

The Powers Legal Firm

300 N. Cedar St., Unit A
Summerville, SC 29483

PH: 843.261.7025
FAX: 843.261.7035

www.ThePowersLegalFirm.com
natalie@thepowerslegalfirm.com

August 12, 2013

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

RE: Conrad Little, #341613 vs. State of South Carolina
Case No.: 11-cp-18-01610

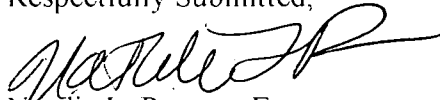
Dear Madam Clerk:

Enclosed for filing is an original Notice of Appeal in the above referenced case. Also included are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent; and
- (2) Order of Dismissal from Mr. Little's PCR (Exhibit 1).

Mr. Williams is an indigent party, and Appellate Defense has been notified and will assume responsibility for his case.

Respectfully Submitted,


Natalie L. Powers, Esq.

Cc: Conrad Little, #341613

RECEIVED

AUG 15 2013

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Hon. Edgar Warren Dickerson

Case No. 2011-CP-18-1610, PCR

Conrad Little.....Appellant,

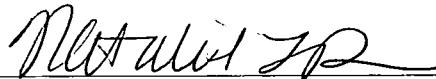
v.

State of South
Carolina.....Respondent.

NOTICE OF APPEAL

Appellant Conrad Little appeals the Order of the Honorable Edgar Warren Dickerson, dated July 12, 2013, which dismissed Appellant's Application for Post-Conviction Relief.

August 12, 2013.



Natalie L. Powers, Esq.
The Powers Legal Firm, LLC
300 N. Cedar St. Unit A,
Summerville, SC 29483
(843) 261.7025
Natalie@thepowerslegalfirm.com

Other Counsel of Record:
Daniel Gourley
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549

RECEIVED

AUG 15 2013

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Hon. Edgar Warren Dickerson

Case No. 2011-CP-18-1610, PCR

Conrad Little.....Appellant,

v.

State of South
Carolina.....Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Daniel Gourley, Esquire, by depositing a copy of the same in the United States Mail, postage prepaid, on August 12, 2013, addressed to the attorney of record at the address indicated below:

Daniel Gourley
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549

August 12, 2013



Natalie L. Powers, Esq.
The Powers Legal Firm, LLC
300 N. Cedar St. Unit A,
Summerville, SC 29483
(843) 261.7025
Natalie@thepowerslegalfirm.com

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1801610

CERTIFIED COPY

Conrad Little

2013 JUL 12 AM 11:32 South Carolina State Of

Cheryl Beckham
CLERK OF COURT

PLAINTIFF(S) DORCHESTER COUNTY

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(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; (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.**

Edgar Dickson

2153

7/12/2013

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

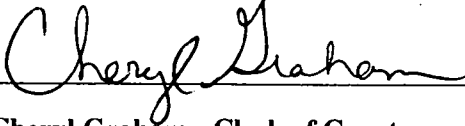
This judgment was entered on 7/12/2013, and a copy mailed first class or placed in the appropriate attorney's box on 7/12/2013, to attorneys of record or to parties (when appearing pro se) as follows:

Conrad Little Broad River Correctional Institute 4460 Broad
River Rd Columbia, SC 29210
Natalie Louise Powers 300 N. Cedar Street Unit A
Summerville, SC 29483

Megan E. Harrigan/David A. Spencer/Daniel Francis
Gourley P.O Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Cheryl Graham - 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.

2013 JUL 12 AM 11:32

Conrad Little., #341613

Case No. 2011-CP-18-01610

341316

Applicant,

Cheryl D. ...
CLERK OF COURT
DORCHESTER COUNTY

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed August 15, 2011. The Respondent made its Return on November 8, 2011. An evidentiary hearing into the matter was convened on May 22, 2013, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Natalie Powers, Esquire. The Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the August 2009 term of the Dorchester County Grand Jury for Distribution of Cocaine (2009-GS-18-0575). Applicant pled guilty before the Honorable Diane S. Goodstein. Judge Goodstein sentenced Applicant to twelve years imprisonment pursuant to a negotiation in addition to a concurrent sentence for time revoked on his outstanding probation. Applicant did not appeal his sentence or conviction.



