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SOLOMONS & LAWTON, P.C.

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A.G. SOLOMONS, JR.  
WINSTON A. "TRIP" LAWTON, III  
WINSTON A. LAWTON, JR. (of Counsel)

803-625-3232  
FAX 803-625-2148

RECEIVED

NOV 21 2013

S.C. Supreme Court

November 18, 2013

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

RE: Shawn Davis v State of South Carolina, 11-CP-25-0320

Dear Mr. Shearouse:


Please find the enclosed Notice of Appeal for filing for the above referenced matter as well as Certificate of Service. I was appointed to represent Mr. Davis in this Post Conviction Relief Matter. My client is incarcerated and indigent, and I am requesting that the South Carolina Office of Appellate Defense be appointed to represent Mr. Davis in his appeal.

I am serving this Notice of Appeal on the Hampton County Clerk of Court, SC Attorney General Alan Wilson, SC Assistant Attorney General Ashleigh R. Wilson, South Carolina Office of Appellate Defense, and Shaw Davis.

Thank you, and please call me if there are any questions or concerns.

With regards,

Solomons & Lawton, PC

By:   
\_\_\_\_\_  
W.A. "Trip" Lawton, III

Cc: Hampton County Clerk of Court, SC Attorney General Alan Wilson, SC Assistant Attorney General Ashleigh R. Wilson, South Carolina Office of Appellate Defense, and Shaw Davis

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

NOV 21 2013

Appeal from Hampton County  
In the Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

S.C. Supreme Court

Case No. 2011-CP-25-0320

Shawn Davis.....Appellant,

v.

State of South Carolina..... Respondent

NOTICE OF APPEAL

Shawn Davis appeals the orders of the Hon. Deadra L. Jefferson entered August 28, 2013 and November 14, 2013, denying post conviction relief. Appellant received written notice of the entry of the final order on November 18, 2013.

W.A. "Trip" Lawton, III  
Attorney for Applicant/Appellant  
P.O. Box 969  
Estill, SC 29918  
803.625.3232

November 18, 2013  
Estill, South Carolina

Other Counsel of Record:

Ashleigh R. Wilson, Esquire  
Assistant Attorney General  
S.C. Attorney General's Office  
P. O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent  
Phone 803.734.3970

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Hampton County  
In the Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2011-CP-25-0320

RECEIVED

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S.C. Supreme Court

Shawn Davis.....Appellant,

v.

State of South Carolina..... Respondent

CERTIFICATE OF SERVICE

I, Mary D. Cooper, secretary to Winston A. "Trip" Lawton, III of the firm of Solomons & Lawton, P.C., attorneys for Appellant Shawn Davis do hereby certify that on November 18, 2013, I did deposit/service in the United States Mail, a Notice of Appeal above referenced action to the following persons to-wit:

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

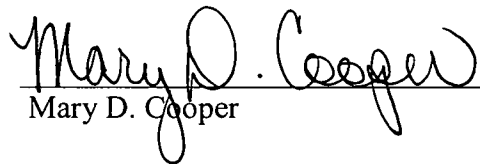
SC Attorney General Alan Wilson  
P.O. Box 11549  
Columbia, SC 29211

SC Assistant Attorney General Ashleigh R. Wilson  
P.O. Box 11549  
Columbia, SC 29211

Hampton County Clerk of Court  
P.O. Box 7  
Hampton, SC 29944

SC Office of Appellate Defense  
Attn: Lorraine French  
P.O. Box 11433  
Columbia, SC 29211-1433

Shawn Davis, Inmate No. 342092  
Lee Correctional Institute  
990 Wisacky Hwy.  
Bishopville, SC 29010

  
Mary D. Cooper

November 18, 2013  
Estill, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2011CP2500320

Shawn Davis	State Of South Carolina
-------------	-------------------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: <b>CLERK OF COURT</b>	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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 DENYING PCR FILED 09-03-2013 SIGNED BY JUDGE JEFFERSON

FILED  
 2013 SEP -9 AM 9:10  
 MYLINDA D. VETTEL  
 CLERK OF COURT  
 COUNTY OF HAMPTON, S.C.  
 BY \_\_\_\_\_

**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.

Circuit Court Judge	Judge Code	Date
For Clerk of Court Office Use Only		

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

*Shawn Davis*

Winston A. Lawton III PO Box 969 Estill, SC 29918

Ashleigh Rayanna Wilson PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Mylynda D Nettles*

Court Reporter

Mylynda Nettles - 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.

