

THE CAPRETTI LAW FIRM, LLC

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The Honorable Daniel E. Shearouse, Clerk  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite #106  
Charleston, South Carolina 29401

RE: Larkin v. State of South Carolina

**RECEIVED**

OCT 18 2013

**S.C. SUPREME COURT**

Dear Mr. Shearouse and Ms. Armstrong:

Enclosed for filing please find the original and one copy of Corey N. Larkin's Notice of Appeal in the above-referenced matter. Please file the originals and return the filed stamped copies to me via the enclosed self addressed stamped envelope. By copy of this letter, I am serving the notice of appeal upon opposing counsel in accordance with the Proof of Service. If you have any questions, please do not hesitate to contact me at (843) 452-8496. Thank you for your assistance with this matter.

Respectfully,

  
The Capretti Law Firm, LLC  
Frank Capretti, Esq.

16 October 2013

Encl.  
CC w/Encl: Ashleigh R. Wilson, Esq.

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Deadra L. Jefferson, Circuit Court Judge

Case No. 2012-CP-10-0633

State of South Carolina

Respondent,

**RECEIVED**

v.

OCT 18 2013

Corey N. Larkin #344734,

Appellant.

**S.C. SUPREME COURT**

NOTICE OF APPEAL

Corey N. Larkin hereby appeals the Order of Dismissal of his application for post-conviction relief by the Honorable Deadra L. Jefferson dated September 17, 2013, and filed September 20, 2013 (attached hereto). Appellant received written notice of entry of this order on September 25, 2013. I (Frank Capretti, Esq.) was appointed to represent applicant Corey N. Larkin and ask the Division of Appellate Defense to take over for purposes of the appeal.

October 16, 2013



Frank Capretti  
The Capretti Law Firm, LLC  
29 Gamecock Avenue, Suite 100  
Charleston, SC 29407  
(843) 452-8496  
Attorney for Appellant

Other Counsel of Record:  
Ashleigh R. Wilson, Esq.  
Assistant Attorney General  
South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, S.C. 29211  
Attorney for Respondent  
(803) 734-4275

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2012-CP-10-0633

**RECEIVED**

OCT 18 2013

State of South Carolina

Respondent, **S.C. SUPREME COURT**

v.

Corey N. Larkin #344734,

Appellant.

PROOF OF SERVICE

I certify that on this 16<sup>th</sup> day of October 2013, I have served on the Respondent's counsel a copy of the attached Notice of Appeal of Appellant by causing a copy of the same to be placed in the U.S. Mail, first-class postage paid, addressed to:

Ashleigh R. Wilson, Esq.  
Assistant Attorney General  
South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, S.C. 29211  
Attorney for Respondent  
(803) 734-4275



Frank Capretti  
The Capretti Law Firm, LLC  
29 Gamecock Avenue, Suite 100  
Charleston, SC 29407  
(843) 452-8496  
Attorney for Appellant

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Corey Larkin, #344734, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2012-CP-10-0633

FILED  
2013 SEP 20 PM 4:17  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

**ORDER OF DISMISSAL**

Presiding Judge: Hon. Deadra L. Jefferson  
Applicant's Attorney: Frank Capretti, Esq.  
Respondent's Attorney: Ashleigh R. Wilson, Esq.  
Plea Counsel: Martha K. Runey, Esq.  
David Haselden, Esq.  
Date of Hearing: May 22, 2013  
Court Reporter: Deborah Garrison

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 27, 2012 and amended May 10, 2013. The Respondent made its Return on November 9, 2012 and amended its Return on January 31, 2013. An evidentiary hearing into the matter was convened on May 22, 2013 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Frank Capretti, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Martha Kent Runey, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR applications, the Respondent's Return thereto, and the Applicant's hearing exhibits.

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*[Signature]*

## PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court for Charleston County. The Applicant was indicted at the October 2008 term of the Charleston County Grand Jury for first-degree criminal sexual conduct (2008-GS-10-8151), five (5) counts of kidnapping (2008-GS-10-8153, 8154, 8114, 8115, and 8063), five (5) counts of armed robbery (2008-GS-10-8155, 8156, 8157, 8117, and 7831), assault and battery of a high and aggravated nature (ABHAN) (2008-GS-10-7832), attempted armed robbery (2008-GS-10-8065), two (2) counts of second-degree burglary (2008-GS-10-8116 and 8158), and three (3) counts of possession of a weapon during the commission of a violent crime (2008-GS-10-8066, 8118, and 8152). Martha Kent Runey, Esquire (1st chair) and David Haselden, Esquire, (2d chair) represented the Applicant.

