



LAW OFFICE OF TRICIA A. BLANCHETTE

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

RECEIVED

DEC 13 2013

S.C. Supreme Court

RE: Curtis R. Sweatt v. State; Docket No.: 2012-CP-46-0975

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 of 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 and a completed Affidavit of Indigency to the Office of Appellate Defense.

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
Curtis R. Sweatt

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas
Post Conviction Relief

RECEIVED

DEC 13 2013

Honorable J. Edward Welmaker, Circuit Court Judge

S.C. Supreme Court

Case No.: 2012-CP-46-0975

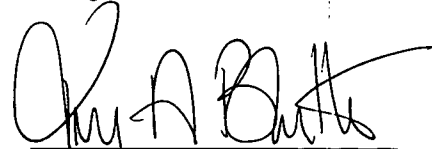
Curtis R. Sweatt,.....Petitioner,

vs.

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

NOTICE OF APPEAL

Curtis R. Sweatt, 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
PO Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
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Post Conviction Relief

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Honorable J. Edward Welmaker, Circuit Court Judge

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Curtis R. Sweatt,.....Petitioner,

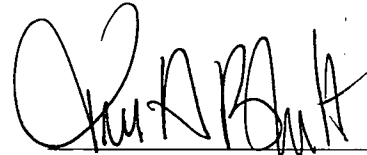
vs.

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



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

December 13, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
))
))
Curtis R. Sweatt, #346121,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2012-CP-46-0975

ORDER OF DISMISSAL

FILED-RECEIVED
2013 OCT 16 PM 4:07
DAVID R. JOHNSON
C.C.P. & D.S.
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 16, 2012. Respondent made its Return on July 6, 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, Gaye Allen-Cook, Danielle Tucker, Lynn Sweatt, Randy Sweatt and Applicant testified on Applicant's behalf. Leland Greeley, 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, Applicant medical records, the autopsy report, autopsy 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 Involuntary Manslaughter (2011-GS-46-01523) and Infliction of great bodily injury to a child (2011-

QW#1

GS-46-01524). Applicant was represented by the Leland Greeley, Esquire. On May 20, 2011, Applicant waived presentment to the Grand Jury and pled guilty as indicted. The Honorable Paul M. Burch sentenced the Applicant to confinement for twenty (20) years suspended upon the service of sixteen (16) years, the balance of which is suspended for four (4) years' probation and five (5) years, concurrent, for Involuntary manslaughter. Applicant did not appeal his conviction or sentence.

In his original 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. "Failure to advise client regarding placement on child abuse registry and properly advise regarding the likely sentence of the court."
 - b. "Misrepresentation of Applicants statements provided to plea counsel to plea to court"
2. Involuntary guilty plea
 - a. "Failure to fully evaluate the State's evidence and conduct an investigation prior to the entry of the plea."

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

1. Ineffective Assistance of Counsel
 - a. "Failure to investigate and/or address Applicant mental health history. Failure to contact and/or utilize Applicant family doctor (Eric G. Johnson, M.D.)"
 - b. "Failure to call an expert (clinical child family therapist specializing in trauma and abuse) in mitigation at the plea or at trial (if a trial was pursued)."
 - c. "Failure to provide the Court with a reasonable defense and/or explanation of the events in question."
 - d. "Failure to refute the State summation of the medical findings and failure to oppose the Court's

review of the highly prejudicial autopsy photographs.”

- e. “Failure to file a Motion for Reconsideration of Applicant’s sentence.”

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

SUMMARY OF TESTIMONY

Gaye Allen-Cook, a clinical child and family psychotherapist, testified she reviewed documents and interviewed Applicant twice in preparation for the PCR hearing. She stated her findings were that Applicant suffers from anxiety, has a “sketchy” memory of the incident and potentially has post-traumatic stress disorder. She also stated Applicant was remorseful and emotional concerning Victim’s death and did not appear to have malicious intent during the incident.¹ Mrs. Allen-Cook lastly testified she would have been willing to testify in mitigation at Applicant’s plea or a trial, if one had been pursued.

