stated plea counsel did not give him any advice about parole eligibility on

this charge and stated he would not have pled guilty if he knew this would be an 85% charge.

Plea counsel testified he was retained to represent the Applicant on the set of charges that eventually went to trial. Plea counsel testified he was also retained to represent the Applicant on a PWID methamphetamine charge. Plea counsel testified that, right after the trial, the assistant solicitor asked if the Applicant wanted to dispose of the pending PWID charge and a probation revocation. Plea counsel testified the Applicant wanted to do so and the State also agreed to dismiss one or two other charges. Plea counsel testified the Applicant was "emphatic" about taking care of the pending matters at that time. Plea counsel testified the Applicant was enthusiastic about going forward and that, if he had balked, they would have waited and disposed of the pending matters later. Plea counsel testified that he could not recall whether or not he advised the Applicant about parole eligibility on the PWID charge, but that he probably did not.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Transcript, p.171; p.174). The Applicant told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Transcript, pp.169-72). The Applicant also told the plea judge that he trusted he would receive a fair sentence. (Transcript, p.176). This Court finds the Applicant entered a knowing and voluntary guilty plea to the charge of PWID methamphetamine. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969)



(holding that, to be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea).

Initially, this Court finds plea counsel was retained to represent the Applicant on the PWID methamphetamine charge at issue in this case. While the Applicant testified another attorney represented him on this charge, plea counsel testified he represented him on the PWID charge he pled guilty to that day. This Court finds plea counsel's testimony is more credible. In support of this finding, this Court notes plea counsel advised the plea judge that he represented the Applicant on this charge. (Transcript, p.168).

This Court finds the Applicant failed to meet his burden of proving plea counsel failed to investigate his charges. While this allegation was raised in the PCR application, the Applicant has failed to articulate anything further plea counsel should have done to investigate his PWID charge. As such, he cannot prevail on this allegation. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the 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).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly advise him about parole eligibility. Even assuming arguendo that plea counsel did not advise the Applicant the PWID charge was not parole eligible (and he could serve 85% of that sentence), counsel was not obligated to convey this information. Parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. Randall v. State, 356 S.C. 639, 641, 591 S.E.2d 608, 609 (2004). Further, given plea counsel's testimony about the Applicant being "emphatic" and "enthusiastic" to proceed and dispose of all outstanding matters, this Court does not find credible the Applicant's testimony

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that he would not have pled guilty to this charge if he had known it was parole ineligible.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea 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 plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must

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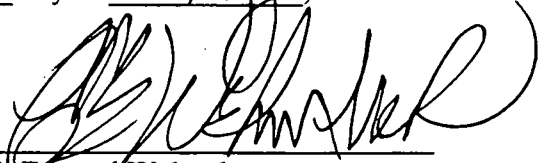

be denied and dismissed with prejudice.


This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

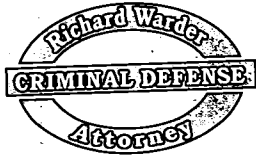
1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3 day of May, 2013.

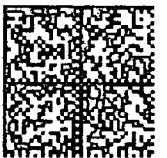
  
\_\_\_\_\_  
G. Edward Welmaker  
Presiding Judge  
Thirteenth Judicial Circuit

  
\_\_\_\_\_, South Carolina.

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South Carolina Supreme Court  
P.O. Box 11330  
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