On November 9, 2010, the Applicant pled guilty. On February 3, 2011, the Honorable Roger M. Young, Sr. sentenced the Applicant to concurrent terms of twenty-five (25) years imprisonment for one (1) count of first degree criminal sexual conduct, three (3) counts of kidnapping, and three (3) counts of armed robbery. The Applicant was also sentenced to concurrent terms of ten (10) years imprisonment for ABHAN and twenty (20) years imprisonment for attempted armed robbery.<sup>1</sup> The Applicant did not appeal.

## ALLEGATIONS

In his original application for post-conviction relief, the Applicant alleged the following:

1. Ineffective assistance of counsel.
  - a. Counsel failed to conduct a proper investigation.
  - b. Counsel failed to subpoena witnesses.
  - c. Counsel failed to tell Applicant he would be able to attack co-

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<sup>1</sup> The Applicant's two (2) second-degree burglary charges, three (3) counts of possession of a weapon during the commission of a violent crime charges, two (2) counts of kidnapping charges, and two (2) counts of armed robbery charges were *nolle prossed* in exchange for the Applicant's plea to the other charges.

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- defendants' credibility at trial.
  - d. Counsel failed to tell Applicant he could file a motion for separation, if he went to trial.
  - e. Counsel failed to properly communicate with Applicant.
2. Involuntary guilty plea.
- a. Applicant would have gone to trial if counsel had adequately prepared and researched the case.

In his amended application for post-conviction relief filed May 10, 2013, the Applicant alleged:

1. Ineffective assistance of counsel.
- a. Counsel failed to reasonably investigate the case or seek a continuance to allow time for proper investigation.
  - b. Counsel failed to discuss potential defense strategies or identify important witnesses, including alibi and expert witnesses that would be able to testify on the applicant's behalf.
  - c. Counsel did not inquire into or cure applicant's state of confusion during the guilty plea hearing thereby rendering applicant's plea not knowing, intelligent, or voluntary.
  - d. Applicant was denied the right to appeal.

At the hearing, the Applicant abandoned all grounds for relief except the ineffective assistance of counsel allegations as outlined in his amended application for post-conviction relief.

### 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 his or her 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).

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### Summary of the Testimony

The Applicant testified he met with counsel six times prior to pleading guilty. He testified he told counsel that he was under the influence at the time of his confession. He testified they did not discuss her investigation of the case or any possible defenses prior to his plea. The Applicant testified had counsel investigated his case, he would not have pled guilty and would have gone to trial. He testified had counsel investigated further, she would have found his statement was not voluntary. He testified he felt the trial court would have granted a motion to suppress his statement.

The Applicant testified he has two alibi witnesses by the name of Tanisha Gibbs and Brandon Simmons. He testified Gibbs lived in Indigo Creek and he last spoke with her in September 2008. He testified counsel did not ask him about his alibi. The Applicant testified he told counsel about his alibi witnesses and the area in which she could find Gibbs. He testified he does not know where Gibbs is today and does not recall if he gave counsel an address or phone number to reach Gibbs. He testified prior to his guilty plea he could have provided counsel with information to locate Gibbs.

The Applicant testified he pled guilty because he was told if he went to trial, he would face life without the possibility of parole (LWOP) and the State had overwhelming evidence of his guilt. He testified he did not understand he was waiving his constitutional rights and was confused at his guilty plea. He testified he knew that he could go to trial and call witnesses to testify on his behalf. He further testified counsel told him to respond to the Court's questions with "yes". He also testified he did not tell the Court he was confused during his guilty plea.

The Applicant testified he did not want to appeal his plea and wanted to skip the appellate process to pursue post-conviction relief. He testified he was not advised of his right to appeal and

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did not discuss his grounds for appeal with counsel. He testified he found out no appeal had been filed in his case after writing the Clerk of Court.

Martha Kent Runey, Esquire, represented the Applicant at his guilty plea and also testified at the evidentiary hearing. Counsel testified that at the time she represented the Applicant she had been a public defender for six (6) years. She testified she had tried several LWOP cases and avoided that sentence with many guilty pleas. She testified she met with the Applicant often. Counsel testified the Applicant always admitted his involvement in the crime; however, the extent of his involvement sometimes differed. Counsel testified the Applicant's co-defendant gave a statement implicating him and the State had overwhelming evidence of the Applicant's guilt.

Counsel testified she filed Brady and Rule 5 motions on the Applicant's behalf. Counsel testified after reviewing the Applicant's discovery, the Applicant had to decide whether to go to trial or to plead guilty. She testified her notes reflected that she had seven (7) visits with the Applicant to go over the discovery. She testified she would have sent the discovery to the Applicant and then met with him to go over the discovery in detail to assess how to attack the deficiencies in the State's evidence and case issue by issue. She testified that after she received the plea offer from the State, she explained the offer to the Applicant and they discussed whether to pursue mitigation for a guilty plea or whether to investigate each individual charge for trial. Counsel testified that the State offered the Applicant a sentence ranging from ten (10) to thirty (30) years on all charges to be run concurrent with the Applicant's pending charges in Dorchester County and that several other charges would be dismissed. She testified she asked the Applicant if he wanted to prepare for trial or focus on mitigation for a guilty plea. She testified he told her he wanted to plead guilty, at which time she shifted her focus on mitigation to present

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at the guilty plea. Counsel testified the discovery in the case was paper intensive, consisting of many documents, and if the Applicant wanted to go to trial she would have shifted her efforts to trial preparation, determined which charges would go to trial first, prepared trial strategy, interviewed witnesses, and determined if the Applicant's co-defendants would testify against him.