Danielle Tucker, Victim’s mother, testified she was very emotional when she made comments at Applicant’s guilty plea. She stated she was never contacted by Counsel before Applicant’s plea. She also stated that the Department of Social Services took custody of her son after the incident and that she does not want Applicant out of her son’s life (Applicant is son’s father). Ms. Tucker lastly testified she was at the PCR hearing to support Applicant.

On cross-examination, she admitted that her testimony at the guilty plea was different than during mitigation at the guilty plea in that she stated she did not want Applicant in her son’s life

¹ Mrs. Allen-Cook was not present during the incident.

AWH/3

before son could decide for himself whether he wanted Applicant in his life. She lastly testified she was not responsible for Victim's death.

Lynn Sweatt, Applicant's mother, testified she worked in labor and delivery as a registered nurse as well as having worked as a grief counselor. She stated she became aware that something was wrong with Victim when she got a telephone call from the hospital from her daughter. She testified Applicant was shaken, worried, and in shock at the hospital. Mrs. Sweatt also testified she retained Counsel and met with him many times in preparation for a trial. It was not until seven to ten days before Applicant's plea that she became aware that a plea was a possibility. Her understanding was that Applicant would plead to Involuntary Manslaughter only and the Infliction of Great Bodily Injury upon a child charge would not be pursued. She also stated Counsel did not tell her what to write in her letter that was presented to the plea court and that had he advised her, she would have added additional comments in support of Applicant. In her opinion, the plea was a vicious proceeding by the prosecutor. Mrs. Sweatt lastly testified she was shocked by Applicant's sentence.

Randy Sweatt, Applicant's father, testified he received a telephone call and proceeded to the Emergency Room at the hospital where he found Applicant visibly upset. He stated this was a situation where he needed to hire an attorney and contacted Michael Smith. Subsequently, the decision was made to hire Counsel. Mr. Sweatt testified he met with Counsel several times and thoroughly discussed the case. He also stated he thought the case was going to result in a trial, and it was not until around one week before the plea that he and Counsel first discussed a plea. He testified Counsel stated that a "favorable judge" would be in the circuit to take Applicant's plea. Mr. Sweatt testified he wrote a letter that Counsel read aloud at the plea, and Counsel did not advise him what to write. He stated he has never witnessed Applicant hurt anyone or anything. He lastly testified he

[Handwritten signature]

would have told the plea court that Applicant was not capable of committing this crime. On cross-examination, Mr. Sweatt admitted that he had an opportunity to address the plea court but had declined to do so.

Applicant testified there were issues not addressed properly at the plea hearing and that he wants a re-sentencing hearing or a new trial. He stated his family first hired Michael Smith who filed a Rule 5 motion and discovery on Applicant's behalf. Applicant then hired Counsel who reviewed the case with Applicant and prepared for a trial. Applicant stated Counsel did not review discovery materials with him but only discussed one or two defense strategies regarding Victim's autopsy, which showed there was no external bruising on Victim's head and neck. Applicant testified Victim's death was an accident and that part of his decision to plead guilty was that the charges he pled to contained no "intent" requirement. Applicant also testified his first attorney (Smith) hired a private investigator but Counsel did not work with this investigator.

Applicant also testified he had been a patient of Dr. Eric Johnson's for anxiety and depression prior to the incident for which he was prescribed medications. He admitted that he stopped taking these medications on his own accord. He stated Counsel did not discuss with him the idea of presenting this medical history in mitigation.

Applicant testified that approximately one week before the plea he decided to plead instead of proceeding with a trial. He claimed Counsel "sold" him on the plea because a visiting judge would be beneficial as Counsel had had prior cases before that judge where the defendant received a favorable sentence. Applicant also testified, while Counsel never promised he would receive probation only, Counsel stated that Counsel thought Applicant was a good candidate for probation.

