LAW OFFICE OF TRICIA A. BLANCHETTE

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DEC 13 2013

S.C. Supreme Court

December 13, 2013
VIA HAND DELIVERY

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

RE: Dytavis Hinton v. State; Docket No.: 2012-CP-46-1536

Dear Sir:

Enclosed for filing is a Notice of Appeal for the above PCR case. Also enclosed are the following:

(1) Proof of service on the Respondent.

(2) A copy of the Order if Dismissal and Order Denying Applicant's Motion for Rehearing and to Alter/Amend.

By copy of this letter, I am providing a copy of the above documents to the Office of Appellate Defense. I will provide a completed Affidavit of Indigency to the Office of Appellate Defense upon receipt from my client next week.

Thank you for your assistance with this matter. Please contact my office with any questions.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: J. Rutledge Johnson, Assistant Attorney General
Office of Appellate Defense
Dytavis Hinton

PO Box 12725 | Columbia SC 29211

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable J. Edward Welmaker, Circuit Court Judge

Case No.: 2012-CP-46-1536

Dytavis L. Hinton,.....Petitioner,

vs.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Dytavis L. Hinton, Petitioner, appeals the Order of Dismissal issued by the Honorable J. Edward Welmaker on October 3, 2013, which was filed on October 16, 2013. Petitioner also appeals the Order Denying Applicant's Motion for Rehearing and to Alter/Amend issued by the Honorable J. Edward Welmaker on November 23, 2013, which was filed on November 25, 2013. Petitioner, through counsel, received notice of the entry of the Order Denying Applicant's Motion for Rehearing and to Alter/Amend on December 2, 2013.

Tricia A. Blanchette
S.C. Bar No. 74904
PO Box 12725
Columbia, SC 29211
(803) 988-0008

Other Counsel of Record:

J. Rutledge Johnson
Assistant Attorney General
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THE STATE OF SOUTH CAROLINA
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Dytavis L. Hinton,.....Petitioner,

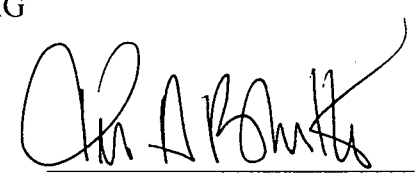
vs.

State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney at Law, hereby certify that I hand delivered this 13th day of December 2013, a copy of Notice of Appeal to J. Rutledge Johnson of the Attorney General's Office, at:

Office of the Attorney General
ATT: J. Rutledge Johnson, Ast. AG
1000 Assembly Street, 5th Floor
Columbia, SC 29211



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December 13, 2013

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
Dytavis Laquan Hinton, #346826, Applicant, v. State of South Carolina, Respondent.	)	2012-CP-46-1536 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 24, 2012. Respondent made its Return on June 28, 2012. An evidentiary hearing into the matter was convened on August 15, 2013, at the Moss Justice Center in York, SC. Tricia Blanchette, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Travis Barnette, Marcus Thompson, Christine Thompson, Ronald Guerette and Applicant testified on Applicant's behalf. Harry Dest, 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, the crime scene photographs, Applicant's memorandum and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. Applicant was charged with Attempted Murder (2007-GS-46-1907), Burglary, 1st degree (2007-GS-46-1908), Attempted Armed

Robbery (2007-GS-46-1909), and Criminal Conspiracy (2007-GS-46-1910)[1]. Applicant was represented by the Harry Dest, Esquire. On July 12, 2011, Applicant waived presentment to the Grand Jury and pled guilty to all charges. The Honorable G. Thomas Cooper sentenced Applicant to confinement for twenty (20) years for Attempted Murder, twenty (20) years, concurrent, for Burglary, 1st Degree, twenty (20) years, concurrent, for Attempted Armed Robbery and five (5) years, concurrent, for Criminal Conspiracy.

A notice of appeal was filed on Applicant's behalf. However, Applicant's appeal was dismissed for failure to identify issues reviewable on appeal. The Remittitur was issued on August 23, 2011.