\_\_\_\_\_  
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FILED

STATE OF SOUTH CAROLINA  
COUNTY OF HAMPTON

2013 NOV 14 AM 10:59

IN THE COURT OF COMMON PLEAS

NYLINDA D. HUSTLES  
CLERK OF COURT  
HAMPTON COUNTY, S.C. 2011-CP-25-0320

Shawn Davis, #342092,

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL**

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	Winston A. Lawton, III, Esquire
Respondent's Attorney:	Ashleigh R. Wilson, Esquire
Trial Counsel:	Dudley B. Ruffalo, Esquire
Date of Hearing:	August 28, 2013
Court Reporter:	Susan "Mia" Perron

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 8, 2011. The Respondent made its return on December 14, 2012. The Applicant amended his application on March 26, 2013. An evidentiary hearing on the matter was convened on August 28, 2013 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by Winston A. Lawton, III, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Court had before it the trial transcript, the Hampton County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's original and amended applications, and the Respondent's return.

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[Signature]

## PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Hampton County Clerk of Court. The Applicant was indicted at the December 2008 term of the Hampton County Grand Jury for one (1) count of Armed Robbery<sup>1</sup> (2008-GS-25-0587) and one (1) count of Murder<sup>2</sup> (2008-GS-25-0585). He was represented by Dudley B. Ruffalo, Esquire.

The Applicant proceeded to trial and was found guilty of Armed Robbery and not guilty of Murder. On August 4, 2010, the Applicant was sentenced by the Honorable D. Craig Brown to thirty (30) years for Armed Robbery. The Applicant did not appeal his conviction or sentence.

## ALLEGATIONS

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

1. Ineffective assistance of counsel.
  - a. "Allowed improper evidence to be introduced into the record and failed to object"
  - b. "Trial counsel's failure to file direct appeal, notice of intent to appeal"
2. Prosecutorial misconduct.
  - a. "Prosecutors presented false evidence to the jury, counsel failed to object"

The Applicant amended his application on March 26, 2013 to allege he is being held in custody unlawfully for the following reason:

1. Trial counsel should have requested the Court charge the jury on the lesser-included offenses of Armed Robbery, which are Attempted Armed Robbery and Larceny.

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<sup>1</sup> An offender who commits Armed Robbery is guilty of a most serious, violent felony and, "upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence." S.C. CODE ANN. § 16-11-330(A) (1996).

<sup>2</sup> A defendant who is convicted of Murder is guilty of a most serious, violent felony and "must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life" without possibility of parole. S.C. CODE ANN. § 16-3-20(A) (2010).

At the hearing, the Applicant abandoned all grounds for relief except ineffective assistance of counsel for the following reasons:

1. Ineffective assistance of counsel.
  - a. Counsel failed to request that the Applicant be evaluated for mental competency.
  - b. Counsel failed to file an appeal for the Applicant.
  - c. Counsel failed to request the jury be charged on the lesser included offenses of attempted armed robbery and larceny.

### 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 conclusion of law as required by S.C. CODE ANN. § 17-27-80 (2003).

#### Summary of the Testimony

Dudley B. Ruffalo, Esquire, testified that he represented the Applicant for the year leading up to his trial. Counsel testified he has been practicing law since 1982 and has spent the majority of his career practicing criminal law. Counsel testified he was appointed to represent the Applicant and met with him twelve (12) to fourteen (14) times prior to trial. He testified he filed Brady and Rule 5 motions on the Applicant's behalf and reviewed the discovery material with the Applicant. Counsel testified he discussed the elements of the charges, his constitutional rights, range of penalty, and what the State was required to prove with the Applicant. He testified they also discussed the Applicant's version of the facts.

Counsel testified he also discussed with the Applicant possible defenses. Counsel testified their strategy was to direct the jury's attention away from the murder by arguing the

Applicant was not the shooter, that the Applicant never agreed to murder the victim, and that the Applicant "had no clue anyone would be killed." Counsel testified the Applicant gave him no witnesses or leads to investigate prior to trial. He testified his investigation of the case involved reviewing all discovery materials, viewing the scene twice, speaking with the co-defendants' attorneys, and speaking with the police officers and solicitors. Counsel testified he had ample time to prepare for trial.

Counsel testified prior to trial, the State offered the Applicant a plea to thirty (30) years for Armed Robbery and a dismissal of the Murder charge. Counsel testified he met with the Applicant frequently—at least twelve (12) to fourteen (14) times—and had no concerns about the Applicant's competency prior to trial. Counsel testified he has extensive experience with psychiatrists and has handled many cases involving guilty, but mentally ill clients. Counsel testified he looks for several factors when evaluating whether his clients have competency issues, including his client's life history, ability to communicate and understand, memory loss, and functioning computation skills. He further testified that the Applicant did not exhibit any of the "indicators" that would have triggered in his mind the need for a competency evaluation. He testified the Applicant never indicated he wanted to be evaluated. He testified he obtained the Applicant's school records, which indicated mostly behavioral problems and no psychological, psychiatric, or emotional issues. Counsel also testified that he was aware of the Applicant's family background and that, based on his experience, the Applicant did not need to be evaluated for competency. Counsel testified he had no concerns regarding the Applicant's competency or his ability to assist in his representation. He further testified that the Applicant was capable and did assist in his defense.