Counsel testified she did not recall a specific defense they would have presented at trial. She testified she usually sends an investigator out to interview witnesses good or bad, but she did not have a memo from the investigator in her file because she did not send one out after receipt of the State's offer. She testified she did not receive any info on witnesses from the Applicant. Counsel testified she never knew of an alibi witness by the name of Tanisha Gibbs. She testified the Applicant did not tell her about any alibi witnesses and, had he done so, she would have investigated the alibi. Counsel further testified that since the Applicant indicated a decision to plead guilty versus demanding a jury trial she, did not complete an independent investigation of the Applicant's case in the same manner as she would have done to prepare for trial. However, she testified she had enough information about the case to advise the Applicant on whether or not he should accept the State's plea offer. She further testified she was concerned about the Applicant's youth and the State's intention to pursue an LWOP sentence if he had pursued a trial. Counsel testified she thought the Applicant would have problems if he went to trial on the charges he was facing. She further testified one of the insurmountable elements for consideration was the detailed confession the Applicant had given to the police. However, she testified she would have gone to trial if the Applicant so desired, regardless of this issue.

Counsel testified that prior to the Applicant's guilty plea, she reviewed with the Applicant the questions he would be asked by the court during his guilty plea. She testified she

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advised the Applicant of the elements of each charge, his constitutional rights, the potential sentence(s), and the meaning of life without the possibility of parole. She testified in preparation for the Applicant's guilty plea she looked into his mental health records, wrote a letter to the judge about her relationship with the Applicant, had the Applicant's pastor come speak at the guilty plea, had the Applicant evaluated to determine his risk of re-offense for sexually violent crimes, researched his job history, and drafted a memo outlining his family life.

Counsel testified she looked into the Applicant's contention that he was intoxicated while giving his confession and thought it should be presented to the court as mitigation during sentencing. She testified the Applicant never indicated his confession was not voluntary. She testified she wanted the court to know that the Applicant was friendly and cooperative with police when questioned. Counsel testified she probably told the Applicant they would assert his involuntary confession if he wanted to proceed to trial. She further testified that the Applicant's alleged impairment during his confession did not change her advice to the Applicant about pleading guilty.

Counsel testified she did not recall the Applicant's alleged confusion during the guilty plea. She testified he did not express any doubt about his decision to plead guilty or indicate any hesitation at the time of the plea. She further testified had the Applicant indicated he was confused, she would have asked the court to stand down. She testified after the guilty plea, the Applicant did not ask her about other legal options. Counsel testified another public defender, David Haseldon, Esquire, represented the Applicant at the sentencing hearing while she was on maternity leave. She testified she received a letter from the Applicant after she returned from maternity leave. She testified she generally informs all clients of their right to appeal.

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### Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application by a preponderance of the evidence. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 441, 334 S.E.2d 813, 814 (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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Id. At 117, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065. 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." Id. At 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine

confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S.Ct. at 2068). 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, 59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill, 474 U.S. at 59, 106 S. Ct. at 370; Jackson v. State, 342 S.C. 95, 98, 535 S.E.2d 926, 927 (2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994)).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 242–44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000) (citing Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may be attacked only through a claim of ineffective assistance of counsel. Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citing Al-Shabazz v. State, 338 S.C. 354, 363–64, 527 S.E.2d 742, 747 (1999)).

This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant’s constitutional rights, the

Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The Applicant acknowledged that he was guilty of these offenses. The Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty.

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 that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 4-5, 239 S.E.2d 750, 751-52 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 476 U.S. 28, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 544 (4th Cir. 1977)). This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

#### **Failure to Investigate**

This Court finds that trial counsel was not ineffective for failing to investigate the Applicant's case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (citing Edwards v. State, 392 S.C. 449, 456, 710

S.E.2d 60, 64 (2011)). "An attorney need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense." Harrington v. Richter, 131 S. Ct. 770, 789–90 (2011) (citing Strickland, 466 U.S. at 691, 104 S. Ct. at 2066). "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." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 256, 227 S.E.2d 199, 202 (1976)). Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, "a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521–22, 123 S. Ct. 2527, 2535 (2003) (quoting Strickland, 466 U.S. at 690–91, 104 S. Ct. at 2066).

