

PCR

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October 30, 2013

RECEIVED

NOV 01 2013

S.C. SUPREME COURT

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

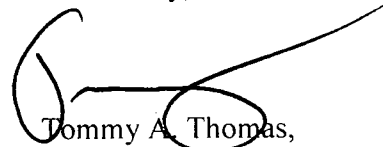
RE: Timothy Michael Hollis #349955 v. State of South Carolina
Appellate Case No.: 2013-CP-46-0267

Dear Sir or Madam:

Enclosed please find and Original and a copy of Mr. Hillis' Notice of Appeal for filing in the above matter.

Kindly return a clocked copy to me in the enclosed envelope. Thank you and should you have any questions, please feel free to contact me.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: J. Rutledge Johnson, Esq.
Timothy M. Hollis #349955

RECEIVED
NOV 0 1 2013
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas
Post Conviction Relief

G. Edward Welmaker, Presiding Judge

Case No.: 13-CP-46-0267

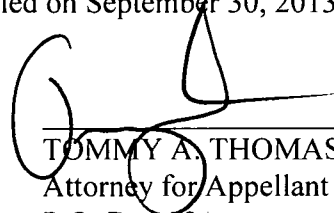
Timothy Michael Hollis #349955Appellant,

vs.

State of South CarolinaRespondent.

NOTICE OF APPEAL

Timothy Michael Hollis #349955 appeals the Order of Dismissal of the Honorable G. Edward Welmaker, signed September 23, 2013 and filed on September 30, 2013 and received on October 3, 2013.



TOMMY A. THOMAS
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Other Counsel of Record:

J. Rutledge Johnson, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

Irmo, South Carolina
October 30, 2013

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas
Post Conviction Relief

G. Edward Welmaker, Presiding Judge

Case No.: 13-CP-46-0267

Timothy Michael Hollis #349955Appellant,

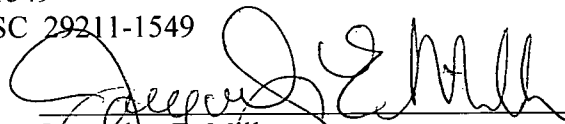
vs.

State of South CarolinaRespondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Attorney for the Applicant,
hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal, with postage
prepaid and the return address clearly shown on said envelope to:

Office of the Attorney General
Atten: J. Rutledge Johnson, Esq.
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller
Tommy A. Thomas, Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, South Carolina
October 30, 2013

RECEIVED
10/3/13

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4600267

Timothy Michael Hollis

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: **ORDER OF DISMISSAL**

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.

s/ G. Edward Welmaker
Circuit Court Judge

2137
Judge Code

9/23/2013
Date

For Clerk of Court Office Use Only

This judgment was entered on **September 30, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **September 30, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Tommy Arthur Thomas PO Box 88 Irmo, SC 29063

**James Rutledge Johnson PO Box 11549 Columbia, SC
29211**

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - 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.

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 Timothy Michael Hollis, #349955,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-0267

ORDER OF DISMISSAL

2013 SEP 30 PM 3:50
 DEPARTMENT OF CORRECTIONS
 C.C.C.P. & GS
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 28, 2013. The Respondent made its Return on April 17, 2013. An evidentiary hearing into the matter was convened on August 12, 2013, at the Moss Justice Center in York, SC. Tommy Thomas, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Michael Brown, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the December 2011 term of York County Grand Jury for DUI Felony Causing Death (2011-GS-46-4351) and Leaving the Scene of an Accident with Death (2011-GS-46-4352). The Applicant was represented by Michael Brown, Esquire. On February 8, 2012, the Applicant pled guilty to both

charges as indicted. The Honorable Robin B. Stillwell sentenced the Applicant, pursuant to negotiations, to confinement for fifteen (15) years for Felony DUI with death resulting and fifteen (15) years, concurrent, for Hit and Run, leaving the scene of an accident with death resulting. The Applicant did not appeal his conviction or sentence.

II.

In his application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Involuntary Guilty Plea"

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified he was arrested on July 29, 2011 around 4-5 p.m., approximately five to ten minutes after the incident. He stated he refused a breathalyzer and was taken to the hospital for a blood draw. Applicant testified he did not ask for a blood sample and was not informed of the right to obtain a sample, but he simply signed the form presented to him. He also stated he did not discuss this with Counsel.

