

LAW OFFICE OF
Kristy Grafton Goldberg, LLC
ATTORNEY AT LAW

October 4, 2013

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

RE: Mark Harmon, SCDC # 130332, vs. State of South Carolina
Case No. 2012-CP-40-04615

Dear Mr. Shearouse,

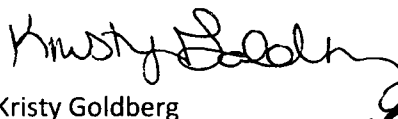
Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service and a copy of the court order which is to be challenged on appeal.

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. Harmon. 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: Daniel Gourley
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

RECEIVED
OCT 10 2013
S.C. SUPREME COURT

Mark Harmon, SCDC # 130332
Walden Correctional Institution
4340 Broad River Road
Columbia, South Carolina 29210

Jeanette McBride, Clerk of Court
1701 Main Street, Room 205
Post office Box 2766
Columbia, South Carolina 29202

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James R. Barber, III Circuit Court Judge

Case No. 2012-CP-40-04615

RECEIVED

OCT 10 2013

S.C. SUPREME COURT

Mark Harmon, SCDC # 130332, Appellant

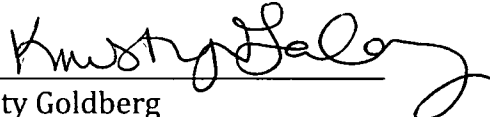
v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant Mark Harmon hereby appeals from the Order of the Honorable James R. Barber, III presiding Judge for the 5th Judicial Circuit, filed August 27, 2013 and received by counsel for the Applicant on or about September 3, 2013 in the matter of Mark Harmon v. State of South Carolina, Case No. 2012-CP-40-04615.

October 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

Other Counsel of Record:

Assistant Attorney General, Daniel Gourley
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James R. Barber, III Circuit Court Judge

Case No. 2012-CP-40-04615

RECEIVED

OCT 10 2013

S.C. SUPREME COURT

Mark Harmon, SCDC # 130332, 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 October 4, 2013 by
depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Daniel Gourley
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

October 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

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4004615

Mark W #130332 Harmon

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or 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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Non Suit); 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 PUBLIC 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
		\$
		\$
		\$

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 the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 27 August 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Mark W #130332 Harmon Kristy Grafton Goldberg Robert Daniel Corney

Mark W #130332 Harmon

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

RECEIVED
OCT 9 2013
Clerk of Court

Jeanette W McBride

S.C. SUPREME COURT

RICHLAND COUNTY
FILED
2013 AUG 27 AM 11:56
JEANETTE W. MCBRIDE
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Mark W. Harmon., #130332,)
)
Applicant,)

Case No. 2012-CP-40-4615

v.)

State of South Carolina,)
)
Respondent.)

RECEIVED

OCT 10 2013

ORDER OF DISMISSAL

S.C. SUPREME COURT

JEANETTE W. McBRIDE
C.C.P. & C.S.

2013 AUG 23 AM 10:55

RICHLAND COUNTY
FILED

This matter comes before the Court by way of an application for post-conviction relief filed July 2, 2012. The Respondent made its Return on August 29, 2012. An evidentiary hearing into the matter was convened on June 5, 2013, at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Kristy Goldberg, 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 Richland County Clerk of Court. The Applicant was indicted at the July 2011 term of the Richland County Grand Jury for four counts of Burglary 2nd Degree (violent) (2001-GS-40-3113;5;7;8). Applicant pled guilty as charged on February 8, 2012 on four counts of Burglary 2nd (violent) and in addition waived presentment to an additional count of Burglary 2nd (violent). Applicant also plead guilty to an additional indictment for Safecracking which had been directly presented (2012-GS-40-00694) to the Grand Jury on January 20, 2012. Immediately after his plea the Honorable Alison

Renee Lee sentenced Applicant to ten years for each Burglary 2nd (violent) charge and ten years for Safecracking with all sentences to run concurrent. 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. Failure to review discovery with Applicant.
 - b. Failure to review elements and consequences of pleading to Safecracking charge.
 - c. Promised that I would attend Bethel House.

SUMMARY OF TESTIMONY PRESENTED

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

During the evidentiary hearing, Applicant testified Counsel was appointed to represent him for his various charges and he met with Counsel several times prior to his guilty plea. Applicant testified he knew he could receive a possible sentence of life plus seventy five years imprisonment on the Burglary charges alone. Applicant testified he did not know about the existence of the Safecracking charge until shortly before his guilty plea, and admitted that at that time Counsel discussed with him that Safecracking was a "violent" offense. Applicant testified the Honorable Judge Lee advised him that the Safecracking charge would require him to serve a minimum eighty-five percent of the sentence. Applicant further testified "I know I deserved time and [Judge] Lee gave me time I know I deserve."