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

1. "Ineffective Assistance of Counsel"
   a. "Counsel failed to investigate"
2. "Violation of Constitutional Rights"
   a. "Police obtained evidence in violation of rights"
3. "Improper Guilty Plea"
   a. "Intelligent Voluntary not knowing about plea"

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

1. "Ineffective assistance of counsel for failure to properly prepare and investigate, specifically, but not limited to the following:

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1 Applicant was also charged with Murder, but the State agreed to dismiss this charge in exchange for Applicant's guilty plea.

a. "Failure to completely review and discuss discovery with Applicant. Failure to ensure that Applicant had a complete copy of the discovery materials."
b. "Failure to contact and utilize witnesses"
c. "Failure to investigate crime scene and evidentiary reports (firearm/ballistics, latent print, gunshot residue, etc.)."
d. "Failure to investigate inconsistencies in witnesses(sic) statements."
e. "Failure to review statements attributed to Applicant with Applicant prior to his plea and/or in preparation for trial."

2. "Ineffective assistance of counsel for advising Applicant that he would receive a split or suspended sentence and informing Applicant to not be concerned with all the charges that he was facing, which resulted in an involuntary guilty plea."
3. "Ineffective assistance of counsel for not allowing Applicant's family to speak on his behalf at the plea hearing."
4. "Ineffective assistance of counsel for failure to file a Motion for Reconsideration."
5. "Ineffective assistance of counsel for failure to properly preserve issues for appeal as was admitted in the Rule203(b), SCACR, Explanation."

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel listed in his amended application.

SUMMARY OF TESTIMONY

Travis Barnette testified he was Applicant's friend from school and was with Applicant earlier in the day on the day of the incident. He stated he heard no discussion about Applicant planning a robbery. He also claimed Applicant "accessorized" his clothing with bandanas. He lastly testified Counsel did not contact him. On cross-examination, Mr. Barnette admitted he was not

present at the Money (the bar) or McDonald's and had no first-hand knowledge about what transpired that night.

Marcus Thompson, Applicant's brother, testified he was working the drive-through window at McDonald's on the night in question. He stated Applicant and Applicant's friends drove through the drive-through window in a PT Cruiser. He testified Applicant's co-defendant, Demorrio Burris, was intoxicated, and he told Burris to go home three times. Burris said he was not going home until he received his money. Mr. Thompson also testified he had a view of the Money from where he was working, but did not see the incident.

Mr. Thompson further stated he spoke with Detective Tripp and gave him information that Applicant had given him. He asked questions to both Detective Tripp and Counsel, but got no answers. He also stated he wanted to speak at Applicant's guilty plea, but was not given the opportunity. He lastly said Applicant often wore bandanas. On cross-examination, Mr. Thompson admitted that he knew Applicant brought the gun used by Burris to the scene that night. He also admitted he could not see the front door of the RV where the shooting occurred. He lastly stated he was not at the Money that night.

Christine Thompson, Applicant's mother, testified she wanted to address the plea court, but did not have the opportunity to do so. She also stated Applicant often wore different colored bandanas. On cross-examination, Ms. Thompson stated she did not know that Applicant possessed a gun that night, but knew Applicant owned one and told him to get rid of it. She also admitted that she knew the gun that was used in the attempted robbery was registered to Applicant. She lastly testified that she was not present at the scene that night.

Applicant testified he was hospitalized after the incident in Charlotte and was extradited back to South Carolina. He spoke with Detective Tripp to whom he gave a statement. Applicant claims he was on narcotics for pain because of his injuries (two gunshot wounds) when he gave this statement. He also presented his version of the facts on the night in question. Applicant stated he was at McDonald's and left his gun in the car with the clip out. He then went into the Money with friends where he bought a few drinks. On the way out of the Money, he claims he saw Burris walking towards Victims' RV, and when he met up with Burris, Burris was already inside the RV. Burris had Applicant's gun and allegedly stated "I got this." Thereafter, shots were fired and Applicant ran away after being shot twice, once in the hip and once in the abdomen. He was found by officers in the parking lot of the Money lying on the ground. Applicant also claimed he did not tell officers at the scene that someone tried to rob him. Additionally, Applicant stated at the plea, the State said he used a bandana to cover his face during the robbery, but at the PCR hearing, Applicant claimed the bandana was just an accessory to his outfit and that he used it to stop the bleeding from his wounds.

Applicant testified Counsel was appointed and he met with Counsel and Counsel's investigator two to three times to discuss gunshot residue, ballistics, and statements. He stated he asked Counsel to speak with witnesses. Applicant also testified he met with Counsel's investigator who discussed the charges with him including a charge of felony murder. Counsel explained he was charged with murder under the theory of "hand of one, hand of all." Applicant stated he was preparing for a trial when Counsel presented him two offers from the State: 1.) a cap of twenty-five years, which declined and 2.) a cap of twenty years. He also stated Counsel indicated he could receive a split sentence. Applicant testified Counsel never explained the waiver of presentment of

the charges to the grand jury. He also stated the facts presented by the State were different than what occurred, but he did not correct them because he was simply going along with Counsel's advice. Applicant further claimed Counsel did not prepare him for the plea and that he wanted his mother and brother to testify, but Counsel would not allow them to because Counsel said they would turn the plea into a racial issue. Lastly, Applicant testified Counsel promised he would not get a twenty-year sentence.