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Counsel testified the Applicant was not the gunman, but confessed to his involvement in the crime. He testified this was clearly a "hand of one" case dealing with accomplice liability. He testified the State's evidence clearly established that there was an agreement between the Applicant and his co-defendants prior to and upon entering the premises to steal drugs and or money from the victim. He further testified the evidence reflected that this agreement was not limited to stealing cash from the register. He testified the Applicant's working defense theory was that the co-defendants elected one person to hold the victim at gunpoint while the others robbed the store and the co-defendants were surprised when the victim was shot. He testified the Applicant admitted going into the victim's pockets and stealing a pack of Newport cigarettes after he was shot, but that the State's theory was that all co-defendants entered the store to rob someone by the threat of death. Counsel testified that, although he felt that the target offense of Armed Robbery had been committed, thus precluding a charge on the lesser included offense of Attempted Armed Robbery, the defense's position was to direct the jury's attention away from the murder and argue that the Applicant had no idea the murder would take place. Counsel testified the State's evidence clearly met the elements of Armed Robbery. He further testified he had no "honest" factual basis in the record upon which to base any request for a lesser-included charge of Attempted Armed Robbery.

Counsel testified that he spoke with the Applicant about his right to appeal immediately after trial. He further testified that when the Applicant was acquitted of Murder, he was elated. Counsel testified the Applicant congratulated him on a job well done and told him he did not want to file an appeal. Counsel testified that he asked the Applicant if he wanted to file an appeal and his response was "No, you did good Ruffalo. You did good." Counsel testified he had lengthy talks with the Applicant about the possibility of being acquitted of the Murder charge.

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He testified he explained to the Applicant that if he was successful on the Murder charge, double jeopardy would have barred him from being tried again for Murder. Counsel testified that, because he told the Applicant that he had to tell him if he wanted an appeal immediately after the verdict, it was not practical to write a follow up letter about an appeal. Counsel testified he never received any letters from the Applicant indicating he wanted an appeal after trial. Counsel further testified the Applicant was thinking clearly after the verdict and that, during the approximately nine (9) to fourteen (14) minutes they conversed after the verdict was read, he made the Applicant seriously aware of his right to appeal. Counsel testified that, had the Applicant requested an appeal, he would have filed one on his behalf but that the only issue that could have been addressed on appeal was the joinder issue. Counsel also testified that he thought the Applicant's trial went well and that an appeal would have been a "useless exercise." He further testified that even though the Applicant was a difficult client at times accusing him of not being a "real" lawyer and making veiled threats regarding his safety, he did not take any of it seriously and would still have filed the appeal had the Applicant requested it. He further testified that he keeps abreast of the ethics materials for public defenders and would not exceed the scope of a client's request regarding the filing of an appeal.

The Applicant also testified. He testified he was twenty-eight (28) years old and was born in Washington, DC and at the age of five (5) weeks moved to South Carolina after his mother's death. The Applicant testified he never met his mother because her body was chopped up. He testified he moved to Estill, South Carolina and experienced emotional problems after his mother's death. He testified he told counsel he wanted to be evaluated. He testified he went to the 12th grade, but got kicked out of school and did not graduate or get his GED. The Applicant testified he asked his attorney to file an appeal, but did not speak with counsel about an appeal.

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He further testified that he was not aware an appeal had not been filed until informed by the Clerk of Court's office.

### 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel 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 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. 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. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "'reasonableness under prevailing professional norms.'" Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the

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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 the 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).

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 range of penalty, the Applicant’s constitutional rights, the Applicant’s version of the facts, and possible defenses or lack thereof.

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 counsel’s testimony credible and the Applicant’s testimony not credible. 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, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. 2052, 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, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel’s representation did not fall below an objective standard of

reasonableness.

This Court finds trial counsel was not ineffective for failing to have the Applicant evaluated for competency prior to trial. A defendant must be mentally competent to stand trial to assist counsel in his defense. Drope v. Missouri, 420 U.S. 162, 171, 95 S. Ct. 896, 903 (1975). See State v. Finklea, 308 S.C. 379, 382, 697 S.E.2d 543, 546 (2010). In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of his trial or plea. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). When deciding whether a client is competent to stand trial, counsel may reasonably rely on his own perceptions. Id.

This Court finds the Applicant has failed to carry his burden of proving that there is a reasonable probability that he would have been found incompetent at the time of his trial had he been evaluated. This Court also finds persuasive counsel's testimony that his interactions with the Applicant did not warrant concern as to the Applicant's competency. This Court further finds the Applicant's competency at the time of trial did not warrant further investigation as the record is clear that the Applicant understood his trial proceeding and was able to actively assist counsel during his representation. This Court also finds counsel adequately investigated the Applicant's family and educational background. None of the background information provided by the Applicant is sufficient to warrant a concern regarding his competency to stand trial. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel should have had the Applicant evaluated for competency prior to trial.

