**THE STATE OF SOUTH CAROLINA**
**In the Supreme Court**

**APPEAL FROM GREENVILLE COUNTY**
**Court of Common Pleas**
**THE HONORABLE ROBIN B. STILWELL**

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**CA No. 2012-CP-23-3348**



JOSHUA ADRIAN PARIS,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

**NOTICE OF APPEAL**

Appellant JOSHUA ADRIAN PARIS, appeals from the Order of the Honorable Robin B. Stilwell, Circuit Court Judge clocked October 24, 2013 and received by Counsel on October 26, 2013.



Respectfully submitted,

Caroline Horlbeck

Caroline M. Horlbeck, Esq.
101 Whitsett St
Greenville, SC 29601

Date: November 26, 2013

Other Counsel of Record: Karen Ratigan, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

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| STATE OF SOUTH CAROLINA ) | IN THE COURT OF COMMON PLEAS |
| ) | C.A. No. 2012-CP-23-3348 |
| COUNTY OF GREENVILLE ) | |
| ) | |
| Joshua Adrian Paris, ) | |
| S.C.D.C. No. 346142, ) | |
| ) | |
| Applicant, ) | |
| ) | **ORDER OF DISMISSAL** |
| v. ) | |
| ) | |
| State of South Carolina, ) | |
| ) | |
| Respondent. ) | |



This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 17, 2012. The Respondent made its return on August 31, 2012. An evidentiary hearing into the matter was convened on August 28, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Philip Paris and the Applicant's plea counsel, E.P. "Bill" Godfrey, Jr., Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

## PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the June 2010 term of the Greenville County Grand Jury for conspiracy (2009-GS-23-5301),



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three counts of armed robbery (2009-GS-23-5305, -5306, -5307), and attempted armed robbery (2009-GS-23-5308). He was represented by E.P. "Bill" Godfrey, Jr., Esquire.

On May 23, 2011, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of five years for conspiracy, fifteen years for each count of armed robbery, and fifteen years for attempted armed robbery.

A notice of appeal was filed at the South Carolina Court of Appeals. By order filed September 9, 2011, the Court of Appeals dismissed the appeal based on the Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

## ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
   a. Failed to compel compliance with plea agreement.
   b. Failed to move to withdraw plea.
   c. Failed to move for reconsideration of sentence.
   d. Failed to prepare for trial and investigate.
2. Involuntary guilty plea.
3. Equal protection of law.

In an Amended Petition for Post Conviction Relief filed by counsel on August 27, 2013, the Applicant made the following allegations:

1. Ineffective assistance of counsel:
   a. Failed to "object to the State's failure to present an indictment to the Grand Jury within ninety (90) days after receipt of the arrest warrant."
   b. Failed to "object to the State's failure to petition the Court for an order delaying action on the warrant for successive ninety (90) day period."

c. Failed to "object to the Court's harsh sentencing of Applicant in comparison to co-defendants in violation of Applicant's right to Equal Protection."

## 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 their 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).

### Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). 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, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).



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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, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he had ten meetings with plea counsel and they reviewed some of the discovery materials, including his statements. The Applicant stated plea counsel never asked why his statements changed. The Applicant stated plea counsel did not make a motion regarding the fact that he was not indicted within 90 days of his arrest. The Applicant stated plea counsel told him the sentence range he was facing was 10-30 years. The Applicant stated there were a few 10-year recommendations from the State, but that he turned them down. The Applicant stated he pled guilty because he did not believe plea counsel was ready for trial. The Applicant stated he met with plea counsel the night before trial and counsel said he would get a 20-25 year sentence if he went to trial but would probably receive a 12 year sentence if he pled guilty. The Applicant stated he did not know at the time that there was not a plea recommendation and would not have pled guilty if he had known this.

Philip Paris, the Applicant's father, stated he attended several meetings with the Applicant and plea counsel. Mr. Paris stated that, in the beginning, there were ten-year plea offers but that plea counsel said there was a good chance at trial. Shortly before the plea hearing, Mr. Paris stated plea counsel told them the Applicant was facing 20-30 years if he went to trial but that counsel would push for a 12-year sentence if he pled guilty.



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Plea counsel testified he filed discovery motions, received those materials from the State, and reviewed them with the Applicant. Plea counsel testified they reviewed the sentence ranges for the charges and the doctrine of accomplice liability numerous times. Plea counsel testified they also reviewed the Applicant's two statements, their impact upon the case, and the hope that they would be helpful because the second statement mentioned coercion. Plea counsel testified he told the Applicant that he would attempt to have the charges reduced to strong arm robbery but that the State would not agree. Plea counsel testified the State made an offer for a ten-year sentence and he discussed it with the Applicant. Plea counsel testified the case was eventually on the trial docket and, while there was hope of a potential helpful witness, that individual did not end up helping the case. Plea counsel testified the Applicant decided to plead guilty prior to that morning. Plea counsel testified the plea judge knew the State would be happy with a 12-year sentence but that he did not make this guarantee to the Applicant. Plea counsel testified he did not consider withdrawing the plea because the State had actually helped their case.