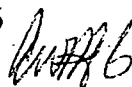


He then claimed he pled on Counsel's advice. Applicant testified he did not think Counsel was properly prepared for trial, but that Counsel's strategy was to shift the blame.

Applicant also testified Counsel did not advise him concerning the Child Abuse Registry, but if Counsel had done so, he would have factored that into his decision to plead guilty because he "loves kids." He then stated Counsel told him to write a statement which Counsel edited, but never reviewed with him before the plea. Applicant also claimed Counsel, on the day of the plea, hurried through a five-minute meeting with him, where Counsel told Applicant he would have the last argument at the plea, but the State actually had the last presentation.

As to the guilty plea itself, Applicant testified he told the court he had no mental conditions because he was competent at the time to know what he was doing and nothing affected his understanding of the proceedings. He also stated he told the court he was satisfied with Counsel's representation because he thought Counsel was prepared for court. He then claimed Counsel misrepresented the facts of the case, and he attempted to correct and clarify what Counsel had said. Moreover, Applicant testified Wanda Tucker (Victim's maternal grandmother) said at the plea that Applicant stated, "if I hurt her, I did not mean to" at the hospital the day of the incident, but Applicant did not have an opportunity to explain what he meant at the plea. Further, Applicant claimed the forensic evidence presented at the plea did not match his story of what occurred, and Counsel failed to clarify the timeline of the events.

Applicant also testified he was not prepared for the State to ask the court for a twenty-year sentence. He stated he did not know the State could read the autopsy report findings to the court. Applicant claims to know that Victim was not in pain because while she cried when he supposedly dropped her and he heard a "popping noise," she was still conscious.



On cross-examination, Applicant admitted that he caused Victim's death, but claims it was an accident. He admitted that he waived his right to a trial by pleading guilty and stated while he did not want a trial at the time, he wants a new trial now. He agreed that there were not threats or promises to entice him to plead guilty. Applicant also testified while he had not seen the full autopsy report, he knew Victim's cause of death was massive trauma to the head and brain. He admitted that at the plea he stated under oath that he was satisfied with Counsel's representation, and never told the plea court he was not satisfied with Counsel's advice. He agreed he pled freely and voluntarily and admitted fault in Victim's death.

Importantly, Applicant admitted he told the plea court that Victim slipped from his grasp and hit her head on a changing table. However, an audio recording of Applicant's call to 911 on the day of the incident was played and heard on it was Applicant telling the 911 operator that Victim's "head snapped back a little" and he "heard a popping sound." When confronted with this tape, Applicant stated, "you can say I lied." When asked about the autopsy results, Applicant admitted he knew Victim suffered no neck injury, but suffered massive head trauma. He stated he was also alerted at the hospital that Victim had two previously broken lower legs and a previously broken forearm. He claimed he did not abuse Victim and did not know how Victim sustained these other injuries.

Lastly, Applicant admitted responsibility for his actions and that was the reason he pled guilty. He further stated he was, in fact, guilty of Involuntary Manslaughter and Inflicting Great Bodily Injury upon on Child.

Dr. Eric Johnson testified he has treated Applicant since 2005 for emotional issues including anxiety and depression. In 2009, Dr. Johnson diagnosed Applicant with a mood disorder, a form of bi-polar illness, and prescribed mood-stabilizers for Applicant. Dr. Johnson stated he never advised

Applicant to stop taking these medications because if Applicant did, the mood instability could return. He also stated Counsel did not contact him for these records.

Counsel testified he was hired by Applicant's family and met with Applicant several times to discuss and review the discovery in the case. The discovery included the incident report, autopsy, 911 tapes, witness statements and Applicant's statements. Counsel stated while Applicant's family hired a private investigator, he was never contacted by the investigator or vice versa because he wanted to learn the case and determine what, if any, investigation should be conducted.