Applicant admitted to leaving the scene of an accident where death resulted and stated he could not argue his innocence on that charge. However, he claims he could "beat" the DUI charge. Applicant stated he relied upon SLED's report and discussed it with both Counsel and Counsel's paralegal. Applicant also testified Counsel did not hire a private investigator for his case.

Applicant further testified he claimed his guilty plea was involuntary because he was under stress as he believed his trial was rushed and did not have enough time before he pled guilty. While he admitted that he pled freely and voluntarily, Applicant stated he was confused during the plea.

On cross-examination, Applicant admitted he waived his rights to a trial and did so on his



own accord. He also acknowledged that had he pursued a trial and was convicted, he faced upwards of fifty years' incarceration. He stated he told the plea court under oath that he was satisfied with Counsel's representation. Applicant also admitted that he was currently on probation when these charges arose and that he pled guilty in that case. As Applicant has pled guilty before, he was familiar with the plea process.

Counsel testified he represented Applicant before and at the guilty plea. Counsel stated that he hired a private investigator in this case. Counsel testified he felt confident about the DUI case as Applicant's blood-alcohol level was below the legal limit and because law enforcement did not draw blood within three hours of the arrest, but that Applicant had admitted to leaving the scene of an accident where death resulted.

On cross-examination, Counsel testified Applicant understood he was pleading to both the DUI and leaving the scene of an accident where death resulted. In exchange for this plea, the State agreed to a negotiated sentence of fifteen years. Counsel also testified he did not threaten or force Applicant to plead guilty. He lastly stated it was Applicant's decision to plead guilty.

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 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he



burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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 (1985).

This Court finds Counsel was competent and diligent in his representation of the Applicant in this case. Counsel sufficiently advised the Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel engaged in

plea negotiations which were beneficial to the Applicant. This Court also finds the Applicant was well informed by Counsel in this case. The Applicant expressed to the plea court that he was satisfied with Counsel's services. Moreover, the Applicant admitted his guilt and accepted responsibility for his actions. The Applicant pled guilty without any threat or coercion and stated he was not under the influence of any intoxicant at the plea hearing. The Applicant also waived his Constitutional rights afforded to him. This Court finds the Applicant pled knowingly, voluntarily, and on his own free will.

The thrust of Applicant's claim is that he would have opted to go to trial in hopes of a successful defense on the Felony DUI charge instead of pleading guilty to both charges. Applicant has failed to carry his burden of proving that Counsel's representation fell below the standard of reasonableness and that, but for Counsel's unprofessional errors, there was a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Drawing from his thirty years of experience in DUI defense, Counsel testified that the success of the leaving the scene of an accident charge was very unlikely. Even if Applicant had been found not guilty of the Felony DUI at trial, he still would have faced up to twenty-five years if found guilty on the other charge for which he is currently serving fifteen years pursuant to his negotiated plea. Accordingly, this Court finds Applicant has failed to demonstrate that he would have chosen to go to trial in light of the circumstances.

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

A handwritten signature in black ink, appearing to be 'C. J. [unclear]', is written over the page number.

As to Applicant's claim of an involuntary guilty plea, the transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Statements made during a guilty plea should be considered conclusive, unless an [Applicant] presents valid reason why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 347 (4th Cir. 1975), overruled on other grounds by U.S. Whitley, 759 F.2d 327 (4th Cir. 1985). This Court finds that Applicant has presented no reasons to show that he should be allowed to depart from the truth of the statements he made during the guilty plea hearing.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

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 notifies the Applicant that he must file and serve a notice of appeal within thirty

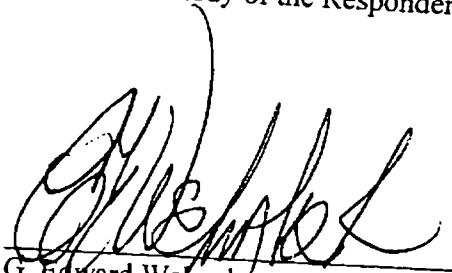


(30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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!



G. Edward Welmaker
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

9-23, 2013

B. K. E. N. South Carolina