This Court finds that counsel was not ineffective for failing to file a notice of appeal of the Applicant's guilty verdict. The United States Supreme Court has rejected a "bright-line rule

that counsel must always consult with the defendant regarding an appeal.” Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). The Court instead held that “counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Id. This Court finds the Applicant was advised by Counsel of his right to appeal and indicated to Counsel that he did not want to pursue an appeal. This Court finds credible Counsel’s testimony that he discussed the right to appeal extensively with the Applicant. This Court also finds credible Counsel’s testimony that the Applicant was elated about the Murder acquittal and told him that he did not want to appeal. This Court also finds Counsel only had an obligation to advise the Applicant of his right to appeal and follow the Applicant’s instructions. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving Counsel failed to file a notice of appeal for the Applicant at the conclusion of trial.

This Court finds trial counsel was not ineffective for failing to request a jury instruction for the lesser included offense of Attempted Armed Robbery and Larceny where such a request is unsupported by the facts. A trial judge is required to charge the jury on a lesser-included offense if there is evidence from which the jury could infer that a defendant committed the lesser offense rather than the greater. State v. Pressley, 292 S.C. 9, 10, 354 S.E.2d 777, 777 (1987) (citing State v. Gandy, 283 S.C. 571, 324 S.E.2d 65 (1984); State v. Tyson, 283 S.C. 375, 323 S.E.2d 770 (1984)).

This Court finds counsel was not ineffective for failing to request jury instructions on the lesser included offenses of Attempted Armed Robbery and Larceny. This Court finds jury

instructions on the lesser included offenses of Attempted Armed Robbery and Larceny were not warranted by the evidence presented at trial and the Applicant would not have been found guilty of those offenses. See S.C. CODE ANN. § 16-11-330(B) (2003) (Attempted Armed Robbery); State v. Moore, 374 S.C. 468, 477, 649 S.E.2d 84, 88 (Ct. App. 2007) (“Larceny is a lesser-included offense of the crime of Armed Robbery.”). The evidence presented at trial shows the defendants agreed to rob the victim and to steal something, which agreement was sufficient to meet the elements of Armed Robbery. This Court also finds the defendants did not have to agree on what to steal in order to be convicted of Armed Robbery. Since the Applicant confessed to being with his co-defendants and taking cigarettes during the robbery, it is unlikely he would have been convicted of any lesser included offenses and the Applicant was not prejudiced as a result.

This Court also finds persuasive counsel’s testimony that he felt the armed robbery was complete and he could not in good faith request a charge on the lesser-included offenses to Armed Robbery. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for requesting a jury instruction on Attempted Armed Robbery and Larceny.

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 Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing 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 whether the Applicant was prejudiced by counsel’s representation.

See id. 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 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 application for PCR 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 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.

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[Signature]

**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 7<sup>th</sup> day of November, 2013

DL Jefferson  
The Honorable Deadra L. Jefferson  
Presiding Judge

Charleston, South Carolina  
At Chambers

130213  
DLJ

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Shawn Davis, SCDC# 342092

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS

Case # 2011-CP-25-0320

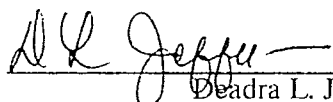
ORDER

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

- 1. The application for post-conviction relief is hereby:  denied  granted under advisement; a formal order will be filed (see below - No:6)
- 2. Motion(s) was/were heard in this case and the court orders:  
 The motion to dismiss and/or for summary judgment is hereby  granted  denied under advisement based upon the  statute of limitations and/or  the successive nature of the application or  other reason as follows:
- 3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:  
 Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.  
 The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or  no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.
- 4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed  with prejudice  without prejudice.
- 5. Other: \_\_\_\_\_
- 6. The court further orders:  
 The  Attorney General  Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within 15 days.  
 Both sides are directed to submit proposed orders to the court and to serve the orders on each other within \_\_\_\_\_ days.  
 The court does not request proposed orders.

2013 SEP -3 AM 10:35  
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 COURT OF COMMON PLEAS  
 COUNTY OF HAMPTON

IT IS SO ORDERED.

  
 Deadra L. Jefferson  
 Judge

Date: August 28, 2013  
Beaufort, s.c.  
 COURT REPORTER

LAW OFFICES  
SOLOMONS & LAWTON, P.C.

125 MARTIN LUTHER KING, JR. BLVD. SE  
P.O. BOX 969  
ESTILL, SOUTH CAROLINA 29918



UNITED WE STAND

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



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