Counsel also testified Applicant explained to him Applicant's version of the facts. Upon learning this information, Counsel stated the case reached a point where Applicant had to decide whether he wanted to pursue a plea or a trial. In Counsel's opinion, a trial would be quite difficult, and if a trial was chosen, Applicant would have had to testify on his own behalf. Counsel testified he advised Applicant that, given the facts of the case, there was a very real possibility he would be convicted of Homicide by Child Abuse (the original charge) and sentenced to life in prison. Counsel then stated he worked with the State to find a "middle ground."

During their meetings, Counsel stated "something occurred" on the day of the incident that Applicant would not fully discuss. When Counsel questioned Applicant about the facts as given by Applicant, Counsel stated it was unusual for a father to give a bath to a three-month old child first thing in the morning. When Counsel said this, Applicant began to cry, and the discussions began.

Counsel testified he entered into plea negotiations with the State on Applicant's behalf to see if the State would be willing to allow Applicant to plead to Involuntary Manslaughter. The State originally declined, but would allow Applicant to plead straight-up to Involuntary Manslaughter and Infliction of Great Bodily Injury upon a Child. Counsel discussed this with Applicant, Applicant

agreed and accepted. Applicant did not want to plead to any offense which contained an "intent" element. Counsel stated he knew there was a wide sentencing range (0-20), but Applicant was facing a good possibility of life sentence if a trial was pursued.

Additionally, Counsel testified he presented mitigation at the plea hearing, including several witnesses who spoke on Applicant's behalf. Counsel also spoke on Applicant's behalf, telling the plea court that Applicant did not intentionally harm Victim. Counsel stated he did not present any of Applicant's medical history because he did not think it was relevant in mitigation. Moreover, Counsel stated he did not present his medical testimony along with evidence of Shaken Baby Syndrome because it was contrary to the accident/negligence theory of defense he was presenting on Applicant's behalf. He also testified he did not consider presenting an expert such as Ms. Allen-Cook because he did not know an "expert" like that existed. Counsel further stated he did not correct the State's facts during the plea because he did not think it necessary and because he approached the bench during the plea and got the State to agree not to mention the prior broken legs and forearm during the plea.

Counsel testified he never promised a certain sentence to Applicant or his family, but thought it would be between five and twenty years. He also stated he did not tell Applicant how to answer the plea court's questions, but did explain the plea process to him.

Lastly, Counsel testified he reviewed a second autopsy on Victim, which the previous attorney had conducted, the findings of which were not beneficial to Applicant. He also reviewed the autopsy photographs of Victim.

On cross-examination, Counsel testified he did not encourage Applicant to lie at the plea and had no reason to believe Applicant lied at the plea. He stated he was disappointed with the sentence

Applicant received, but it was a fair and just sentence. Counsel also testified he had appeared before the plea judge in prior cases and knew he was reasonable and used common sense. On re-direct examination, Counsel stated he found no reason to request a reconsideration of Applicant's sentence because that was in the sole discretion of the plea judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

*law,
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 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), SCRPC). 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.

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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 satisfactorily 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 Applicant's mental health history

Applicant claims Counsel failed to investigate or address Applicant's mental health history along with failing to contact Applicant's family doctor. At the PCR hearing, Counsel testified that

he knew of the prescriptions Applicant had been taking, but he chose not to address this issue in mitigation because Applicant's anxiety was not relevant to the defense's theory of an accident. Applicant even admitted that he stopped taking the medications on his own accord and not on the advice of Dr. Johnson. Further, even if Counsel had called Dr. Johnson to the stand, 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 call expert in mitigation at plea or trial

Applicant claims Counsel failed to call an expert on child trauma and abuse in mitigation at the plea or trial. At the PCR hearing, Counsel testified that he reviewed a second autopsy of Victim, but the results were not beneficial to Applicant's defense. Counsel also testified that he did not think he could find an expert to say Applicant meant no harm, thus the decision not to hire an expert was a legitimate trial strategy based on the facts of the case and also the conversations with Applicant. Therefore, Applicant has failed to demonstrate this decision fell below prevailing professional norms. See McLaughlin v. State, 352 S.C. 476, 483-484, 575 S.E.2d 841, 844-845 (2003) (holding that where counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel).