On cross-examination, Applicant admitted he made the statement to Detective Tripp nine days after the incident date. He also admitted he was both drunk and high on marijuana the night of the incident. He claims he did not tell law enforcement when arrested that two white males tried to rob him and left in a white car. Applicant stated that he agreed with the facts as presented at the plea but did not lie because he was simply heeding Counsel's advice. However, when given the opportunity to speak at the plea, Applicant did not correct the facts. Applicant testified while Counsel explained to him the theory of "hand of one, hand of all," he did not understand why he was charged with Burris's death. Applicant then admitted had he not brought the gun to the scene that night, Burris would not have had access to it. Applicant stated he realized if successful on his PCR, he would be facing fifteen years to life on the Burglary, 1st degree charge alone. He also stated he was willing to risk a five-year reduction for a potential of life in prison. Applicant admitted he waived his right to a trial when he plead guilty and that no one threated or promised him anything to get him to plead guilty. He also admitted he stated at the plea that he was satisfied with Counsel's representation and apologized for bringing his gun to the scene that night.

Ronald Guerette, qualified as an expert in crime scene investigation, testified he received three compact discs from Counsel's file, interviewed a witness (Michael Walsh) and Applicant and

reviewed the discovery in this case. He stated there was no indication that this case had been investigated and that there were no hand-written notes from law enforcement on the case. Mr. Guerette also testified the medical examiner should have been contacted as there was evidence of an execution-style shooting of Burris. He stated there was no indication that the patrons of the Money were ever interviewed. He also stated while there were photographs of the bullet trajectories, there was no report of findings or physical evidence in the State's property report.

Mr. Geurette testified Applicant's statements to law enforcement were consistent with each other and the evidence at the crime scene. He also claimed law enforcement's explanation of the crime scene did not match what witnesses stated. He further stated that after Burris was shot in the hip, Burris was shot execution-style. Mr. Guerette testified gunshot residue kits were only performed on Burris and Scott Thomas, and no fingerprint evidence was collected. He stated Walsh's statements to police conflicted each other. Mr. Guerette testified there was a small bag of marijuana found at the scene, alluding that a drug sale might have occurred. He also stated he reviewed many photographs of the crime scene and could have told a trial court that this case should have been investigated more thoroughly and that Applicant should not have pled guilty based on the lack of investigation. He lastly stated his opinion of what occurred, based on his review of the crime scene photographs and other documents, was that Applicant was outside of the RV when shot and that Applicant was only shot once and had an entrance and exit wound which produced the two wounds on his body.

On cross-examination, Mr. Guerrette testified he did not review Applicant's medical records, and Applicant did not tell him that Applicant was shot twice during the incident. He stated his investigation would not have changed if Applicant told him that Applicant was shot twice. He also

stated he does not know if his investigation would change if he knew that Applicant told the treating physician he was shot twice because he did not review the medical report. Mr. Guerette stated the Victims had a right to protect themselves in their own RV, but not to the point of shooting Burris from point-blank range[2]. He also testified that just because gunshot residue on Victim was not documented does not mean that it did not exist. Mr. Geurette admitted he did not speak to any of the law enforcement officials working the scene that night. He also claimed that the blood on the staircase should have been tested to determine whose blood it was.

Mr. Geurette admitted that all of the shell casings were found inside the RV, which indicated that all of the shooting occurred inside the RV. He also stated he knew Burris used Applicant's gun. Mr. Geurette admitted he could not tell the order in which the shots were fired. He testified Applicant told him that Applicant heard another gunshot while Applicant was lying on the ground in the parking lot, but this account was not contained in any of the other witnesses' statements. Mr. Guerette also testified he did not interview Counsel in preparation for the PCR hearing. He stated he was aware that Burris had marijuana in his system, the marijuana that was found at the scene was outside the RV, Applicant admitted to smoking marijuana that night and that there was no evidence that a drug sale occurred. Mr. Guerette admitted he did not review the plea transcript in preparation for his testimony. Lastly, Mr. Geurette testified there was no possibility, based on the bullets' trajectory, that Applicant was inside the RV that night.