Applicant testified he feels Counsel was ineffective for failing to review all the discovery material with him. Specifically, Applicant testified Counsel "lightly" reviewed discovery with him. Applicant alleges Counsel sent him a copy of his discovery after his guilty plea. Applicant testified Counsel advised him that he would most likely be sentenced to Bethel House. Applicant elaborated that he was approved to attend Bethel House. However, Applicant testified that he understood he was pleading without negotiations.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel testified she has practiced exclusively criminal law for approximately six and a half years. Counsel testified she reviewed discovery in full with Applicant. Counsel further testified Applicant never asked for a copy of his discovery and she typically does not give clients discovery while they are incarcerated. Counsel explained to Applicant the elements for each charge he was facing. Specifically, Counsel testified she reviewed with Applicant the new Safecracking charge, the elements, and how he would be required to serve a minimum of eighty-five percent of the sentence. Counsel testified that she answered all of Applicant's questions and Applicant understood everything prior to his guilty plea. Counsel further testified Applicant understood it was Judge Lee's decision as to whether Applicant would be given a sentence where he would be allowed to attend Bethel House rehabilitation facility.

Additionally, Counsel testified she filed a motion for reconsideration on the Safe Cracking charge. Counsel attempted to mitigate the charge on the basis that the Safe was not necessarily a bank safe, but more like a lock box, and presented pictures to Judge Lee. Counsel further asked Judge Lee to consider Bethel House because Applicant became addicted to Oxycontin, a pain killer Applicant was originally prescribed.

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. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is less credible. 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).

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, 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). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

This Court finds Applicant's allegation that he was denied effective assistance of trial counsel due to Counsel's failure to advise him that Safecracking requires service of eighty-five percent of his sentence is without merit. This Court finds the guilty plea transcript, along with Counsel's credible testimony, reveals Applicant was well aware of the minimum eighty-five percent requirement. Applicant alleges Counsel failed to advise him that he would be required to serve eighty-five percent of his sentence, and had he known this requirement he would have insisted on going to trial. However, Counsel testified that she explained to Applicant that Safecracking requires he be incarcerated for at least eighty-five percent of his sentence. Counsel explained to Applicant the elements of the offense and consequences of his plea. Further, the plea transcript shows that Judge Lee advised him that Safecracking requires service of at least eighty-five percent of the sentence imposed. This Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

Additionally, this Court finds Applicant's allegation of ineffective assistance of trial counsel due to Counsel's alleged failure to review his discovery material is also without merit.

Based on the credible testimony of Counsel, this Court finds Counsel reviewed Applicant's case, including all discovery materials, extensively with Applicant and answered all of Applicant's questions prior to the guilty plea. Counsel testified it is her practice to not give her clients a copy of the discovery if they are incarcerated. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). This Court finds that the Applicant's attorney 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 the Applicant has not shown actual prejudice from this alleged deficiency of counsel. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Finally, this Court finds Applicant's allegation that Counsel was ineffective for advising him that he would be sentenced to a year at Bethel House is without merit. Applicant testified Counsel explained to him prior to his guilty plea that he would be sent to Bethel House due to his addiction to Oxycontin, a pain killer that he was previously prescribed. However, Applicant further testified that he was aware that his guilty plea was entered into without negotiations and Judge Lee had complete discretion when sentencing Applicant. Applicant testified that no one had promised him anything in order for him to plead guilty. Counsel testified that she asked Judge Lee to consider allowing Applicant to go to Bethel House, but she also advised Applicant that Judge Lee had complete discretion in deciding Applicant's sentence. Applicant understood the State was asking for twenty years. This Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly 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 sufficient 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.

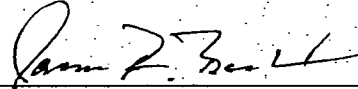
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right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

[signature block on following page]

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 August, 2013.



JAMES R. BARBER, III
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Mark W. Harmon, #130332)

Plaintiff)

v.)

State Of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-40-4615

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

RICHLAND COUNTY
FILED
2013 AUG 23 AM 10:55
DEANETTE W. MOBBIDE
C.C.P. & G.S.

Plaintiff's Attorney:
Kristy Grafton Goldberg, Bar No.
Address:
1720 Main Street, Suite 301
Columbia, SC 29201
phone: fax:
e-mail: other:

Defendant's Attorney:
Daniel Gourley, Bar No.
Address:
P.O. Box 11549
Columbia, SC 29211
phone: (803) 734-3737 fax: (803) 734-3737
e-mail: other:

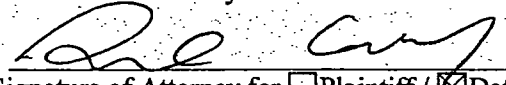
- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

Date submitted: July 17, 2013

SECTION III: Motion Fee

- PAID - AMOUNT:
- EXEMPT:
 - Rule to Show Cause in Child or Spousal Support
 - (check reason) Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter:
- Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE _____

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: _____

CONTESTED - AMOUNT DUE: _____

LAW OFFICE OF
Kristy Grafon 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