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 the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.9; p.14). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.7-9). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was pressured into



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entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly investigate or prepare his case. This Court finds plea counsel had numerous meetings with the Applicant over a two-year period and that they reviewed the discovery materials and the Applicant's statements. This Court notes plea counsel had a private investigator who located a potential witness, but that this individual did not provide any helpful information. This Court finds the Applicant has failed to articulate what more plea counsel should have done to investigate his case and change the outcome of the proceedings. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the 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); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective in failing to object to the indictments being issued more than 90 days after the arrest warrants. Such a delay is not an automatic ground for relief. See State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984) ("[T]he failure of the solicitor to act upon a warrant within

ninety (90) days . . . does not within itself invalidate a warrant or prevent subsequent prosecution."). Further, this Court finds the Applicant cannot prevail on this allegation because he failed to provide evidence of any prejudice that resulted from the delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order to prevail on an allegation that one's speedy trial rights were violated).

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive if he pled guilty. The Applicant cannot prove plea counsel was deficient. Neither the Applicant nor Mr. Paris testified plea counsel promised the Applicant would receive a 12-year sentence if he pled guilty – only that he would push for such a sentence. Plea counsel testified that, while the State agreed in a bench conference to a 12-year sentence, he never promised the Applicant that the judge would impose this sentence. This Court finds the Applicant was advised of the sentence ranges for his charges – by both plea counsel and the plea judge. (Plea transcript, pp.5-7). While the Applicant may have hoped for a 12-year sentence, he was well aware that he could receive a harsher sentence. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citing Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). This Court also finds that plea counsel was not deficient in failing to move to withdraw the plea merely because the Applicant did not receive a 12-year sentence. See State v. Cantrell, 250 S.C. 376, 380, 158 S.E.2d 189, 191-92 (1967) ("An accused is not permitted to speculate on the supposed clemency of the judge and enter a plea of guilty with the right to retract it if he finds that his expectation was not realized.").



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Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea 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 plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

**Equal Protection**

The Applicant stated his Equal Protection Rights were violated because he received a harsher sentence than his co-defendants. The United States Supreme Court has held that, in addition to showing he has been treated differently than others similarly situated, an equal protection claimant must show by direct or circumstantial evidence that discriminatory intent was the motivating factor for the differentiation in treatment. See, e.g., Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 97 S. Ct. 555 (1977). This Court finds the Applicant has not shown any such discriminatory intent. This Court also notes the Applicant's assertion that she received an unfair sentence is not a basis for relief. The Applicant was sentenced within the statutory range for these offenses. A judge has discretion in sentencing within statutory limits and a disparate sentence between co-defendants is not an abuse of discretion. See State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974); State v. Dozier, 263 S.C. 267, 210 S.E.2d 225 (1974).

## 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 testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

## CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. 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 this Order if he wants 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 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.

**AND IT IS SO ORDERED** this 22 day of OCT, 2013.

Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

GREER, South Carolina.

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| **STATE OF SOUTH CAROLINA** | ) | **IN THE SUPREME COURT** |
| | ) | |
| **COUNTY OF GREENVILLE** | ) | |
| | ) | **C.A. No. 2012-CP-23-3348** |
| JOSHUA ADRIAN PARIS, | ) | |
| | ) | |
| APPELLANT, | ) | |
| | ) | |
| -vs- | ) | **CERTIFICATE OF SERVICE** |
| | ) | |
| | ) | |
| STATE OF SOUTH CAROLINE, | ) | |
| | ) | |
| RESPONDENT. | ) | |
| | ) | |

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorney for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Loriene French
S.C. Office of Appellate Defense
1205 Pendleton St., Suite 306
Columbia, SC 29201

Karen Ratigan, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Caroline M. Horlbeck

Greenville, South Carolina

Nov. 26, 2013

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November 26, 2013

**Via Regular Mail**
Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

**Re:** *JOSHUA ADRIAN PARIS v. State*

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.



Yours very truly,

Caroline Horlbeck
Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General
Office of Appellate Defense

CAROLINE M. HORLBECK
*Attorney At Law*
101 WHITSETT ST.
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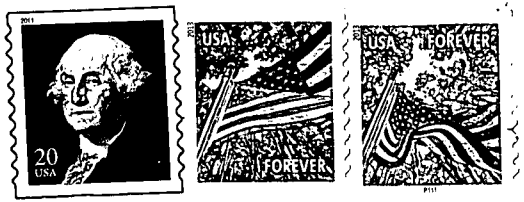


**Via Regular Mail**
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