

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Richland County  
Court of Common Pleas  
L. Casey Manning, Circuit Court Judge

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Appellate Case No. 2012-213495

DANIEL BROWN, #341265,

Petitioner,

V.

STATE OF SOUTH CAROLINA,

Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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ALAN WILSON  
Attorney General

MEGAN E. HARRIGAN  
Assistant Attorney General  
S.C. Bar No. 100108

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ATTORNEYS FOR RESPONDENT

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**S.C. Supreme Court**

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## **ISSUE PRESENTED**

**Is there evidence of probative value in the record to support the post-conviction relief court's finding that Counsel was not ineffective, where Petitioner pled guilty to a lesser included offense without negotiations or recommendations from the State, failed to appear for deferred sentencing, and there was overwhelming evidence of guilt?**

## STATEMENT OF THE CASE

Petitioner was true bill indicted during the August 2007 term of the Richland County Grand Jury for Criminal Sexual Conduct with a Minor in the Second Degree (2007-GS-40-6132). He was represented by Joenathan Chaplin, Esquire (herein "Counsel"). On January 20, 2010, Petitioner appeared before the Honorable J. Michelle Childs, where he pled guilty to the lesser included offense of Assault and Battery of a High and Aggravated Nature; sentencing was deferred until a later date.

On March 19, 2010, the plea court reconvened for sentencing; Counsel and prosecuting Assistant Solicitor Margaret Fent were present. Counsel informed the court that he informed Petitioner of the sentencing hearing multiple times and had spoken with members of Petitioner's family, but that he did not know why Petitioner failed to appear. Judge Childs imposed a sentence, which was sealed at that time. An arrest warrant was issued for Petitioner and Counsel's motion to be relieved was granted.

Petitioner was subsequently arrested and transferred to Richland County for the imposition of his sentence. On June 9, 2010, Petitioner appeared *pro se* before Judge Childs, who unsealed Petitioner's sentence and sentenced Petitioner to ten years imprisonment and required him to register as a sex offender. Petitioner did not appeal his guilty plea or sentence.

Thereafter, Petitioner filed an application for post-conviction relief on November 12, 2010, and amended on December 14, 2010.<sup>1</sup> An evidentiary hearing on the matter was convened before the Honorable L. Casey Manning at the Richland County Courthouse on May 22, 2012. Petitioner was present at the hearing and represented by Ryan Holt, Esquire. Respondent was

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<sup>1</sup> Petitioner originally filed an application for post-conviction relief on November 12, 2010 (C.A. No. 2010-CP-40-7924), which the State moved to dismiss based on Applicant's failure to include a verification page. Thereafter, Applicant filed a subsequent application (C.A. No. 2010-CP-40-8716). The two applications were merged in the Order of Dismissal, under the consolidated C.A. No. 2010-CP-40-8716.

represented by Assistant Attorney General Robert D. Corney of the South Carolina Attorney General's Office. Testimony from Petitioner and Counsel was presented to the court. By Order signed and filed on November 19, 2012, Judge Manning denied and dismissed Petitioner's application with prejudice.

Petitioner filed a Petitioner for Writ of Certiorari on August 7, 2012. This Return follows.

## STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether “‘any evidence’ of probative value” exists to sustain the post-conviction relief court’s findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (emphasis added).

In a post-conviction relief action, the petitioner bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the petitioner 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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. Id. The petitioner must overcome this presumption in order to receive relief. Cherry, 300 S.C. 115, 386 S.E.2d 624.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the petitioner must prove that counsel’s performance was deficient. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel’s deficient performance must have prejudiced the Petitioner 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. Where there has been a guilty plea, the Petitioner must prove prejudice by showing that, but for counsel’s errors,

there is a reasonable probability he would not have pled guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985); Hyman v. State, 397 S.C. 35, 49, 723 S.E.2d 375, 382 (2012); Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011); Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

## ARGUMENT

**There is evidence of probative value in the record to support the post-conviction relief court's finding that counsel was not ineffective, where Petitioner pled guilty to a lesser included offense without negotiations or recommendations from the State, failed to appear for deferred sentencing, and there was overwhelming evidence of guilt.**

Petitioner asserts that the post-conviction relief court erred by not finding Counsel ineffective for not securing a plea offer in writing and failing to object and/or move to withdrawal the plea when the State breached the terms of plea agreements. This argument is without merit, as the record provides ample evidence to support the post-conviction relief court's finding that Counsel was not ineffective.