Failure to provide plea court with reasonable explanation of facts

Applicant claims Counsel failed to provide the plea court with a reasonable defense or explanation of the events in question. At the PCR hearing, Counsel testified that he did provide an explanation for the events by arguing Applicant's conduct was an accident. A review of the transcript reveals that Counsel provided the plea court with a thorough and reasonable explanation of

the events. See Transcript of Record, May 20, 2011, p. 13-19. The transcript also reveals that Counsel had Applicant speak to the plea court, and Applicant himself characterized the events as “an accident,” which corresponded with the defense’s overall theory. See Transcript of Record, May 20, 2011, p. 35. Applicant, who has the burden of proof, has failed to put forward any evidence that Counsel failed to provide the plea court with a reasonable defense or explanation of the events in question.

Failure to refute the State’s summation of medical findings

Applicant claims Counsel failed to refute the State’s summation of the medical findings and failed to oppose the plea court’s review of the autopsy photographs. Here, Applicant has not shown that Counsel acted unreasonable “under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625. Furthermore, the State’s summation and autopsy photographs were not reviewed by an impressionable jury, but by an experienced circuit court judge thus any prejudicial effect, if any, was likely minimal. Accordingly, Applicant has failed to make any showing of prejudice, irrespective of whether he showed Counsel’s performance was deficient.

Failure to file a Motion for Reconsideration

Applicant claims Counsel failed to file a Motion for Reconsideration of Applicant’s sentence. A review of the transcript reveals that the plea judge accepting Applicant’s plea described his rationale in sentence Applicant. See Transcript of Record, May 20, 2011, pp. 52-56. Even if Counsel had filed a Motion for reconsideration, Applicant has failed to demonstrate any reason for a change in the original sentencing rationale that would have ultimately reduced his sentence. Further, a sentence reduction is not a proper remedy in post-conviction relief. Accordingly, Applicant has failed to show any prejudice produced by Counsel’s failure to file a Motion for Reconsideration.

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).

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.

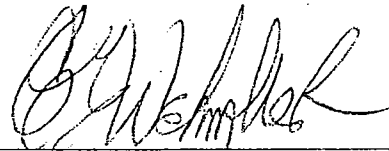
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant 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 2012CP4600975

Curtis Randall Sweatt	South Carolina State Of
-----------------------	-------------------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	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), 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

Order Denying Applicant's Motion For Rehearing And to Alter/Amend

This order ends does not end the case.

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

Circuit Court Judge

2137

Judge Code

11/25/2013

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

James Rutledge Johnson PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered:

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Curtis R. Sweatt, #346121)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2012-CP-46-0975

**ORDER DENYING APPLICANT'S MOTION
FOR REHEARING AND TO
ALTER/AMEND**

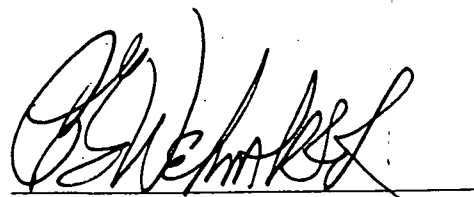
FILED-RECEIVED
2013 NOV 25 PM 2:43
DAVID WELMAKER
C.C.P. & C.S.
YORK COUNTY, SC

This matter comes before the Court by way of Applicant's Motion to Alter or Amend Judgment pursuant to Rule 59, SCRCPP. 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 fully and accurately reflect the testimony of witnesses, and the Order briefly discusses the issue of "Failure to File a Motion for Reconsideration" without addressing Applicant's request for specific relief.