This Court finds counsel articulated a reasonable strategic basis for her decision to halt investigation of the facts of the Applicant's case once he indicated he wanted to plead guilty. Counsel gave credible testimony that once the Applicant indicated his desire to plead guilty, she shifted her focus to the mitigation evidence that would be presented at the Applicant's sentencing proceeding which she more than adequately investigated. This Court also finds that counsel's strategic decision benefitted the Applicant and resulted in substantial mitigation evidence being presented to the court and a more favorable sentence for the Applicant. The record reflects several family members were present to speak on the Applicant's behalf during sentencing, the court was made aware of the Applicant's cooperation with police, and counsel submitted a letter to the court on the Applicant's behalf.

This Court also finds the Applicant has failed to carry his burden of proving additional

investigation by counsel would have affected the outcome of the proceeding. The Applicant has provided the court no evidence of what would have been discovered had counsel continued her investigation of the Applicant's case. This Court finds it is unlikely further investigation would have aided the Applicant in light of counsel's characterization of the State's evidence against the Applicant as overwhelming. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to investigate his case.

**Failure to discuss potential defense strategies or identify important witnesses**

This Court finds that trial counsel was not ineffective for failing to discuss defense strategies or identify important witnesses. This Court finds counsel gave credible testimony that it is her general practice to discuss defenses while reviewing discovery with the client.

This Court also finds trial counsel was not ineffective for failing to investigate the Applicant's alleged alibi witnesses. In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995). This Court finds the Applicant failed to produce any witnesses to testify to his alleged alibi. The Applicant's mere speculation as to what the testimony of Tanisha Gibbs and Brandon Simmons would have been is merely speculative and not sufficient to support his claim of ineffective assistance of counsel for failing to interview potential alibi witnesses. This Court further finds credible the testimony of counsel that the Applicant never provided her with the names of any witnesses to pursue or

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interview to establish an alibi defense. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to discuss defense strategies and possible witnesses.

**Failure to inquire into or cure Applicant's state of confusion during the guilty plea**

This Court finds that trial counsel was not ineffective for failing to inquire into or cure the Applicant's alleged state of confusion during the guilty plea. This Court finds the record is void of any equivocation from the Applicant during his guilty plea. This Court finds most persuasive the record and counsel's testimony that the Applicant was well aware of the consequences and nature of his guilty plea. The record reflects the Applicant was advised of the potential sentences for his charges (Tr. 2:14-5:21); his right to a jury trial (Tr. 7:23-8:22), his right to remain silent (Tr. 8:9-18), and his right to confront his accusers. (Tr. 8:11-18.) The Applicant told the court he did not wish to go to trial (Tr. 12:20), was not threatened or promised anything to plead guilty (Tr. 14:1-4), and that he was not under the influence of any alcohol or drugs and did not suffer from any mental illness. (Tr. 11:16-25.) This Court finds the Applicant's colloquy with the court was sufficient to advise him of the seriousness of the charges he was resolving by pleading guilty, his constitutional rights and the potential penalty. The record reflects further the Applicant had no interest in proceeding to trial and putting up a defense. This Court finds the Applicant's guilty plea was entered intelligently, freely, and voluntarily. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to cure his alleged state of confusion during the guilty plea.

**Denial of the Applicant's right to appeal**

This Court finds the Applicant has failed to carry his burden of proving he did not

voluntarily waive his right to appeal. The United States Supreme Court has rejected a bright-line rule that counsel must always consult with the defendant regarding an appeal. See Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). Instead, counsel only has such duty "when there is reason to think either (1) that a rational defendant would want to appeal . . . or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. In making this determination, courts must take into account all the information counsel knew or should have known." Id. "[T]o show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed." Id. at 484, 120 S. Ct. at 1038.

This Court finds most persuasive the Applicant's own testimony that he wanted to skip the direct appeal process and pursue post-conviction relief. This Court finds counsel was not deficient for failing to advise the Applicant of his right to appeal. This Court finds further the Applicant has failed to carry his burden of proving he demonstrated to counsel that he was interested in appealing and that he would have timely appealed.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. See Strickland, 466 U.S. at 688, 104 S. Ct. at 2065. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

### 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. Therefore, all other allegations are hereby denied and dismissed.

### CONCLUSION

Based on the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations occurring before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this PCR application must 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 written notice of entry of this Order 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 served and 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.

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[Signature]


AND IT IS SO ORDERED this 17<sup>th</sup> day of Sept., 2013.

DL Jefferson  
The Honorable Deadra L. Jefferson  
Presiding Judge, Ninth Judicial Circuit

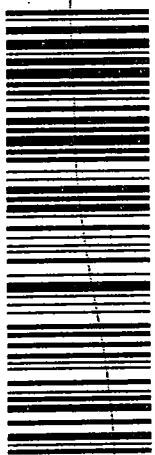
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