At the post-conviction relief hearing, Applicant testified that Counsel told him that in exchange for his guilty plea to the lesser included offense of Assault and Battery of a High and Aggravated Nature, he would receive a probationary sentence and would not be placed upon the sex offender registry. (App. p. 60). He testified that the plea offer was never in writing and acknowledged that he heard the prosecuting Assistant Solicitor state to the plea court that the pleas was without negotiation or recommendation as to a term of imprisonment (App. p. 66). Applicant also acknowledged during the guilty plea proceeding, following his admission of guilt to having sexual relations with a twelve year old girl, he told the plea court that Counsel "did a great job" and he apologized to the victim's family. (App. p. 15). Petitioner testified that he did not appear for his sentencing hearing due to a death in the family, but failed to present any verification of this. (App. pp. 62-63). Applicant's signature is also on the sentencing sheet which is clearly marked "Without Negotiations or Recommendations." (Supp. App. p. 1).

Counsel testified that he entered into plea negotiations with the State and asked for a probationary sentence. (App. p. 71). He testified that the prosecuting Assistant Solicitor Margaret Fent "was adamant that she wasn't going to agree to probation and that the victim's

family was not going to agree to probation.” (App. p. 71 lines 15-17). He elaborated that “what they would do is reduce the charge down to assault and battery of a high and aggravated nature and then leave us the possibility of being able to get probation if you judge saw – you know, saw fit as well as the registry.” (App. p. 17 lines 17-24). He testified that he fully explained the plea negotiations to Petitioner and that Petitioner could get any sentence “from zero to ten.” (App. p. 72-73). He testified that sentencing was deferred at his client’s request, but that Petitioner did not appear for the sentencing hearing despite being contacted by Counsel and his staff numerous times. (App. pp. 72-74). He testified that he personally spoke with Petitioner and “was never put on notice about anybody – a death in the family.” (App. p. 74 lines 20-21). He testified that following the sentencing hearing, Petitioner contact him and he informed Petitioner that once he failed to appear for sentencing, “all bets were off” in regards to getting a more lenient sentence. (App. pp. 75). When questions as to whether he ever promised Petitioner a particular sentence, Counsel responded: “Never. I never promise anyone anything because again, you know, I don’t have the black rob[e] on and I do not know the -- the nature of what’s going to occur . . . based on what’s happening at that time.” (App. p. 76 lines 5-11). He testified that he did not object to the prosecuting assistant Solicitor’s comments regarding the victim’s family wanting the maximum sentence because he did not feel that she was making any sort of a recommendation and that she “has to repeat what the victim says.” (App. p. 78).

In its Order of Dismissal, the post-conviction relief court specifically found Counsel’s testimony to be very credible while Petitioner’s testimony was not credible and determined that Counsel’s performance was “within reasonable professional norms.” (App. pp. 93-94). The post-conviction relief court elaborated that after receiving Counsel’s reasonable professional advice, Petitioner “made an informed decision to enter his plea.” (App. p. 70-71). Additionally, the post-

conviction relief court found that there was no prejudice due to overwhelming evidence of Petitioner's guilt, citing that "the victim was able to tell police [Petitioner]'s license plate number from the car in which he picked her up, the exact address of [Petitioner]'s home where the assault occurred, give a detailed description of [Petitioner], pick [Petitioner] from a photo lineup and provide other various distinguishing details identifying [Petitioner] as the suspect." (App. pp. 94). Based on the foregoing, there is evidence of probative value to support the post-conviction relief court's findings.

**CONCLUSION**

For the foregoing reasons, Respondent submits that the Petition should be denied. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON  
Attorney General

MEGAN E. HARRIGAN  
Assistant Attorney General  
S.C. Bar No. 100108

By:   
ATTORNEYS FOR RESPONDENT

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November 26, 2013

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County  
The Honorable L. Casey Manning, Circuit Court Judge  
Case No. 2010-CP-40-8716  
Appellate Case No. 2012-213495

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DANIEL BROWN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**PROOF OF SERVICE**

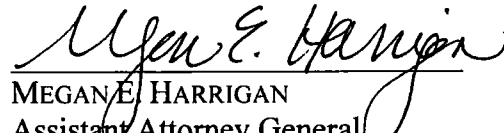
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I, Megan E. Harrigan, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire  
Post Office Box 11589  
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 26<sup>th</sup> day of November, 2013.

  
MEGAN E. HARRIGAN  
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ALAN WILSON  
ATTORNEY GENERAL

November 26, 2013

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**S.C. Supreme Court**

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

Re: **Daniel Brown, #341265 v. The State of South Carolina**  
**Appellate Case No. 2012-213495**

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of Respondent's Return to Petition for Writ of Certiorari.

Sincerely,

Megan E. Harrigan  
Assistant Attorney General  
S.C. Bar No. 100108

MEH/ko  
Enclosures

cc: Wanda H. Carter, Esquire, Appellate Defense  
Trisha Allen, Victim's Services