

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

SEP 27 2013

Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

**S.C. SUPREME COURT**

Case No.: 2012-CP-02-1247

Travonte Jamal Williams, #346287, .....Petitioner,

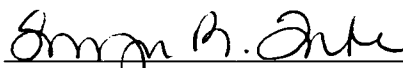
v.

State of South Carolina, .....Respondent.

**NOTICE OF APPEAL**

The Petitioner Travonte Jamal Williams, #346287, appeals the Honorable R. Ferrell Cothran, Jr.'s August 19, 2013, order denying post-conviction relief to the Respondent. Undersigned counsel received notice of entry of the order on August 28, 2013. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Sonja R. Tate  
S.C. Bar No. 16206  
Attorney for Applicant

September 25, 2013

FULCHER HAGLER, LLP  
Post Office Box 1477  
Augusta, GA 30903  
(706) 724-0171

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )  
  
Travonte Jamal Williams, #346287, )  
) )  
Applicant, )  
) )  
v. )  
) )  
State of South Carolina, )  
) )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2012-CP-02-1247

**RECEIVED**

SEP 27 2013

**ORDER OF DISMISSAL S.C. SUPREME COURT**

This matter comes before the Court by way of an application for post-conviction relief filed May 21, 2012. Respondent made its Return on August 9, 2012. An evidentiary hearing into the matter was convened on July 12, 2013, at the Aiken County Courthouse. Applicant was present at the hearing and was represented Sonja R. Tate, Esquire. 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 Aiken County Clerk of Court. The Applicant was indicted at the June 2009 term of the Aiken County Grand Jury for Murder (2009-GS-02-1043). The Applicant was subsequently indicted during the December 2010 term of the Aiken County Grand Jury for Arson in the Second Degree (2010-GS-02-2016). The Applicant was represented by Kelley Perkins Brown, Esquire. On May 31, 2011, Applicant pled guilty to Voluntary Manslaughter and as indicted to Arson in the Second Degree. The Honorable Doyet A. Early, III, sentenced Applicant to a period of twenty-five years confinement for Voluntary Manslaughter and a consecutive fifteen years imprisonment for Arson in the Second Degree. The Applicant did not appeal his guilty plea or sentence.

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Liz Hodson  
U.C.P. CLERK  
Anita Knoche 230  
Deputy Clerk

two life sentences. Applicant testified that he cooperated with police during their investigation. Applicant further testified he was guilty of these crimes.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel testified she has been practicing criminal law for fifteen years. Counsel testified she was court appointed on November 4, 2009. Counsel further testified this case was originally assigned to another attorney within the Public Defender's office. Counsel testified she met with Applicant six separate times prior to his guilty plea. Counsel testified she received discovery in this case and reviewed it with Applicant. Counsel further testified she discussed and addressed all questions Applicant posed. Counsel testified Applicant never gave any witnesses or leads to investigate. Counsel testified Applicant had cooperated with law enforcement prior to her or any other attorney's involvement with the case. Counsel testified the State had very strong evidence against Applicant. Counsel further testified she reviewed possible punishments with Applicant.

Counsel testified that Applicant never wanted to proceed to trial and wanted to plead guilty, however, Applicant had unrealistic expectations when it came to the plea bargaining process. Counsel testified Applicant understood but did not agree with the "hand of one hand of all" aspect of the law. Counsel testified Applicant did not want to walk in to the court room and accept thirty years. Counsel further testified the Solicitor reduced the Murder charge to Voluntary Manslaughter. Counsel testified Applicant understood the maximum amount of time he was facing. Counsel testified she never promised Applicant he would receive a certain amount of time. Counsel testified she did not review the terms of the Grand Jury with Applicant and admittedly was not familiar with the dates of the Grand Jury terms. Counsel testified the indictments were true billed and she did not feel there was any basis to challenge the indictments.

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.