On re-direct examination, Mr. Geurette testified his role was to review the investigation done in this case. He stated the pictures reveal what looked to be a fight inside the RV. He also stated

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2 Mr. Guerette admitted that he was not a legal expert or trained in the law.

Applicant could have been outside of the RV, but he could not tell exactly from where the bullets were fired.

Counsel testified he was appointed shortly after Applicant's arrest, has been a public defender for twenty-three years and has handled hundreds of murder cases. He also stated he has investigated many crime scenes and hired investigators to investigate crime scenes on many occasions. Counsel testified he has an understanding of bullet trajectory, but would hire an expert if he did not understand a certain concept. Counsel stated he filed for discovery and received packets of compact disks from the State. Counsel testified that Applicant, early in the case, told Counsel that he went inside the RV that night to help Burris commit a robbery. This was a last-minute decision and not a planned event. Applicant also told Counsel he was under the influence of alcohol and marijuana that night. Counsel testified Applicant give four different statements during the investigation of the case: 1.) a woman with black hair tried to rob him; 2.) two white males robbed him and fled in a white car; 3.) he went to the RV to try and stop Burris from robbing Victims; and 4.) he knew Burris was going to RV to rob and went with Burris. Counsel testified he confronted Applicant with these statements, and Applicant admitted he put the bandana over his face and went into the RV to rob Victims and shot were fired inside the RV.

Counsel testified that all of the empty shell casings were found inside the RV. He also stated the Victims gave statements that two black males came into the RV with masks/bandanas covering their faces, demanded money, and shots were fired. Counsel testified Applicant did not have a gun during the incident, but Burris used Applicant's gun. Counsel stated Applicant wanted Counsel to interview other witnesses because Applicant did not believe that Broderick was going to make a

statement against Applicant. Broderick told Counsel he thought Applicant and Burris were going to the RV to rob Victims.

Counsel testified he did not investigate the case further after Applicant admitted his involvement in the crime, but made efforts to mitigate the crime. He hired Dr. Kenneth Marsh to evaluate Applicant about possible recidivism. Applicant had no significant prior criminal history, and Counsel used this report to argue for leniency at the plea. Counsel also stated Applicant did not want Counsel to tell Applicant's family much information because Applicant was ashamed of his actions.

Counsel testified he did not meet with Victims, but requested through the State to meet with them. However, Victims would not meet with Counsel. He also stated he did not file a motion to reconsider because in his opinion, based on his experience and the facts of the case, the plea judge would not have reduced Applicant's sentence. Counsel testified he did not promise Applicant a split or suspended sentence, but asked for it at the plea hearing. He stated he never promise his clients a certain sentence. The negotiation with the State was a cap of twenty years, and Applicant's sentence was within the plea judge's discretion. Counsel further stated he did not disallow Applicant's family from speaking at the plea, but it was his recollection that Applicant's family did not want to speak during the hearing. Moreover, Counsel testified he never told Applicant's family that this case was fueled by a racial issue.

Counsel testified he made no threats or promises to get Applicant to plead guilty. Counsel discussion all of the charges with Applicant and explained why the State dismissed the murder charge. Counsel testified, while other states have decided whether the "felony murder" rule applies in cases such as this one, South Carolina has not decided the issue. He stated he thought the State

would not pursue the murder charge because the Burglary, 1st degree charge carried a maximum sentence of life in prison, and the State was not willing to pursue a lesser offense. Counsel also explained the "hand of one, hand of all" theory and Applicant understood it.

On cross-examination, Counsel testified Applicant wanted to accept the plea offer. He also stated he did not remember a twenty-five year offer or Applicant declining an initial offer. Counsel discussed again the "felony murder" rule and its applicability in South Carolina. Counsel stated he asked for a split or suspended sentence but did not file a motion to reconsider because he and Applicant expressed all of the facts they wanted to present and had no new or additional information which would necessitate a motion for reconsideration. Additionally, Counsel testified he has argued "Castle Doctrine" cases previously, and the cases where he prevailed were cases in which someone invaded his client home and his client protected himself. He stated this was not one of those cases. Further, Counsel testified, in his opinion, the local judges tend to be heavy on the sentencing, and it was strategy to have Judge Cooper hear Applicant's guilty plea. Lastly, Counsel stated he met with Applicant immediately after the plea and does not remember Applicant accusing him about the type and length of the sentence Applicant would receive.