In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel.
 - a. Attorney failed to properly prepare defense
 - b. Attorney failed with plea bargaining process
 - c. Attorney failed to file appeal.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Steve Davis, Esquire (Counsel). This Court also had before it a copy of Applicant's guilty plea transcript, the records of the Dorchester County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified Counsel was retained to represent him for his charge and he met with Counsel twice prior to his guilty plea. Applicant testified it was his decision to plead guilty and that he was guilty of these crimes. Applicant further testified he discussed various defenses with his attorney. Applicant testified Counsel never showed him the video and photos involved in his case. Applicant testified he wanted an appeal and requested Counsel file an appeal on his behalf. Applicant testified Counsel did not explain the three strike law and the consequences of his plea. Applicant testified he requested counsel seek a continuance because he could not be present if his case went to trial. Applicant testified he would be willing to accept the original five year plea offer that he refused to take earlier.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel testified he has practiced criminal law exclusively for thirty years. Counsel testified he was retained in this case and knew Applicant from representing him in prior proceedings. Counsel further testified he reviewed discovery with Applicant, including all photos and videos involved

in the case. Counsel testified he explained the elements of the charges and what the State was required to prove in the case. Counsel testified he specifically reviewed the consequences of Applicant's plea including the two strike, three strike law. Counsel explained to Applicant the elements for each charge he was facing. Counsel testified there was a plea offer of five years that Applicant refused and eventually Applicant chose to plead guilty to twelve years. Counsel further testified one of Applicant's requirements when pleading was he not be required to report until after the holidays. Counsel further testified he was prepared to go to trial.

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, 80 L.Ed.2d 674, 692 (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). 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, 88 L.Ed. 2d 203 (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 is not 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 prepare a defense

This Court finds Applicant's allegation that he was denied effective assistance of trial counsel due to his failure to properly prepare a defense is without merit. This Court finds Counsel was thoroughly prepared and was ready to proceed to trial. This Court finds Counsel met with Applicant several times prior to his guilty plea. This Court finds Counsel reviewed all discovery material including all photos and video involved in Applicant's case. This Court

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further find Applicant has failed to produce any credible evidence that would have affected his decision to plead guilty. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (no prejudice where claim of failure to investigate is supported only by mere speculation as to the result). This Court holds that Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

Counsel was ineffective in plea bargaining process

This Court finds Applicant's allegation that he was denied effective assistance of Trial Counsel due to his failure in the plea bargaining process is without merit. There is uncontroverted testimony that Counsel relayed all plea offers to Applicant. This Court finds Counsel relayed a five year plea offer to Applicant. Applicant chose not to accept the plea offer. This Court further finds Counsel relayed a twelve year plea offer, which Applicant accepted on the condition that he not be required to report until after the holidays. This Court holds that Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

Counsel was ineffective for failing to file a direct appeal

Applicant alleges he is entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S.Ct. 1029 (2000). "Even in cases when the defendant pleads guilty, the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or

waived some or all appeal rights.” Id. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). “One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal.” Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Counsel testified ^{he was} ~~was~~ unaware of any appealable grounds and that Applicant never requested an appeal be filed. This Court finds that Counsel’s performance was reasonable and effective. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

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 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 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 27th day of June, 2013.

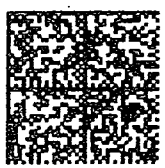


EDGAR W. DICKSON
Presiding Judge
First Judicial Circuit

Orangelony, South Carolina

The Powers Legal Firm, LLC
300 N. Cedar Street, Unit A
Summerville, SC 29403

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



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