*Counsel was ineffective for failing to challenge the indictments on subject matter jurisdiction.*

This Court finds that Counsel was not ineffective for failing to challenge the Applicant's indictments based on the indictments not being presented during a term of the Aiken County Grand Jury. Indictments are sufficient when they allege time and place, as required by law, and charge the crime substantially in the language of the statute or the common law which prohibits the crime or so plainly that the offense charged may be easily understood and, if the offense is statutory, that the offense is contrary to the statute involved. S.C. Code Ann. § 17-19-20 (2003). All indictments must be viewed with a "practical eye" to determine whether they fulfill their function to notify the accused of the charge he must answer, notify the court of what judgment and sentence to pronounce, and present a bar to subsequent prosecution. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

This Court finds that Applicant's indictments were sufficient to give the Applicant notice of the charges he must answer and to notify the court of what judgments and sentences to pronounce. This Court finds that Counsel provided credible testimony that she did not object to the time frame for the crime listed on the indictments because in her experience the time frame

(2003), "every objection to any indictment for any defect apparent on the fact thereof shall be taken...on motion to quash such indictment before the jury shall be sworn and not afterwards." Since the Double Jeopardy Clause of the Fifth Amendment attaches in a jury trial only once the jury is sworn, a successful motion to quash, by its very definition, will not work to bar subsequent prosecution on the same allegation on that grounds. See State v. Prince, 279 S.C. 30, 301 S.E.2d 471 (1983). Accordingly, this Court finds Applicant has failed to prove any resulting prejudice from counsel's failure to move to quash the indictments.

*Involuntary Guilty Plea.*

Applicant's alleges his guilty plea was entered involuntarily. To find a guilty plea voluntary and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (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 presented at the post-conviction relief hearing. Harris v. Lecke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant'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 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975) *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985).

allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

### CONCLUSION

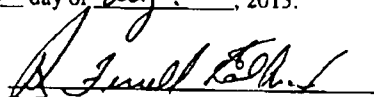
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

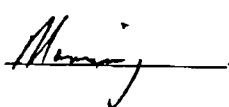
This Court notes that that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), 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 the 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 19 day of Aug., 2013.

  
R. FERRELL COTHRAN, JR.  
Presiding Judge  
Second Judicial Circuit

 South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2012CP0201247

Travonte Jamal Williams

South Carolina State of

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(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.

Circuit Court Judge

Judge Code

8/28/2013

Date

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

TRAVONTE JAMAL WILLIAMS, #346287, Applicant,

v.


STATE OF SOUTH CAROLINA, Respondent.

**CERTIFICATE OF SERVICE**

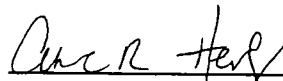
The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Sonja R. Tate, Esquire  
Fulcher Hagler, LLP  
PO Box 1477  
Augusta, GA 30903-1477**

This 3<sup>rd</sup> day of September, 2013.

  
Caroline Kaiser, Legal Assistant  
For Respondent

SWORN to before me this 3rd day of September, 2013.

  
Notary Public for South Carolina.  
My Commission Expires: 7/18/2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

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Case No.: 2012-CP-02-1247

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Travonte Jamal Williams, #346287, .....Petitioner,

v.

State of South Carolina, .....Respondent.

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PROOF OF SERVICE

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I, Sonja R. Tate, certify that I have today served the within notice of appeal by depositing a copy of it in the United States Mail, postage prepaid, addressed to:

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

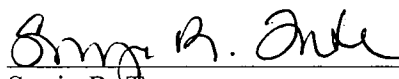
South Carolina Commission on Indigent Defense  
P.O. Box 11433  
Columbia, SC 29211-1433

Office of the Attorney General  
Attn: Daniel Gourley  
P.O. Box 11549  
Columbia, SC 29211-1549

Travonte Jamal Williams, #346287  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, SC 29669

Aiken County Court of Common Pleas  
P.O. Box 583  
Aiken, SC 29802

Dated: September 25, 2013



Sonja R. Tate  
S.C. Bar No. 16206  
Attorney for Applicant

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Sonja R. Tate  
Direct Fax No: (706) 396-3625  
E-mail Address: [State@fulcherlaw.com](mailto:State@fulcherlaw.com)  
Admitted in Georgia and South Carolina

September 25, 2013

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Daniel E. Shearouse, Clerk  
Supreme Court for the State of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

S.C. SUPREME COURT

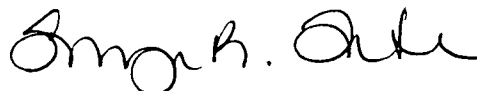
RE: *Notice of Appeal for Travonte Jamal Williams v. State of South Carolina*  
Our File No. 1016/213

Dear Mr. Shearouse:

Enclosed please find an original and one copy of each of the Notice of Appeal and Proof of Service for filing in the captioned case. Once the originals have been filed, please return the date-stamped copies to me in the envelope provided for your convenience.

Thank you for your assistance.

Very truly yours,



Sonja R. Tate  
For the Firm

SRT/gc  
Enclosures

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**Fulcher Hagler LLP**  
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One 10th Street, Suite 700 · Augusta, GA 30901

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