On re-direct examination, Counsel testified he pursued no more investigation of the crime scene due to Applicant's confession, his experience and the facts of the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW AW
including Applicant's MEMORANDUM

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. This Court finds the testimony of the Applicant and Mr. Guerette not credible while

finding Counsel's testimony very credible. 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 Applicant in this case. Counsel sufficiently advised Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel satisfactory investigated this case based on the information supplied by Applicant and the evidence available. Counsel also engaged in plea negotiations which were beneficial to Applicant. This Court also finds Applicant was well informed by Counsel in this case. This Court is convinced that all of Counsel's strategies and his advice that Applicant accept a plea offer from the State were reasonable professional decisions based upon Counsel's experience and the facts of the case. As such, Applicant cannot show any resulting prejudice.

Failure to investigate crime scene

The thrust of Applicant's claims relate to Counsel not conducting a full investigation of the crime scene. An expert witness, Mr. Guerette, testified on Applicant's behalf and discussed inconsistencies in numerous State exhibits and witness statements, using documents of the investigative file in support. This Court, in analyzing each point raised, finds that differences are commonplace in investigations and none of those relied upon by the expert would have resulted in a change in the outcome. (Even Applicant's statements to law enforcement varied.) In preparation for his testimony, the expert acknowledged never having discussed with local law enforcement their investigation or reading the guilty plea transcript. In the light of all of the facts and testimony presented, Counsel did more than an adequate investigation of the facts to present to Applicant for his consideration before entering his guilty plea. Accordingly, Applicant has failed to demonstrate that the outcome of the proceeding would have been different. *See* Cherry v. State, 300 S.C. 115, 386

S.E.2d 624 (1998). Applicant has failed to meet his burden as to this allegation.

Failure to review discovery with Applicant

Applicant claims Counsel failed to fully review discovery with him and provide him with a complete copy of discovery.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information." Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 2066 (1984).

Counsel testified he filed for and received discovery from the State. Counsel also testified that early in the case, Applicant admitted he joined Burris in attempting to rob Victims. At this point, fully discussing the discovery was futile. Nevertheless, Counsel testified he reviewed all of the charges with Applicant and his family and that it was Applicant's desire to accept the State's plea negotiation. Applicant has failed to meet his burden of proving that had Counsel more thoroughly reviewed discovery with Applicant, Applicant would have not pled guilty, but would have insisted on going to trial. *See* Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

Failure to contact and utilize witnesses

Applicant claims Counsel was ineffective for failing to contact and utilize witnesses before and during the guilty plea. Witnesses at the PCR on Applicant's behalf testified they would have been willing to speak on Applicant's behalf at the plea or testify at trial. Most of the testimony centered around Applicant's use of bandanas to accessorize his clothing. The State argued at the plea that Applicant's use of bandanas (which arose as an afterthought by Solicitor (p. 40 Tr.)

displayed Applicant's preparation for the crime or speculated on Applicant's gang activity. Counsel testified Applicant told him Applicant used the bandana to cover his face during the attempted robbery. Additionally, Counsel stated it was his recollection that these witnesses chose not to address the plea court when given the chance. Further, none of the witnesses presented at the PCR hearing witnessed the actual incident. Therefore, these witnesses would not have been able to provide a first-hand account that would lessen Applicant's accountability in this case. Regardless, the issue of the bandana would not have changed the outcome of the plea before a very experienced and seasoned circuit court judge.

Failure to investigate inconsistencies in witnesses' statements/Failure to review statements attributed to Applicant prior to his guilty plea

Applicant claims Counsel failed to investigate inconsistencies in witnesses' statements and failed to review statements attributed to Applicant prior to his guilty plea.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information." Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 2066 (1984).

As stated prior, Counsel testified Applicant told him early in the case that Applicant joined Burris for the purpose of robbing Victims. Once Applicant admitted his involvement in these crimes, Counsel was not required to further investigate any more statements as such effort would be fruitless. Clearly, Counsel's actions in this case were heavily influenced and guided by the information provided by Applicant. As such, Applicant has failed to prove Counsel's actions fell

below the reasonableness standard or that the outcome would have changed had Counsel more thoroughly investigated or discussed the various statements with Applicant.

Failure to file a Motion for Reconsideration

Counsel's failure to ask for a reconsideration of the sentence is without merit based on the negotiations and interchanges with the plea judge. Further, Counsel testified he and Applicant were able to elucidate all of the defense's theory in mitigation and that there was no new evidence which would have warranted seeking a reduced sentence.