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) SCRCPP 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

STATE OF SOUTH CAROLINA)

COUNTY OF York)

AFFIDAVIT OF INDIGENCY

PCR Case Name Curtis R. Sweatt #346121 v. State of South Carolina

PCR Criminal Case No. 2012-CP-46-0975

Curtis Sweatt #346121 Current Address: 990 Wisacky Hwy Lee Correctional Bishopville SC 29010

Are you incarcerated? Yes (If "Yes") Where? Lee Correctional Bishopville SC
 No

What were you convicted of? Involuntary Manslaughter/Bodily Harm of Child

What was your sentence? 20yrs suspended to 16yrs 4yrs probation

Are you appealing from _____ a trial, _____ a guilty plea a post-conviction relief hearing?

In what county was this trial/hearing/guilty plea held? York County

Presiding Judge's name? G. Edward Welmaker

Date of trial/guilty plea or post-conviction relief hearing August 15, 2013

Were you represented by _____ a court-appointed attorney _____ public defender or retained counsel?

PCR Name of attorney/public defender? Tricia A. Blanchette

If retained, how much did you pay for attorney fees? \$ Approx \$15,000

If you still owe money to your attorney, how much? \$ 0

.....

1. Are you presently employed? Yes _____ No

a. If "yes," state the amount of your salary or wages per month, and give the name and address of your employer. _____

b. If "no," state the name and address of last employment, date of termination of employment, and amount of your salary or wages per month. Uni-health of Rock Hill Hickory Ave Rock Hill, SC 29732 ~~CS~~ ~~CS~~ \$1280 per month

2. List by name, age and relationship to you, any persons who are dependent upon you for support. Indicate beside each how much you contribute toward their support. None

3. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment?
Yes _____ No

b. Rent payments, interest or dividends?
Yes _____ No

c. Pensions, annuities or life insurance payments?
Yes _____ No

d. Gifts or inheritance?
Yes No _____

e. Any other sources?
Yes _____ No

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. Approximately \$2500
over the year for Conteen account, Clothing and food

4. Do you own cash, or do you have any money in a checking or savings account?
Yes _____ No

If the answer is "yes," state the total amount of the cash owned. \$ _____

5. Do you own any real estate, stocks, bonds, notes or other valuable property (excluding ordinary household furnishings and clothing)? Yes _____ No

If the answer is "yes," describe the property and state the appropriate value of the items owned. _____

6. What kind of motor vehicle do you own? N/A

Is it paid for? Yes _____ No _____

If not, what are the monthly payments? \$ _____

7. How much to you owe (on liens, mortgages, other encumbrances or debts)? _____

approx \$5,000

I do solemnly swear that the account by me delivered into this Court does contain a true and full account of all my real and personal estate, debts, credits and effects whatsoever without exception, which I, or any person in trust for me, have or at the time of my possession had, or am, or was, in respect, entitled to, in possession, remainder or reversion and that I have not at any time since charges were made against me or before, directly or time since charges were made against me or before, directly or indirectly sold, leased, assigned or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned herein.

I understand that the State shall file a claim against me in an amount equal to the cost for representation, but that such claim shall not constitute a lien against my property, unless, the claim is reduced to judgment by the Order of the Court after giving me at least thirty days' notice.

Under penalty of perjury, I certify that the information give by me on this affidavit is true and correct, and I understand that I will be subject to civil and/or criminal penalties if I knowingly furnish false information.

I am financially unable to employ counsel.

This 9 day of December 2013, _____.

Curtis Sweatt
Defendant

I understand that I am entitled to at least thirty days' notice before a claim against me may be reduced to judgment, and I do hereby waive the right to such notice.

This 9 day of December 2013, _____.

Curtis Sweatt
Defendant

SUBSCRIBED AND SWORN to before
me this 9 day of Dec., 2013.

Debra Jones
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission Expires: 11-4-2015