Failure to move to quash murder charge under State v. Bonner

Applicant claims Counsel was ineffective for failing to move to quash his arrest warrant for murder under State v. Bonner, 330 N.C. 536, 411 S.E.2d 598 (1992). This Court finds this allegation is without merit. First, Bonner is a North Carolina case and therefore, is not binding. Second, Bonner is concerned with the "felony murder" rule and whether a defendant can be convicted of the murder of a co-defendant at the hands of his adversaries. In South Carolina, the law is unsettled as to whether a defendant can be charged with the death of a co-defendant during the commission of a felony at the hands of his adversaries. Counsel testified he is licensed in both North Carolina and South Carolina, has practiced criminal defense for twenty-three years and has handled hundreds of murder case. He also testified he is very familiar with State v. Bonner. He thoroughly explained that South Carolina has yet to resolve the "felony murder" rule. He further testified he did not believe the State would pursue the murder charge because Applicant was also charged with Burglary, 1st degree, which carries the same maximum penalty as murder: life imprisonment. Moreover, this charge was dismissed by the State and had no influence on the very experienced circuit court judge's acceptance of the negotiated plea agreement. This Court finds Applicant has failed to meet his burden of proving

that had Counsel moved to quash the murder charge under State v. Bonner, he would not have pled guilty, but insisted on going to trial.

In sum, Counsel's representation did not fall below the reasonable professional standard. Bennett v. State, 371 S.C. 198, 204 S.E.2d 673 (2006). Applicant has the burden of proving to the Court that, but for counsel's errors, there is a reasonable probability that the outcome of the proceeding would have been different. *See, e.g.* Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1998). Applicant has not satisfied this burden. Similarly, Applicant has not shown a reasonable probability that but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. *See* Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

Other allegations

While the Applicant alleged in his application and at the evidentiary hearing that Counsel was ineffective for misadvising Applicant concerning a split or suspended sentence and for failure to preserve issues for appeal, this Court finds Applicant failed to meet his burden of proving Counsel's ineffectiveness. Specifically, Counsel testified he never promised Applicant a certain sentence and even asked for a split sentence during the guilty plea. Further, Applicant failed to produce evidence sufficient to show how Counsel failed to preserve issues for appeal. Applicant also failed to show how these alleged deficiencies prejudiced his guilty plea. 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

30 Oct, 2013
Greenville, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP4601536

Dytavis Laquan Hinton	South Carolina State Of
PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Court	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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ 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. **ORDER DENYING APPLICANTS MOTION FOR REHEARING & TO ALTER/AMEND**

Additional Information for the Clerk: _____

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 — 11/25/2013

Circuit Court Judge — **Judge Code** — **Date**

For Clerk of Court Office Use Only

This judgment was entered on **November 25, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **November 25, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

James Rutledge Johnson
PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

David Hamilton

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	IN THE COURT OF COMMON PLEAS
Dytavis L. Hinton, #346826	DOCKET NO.: 2012-CP-46-1536
Applicant,	**ORDER DENYING APPLICANT'S MOTION FOR REHEARING AND TO ALTER/AMEND**
vs.	
State of South Carolina,	
Respondent.	

This matter comes before the Court by way of Applicant's Motion to Alter or Amend Judgment pursuant to Rule 59, SCRCP. Applicant asks this Court to reconsider its Order of Dismissal filed on October 16, 2013. Specifically, Applicant submits that the Order of Dismissal fails to reference Applicant's Amendment submitted on May 9, 2013, the Order inaccurately summarizes expert witness Ron Guerette's testimony and improperly finds his testimony not credible, the Order improperly relies upon testimony of the Assistant Solicitor, and the Order briefly discusses the issue of "Failure to File a Motion for Reconsideration" without addressing Applicant's request for specific relief.

Applicant's Amendment was reviewed by the Court, and the Court considers that expert witnesses, like lay witnesses, have varying degrees of credibility. The transcript of record was thoroughly reviewed, and sufficient notes were made at the PCR Hearing. After careful consideration of the record in this case and the arguments of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Applicant's Motion pursuant to Rule 59(e) SCRCP to Alter or Amend Judgment of this Court's Order entered on or about October 16, 2013. Pursuant to Rule 59(f), the Court is

of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

November 23, 2013
Pickens, South Carolina

Honorable G. Edward Welmaker
Judge, Thirteenth Judicial Circuit