

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas  
Honorable R. Knox McMahon Circuit Court Judge

Case No: 2012-CP-43-0520

Randall Q. Sanders..... Appellant  
S.C.D.C. No.: 332675

v.

The State..... Respondent

NOTICE OF APPEAL

Randall Q. Sanders appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable R. Knox McMahon on November 26, 2013, which I, Charles T. Brooks, III, received on December 12, 2013

December 12, 2013

  
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Attorney for Appellant

Other Counsel on Record:  
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**RECEIVED**  
DEC 16 2013  
S.C. Supreme Court

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**PROOF OF SERVICE**

I, the undersigned, do hereby certify that on this 12<sup>th</sup> day of December, 2013 I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on December 12, 2013 addressed to the following as indicated below:


South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29211-1589

Office of Attorney's General  
Attn: Daniel Gourley, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Randall Q. Sanders, 332675  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, S. C.29010

Dated: December 12, 2013

  
\_\_\_\_\_  
Charles T. Brooks, III  
Attorney for the Appellant  
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Sumter, South Carolina 29150  
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STATE OF SOUTH CAROLINA **RECORDED** IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMTER 2013 DEC -9 ) PM 12: 29 FOR THE THIRD JUDICIAL CIRCUIT

Randall Q. Sanders, #332675,

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

Case No. 2012-CP-43-520

Applicant,

v.

**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

*Sherry H. Hart*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief application filed on March 15, 2012. Respondent made its Return on August 6, 2012. An evidentiary hearing into the matter was convened on October 2, 2013, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted during the January 2008 term of the Sumter County Grand Jury for possession with intent to distribute cocaine (2008-GS-43-134). Lauren Stevens, Esquire, represented him. Applicant proceeded to trial and on January 14, 2009, he was convicted of possession with intent to distribute cocaine base- third or subsequent offense. The Honorable R. Ferrell Cothran, Jr. sentenced the Applicant to eighteen years imprisonment and a fine of fifty thousand dollars.



A timely notice of appeal was filed on the Applicant's behalf and appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Sanders, No. 2012-UP-082 (Ct. App. filed February 22, 2012). The Remittitur was sent on February 13, 2012.

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

1. Ineffective assistance of counsel regarding trial preparation
  - a. "Counsel failed to investigate case adequately."
  - b. "Denied right to be present during state of trial."
  - c. "Counsel failed to object to certain testimony which was not deemed strategic."
  - d. "Counsel failed to contemporaneously object to preserve issues for appellate review."
2. Due Process Violation
  - a. "Denial of equal protection of the law."
  - b. "Denied right to be present during stage of trial."

#### **SUMMARY OF TESTIMONY PRESENTED**

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Lauren Stevens, Esquire (Counsel). This Court also had before it a copy of Applicant's trial transcript, Applicant's appellate records, the records of the Sumter County Clerk of Court, and records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified he was out on bond prior to his trial. Applicant testified he made multiple attempts to get in contact with Counsel. Specifically, Applicant testified he went to her office on several occasion and left his contact information, but Counsel never contacted him. Applicant testified Counsel never gave him any notice of trial. Applicant testified he showed up for roll call that afternoon and learned that he had been tried in his absence. Applicant testified he went to Counsel's office and Counsel informed him that he



was found guilty. During cross-examination, Applicant testified that his bond papers gave him notice that his case could be called for trial and if he did not appear he would be tried in his absence. Applicant testified and the transcript reflects him explaining to the trial judge that Counsel told him his case would be called for trial that morning. (Tr. p. 72 ln. 23—p.73 ln. 1). Applicant testified he was aware that his case would be called for trial that morning and he elected not to show up. Applicant further testified he had been on drugs since he was seventeen years old and that he had been a cocaine user for the past two and a half years prior to his arrest.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel testified she was appointed to Applicant's case January 15, 2008. Counsel testified she met with Applicant "every time that he would show up" for roll call. Counsel testified she filed for and reviewed discovery with Applicant. Counsel further testified she discussed Applicant's version of the facts and any possible defenses. Counsel testified that Applicant was out on bond the entire time. Counsel testified the State offered a plea deal on December 5, 2008 and Applicant intended to accept the plea offer. However, Counsel testified Applicant continually requested her to delay his case. Counsel testified the State had very good evidence against Applicant. Specifically, Counsel testified the Police found cocaine wrapped in aluminum foil hidden in Applicant's sock.

Furthermore, Counsel testified Applicant continually changed his phone number. Specifically, Counsel testified she attempted to contact him at least twelve different times during the course of her representation on various numbers given to her by Applicant. Counsel testified she met with Applicant the morning of Applicant's trial. Counsel testified she explained to Applicant that his case was going to be called for trial that morning. Counsel testified Applicant failed to appear for trial and she made a motion for continuance as a result, but her motion was



ultimately denied.

### 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 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. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is less 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 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

### INEFFECTIVE ASSISTANCE OF COUNSEL

#### *Counsel failed to investigate case adequately.*

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to investigate his case adequately is without merit. Counsel testified she filed for and reviewed discovery with Applicant. Counsel further testified that she discussed Applicant's version of facts and discussed any possible defenses with Applicant. Counsel testified she met with Applicant "every time he would show up." Counsel testified Applicant was out on bond and was a very difficult client to get in touch with as he continually changed phone numbers. Counsel testified she attempted to get in contact with Applicant at least twelve times on various phone numbers. Counsel testified Applicant intended to accept the plea offer, but continually requested her to delay his case. Further, despite Applicant's intention, Counsel testified she was prepared for trial. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Applicant can prove no prejudice when he presents no evidence at PCR hearing to show what Counsel could have further investigated in preparation for a trial. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998);



Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997). Applicant provided no testimony or evidence which would substantiate this allegation and show what further investigation Counsel should have undertaken in preparation for a trial. Applicant has failed to meet his burden of proof and thus, this allegation is denied.

*Trial Counsel ineffective for allowing Applicant to be tried in his absence*

This Court finds Applicant's allegation of ineffective assistance of counsel for allowing Applicant to be tried in his absence is without merit. Counsel testified and Applicant confirmed that they met the morning of trial. Counsel testified and Applicant confirmed that she explained his case would be called for trial that morning. Specifically, Applicant testified that a condition of his bond stated that he would be tried in his absence if he failed to appear. Applicant further testified that he understood he could be tried in his absence if he failed to appear and ultimately chose not to appear for his trial.

Furthermore, Counsel testified she requested a continuance prior the start of the trial as a result of Applicant failure to appear. However, Counsel testified her motion was ultimately denied. This Court finds that Applicant knowingly and voluntary waived his right to be tried in his presence. Furthermore, this Court finds that Applicant has not shown that Counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Applicant provided no testimony or evidence which would substantiate this allegation. Applicant has failed to meet his burden of proof and thus, this allegation is denied.

**ALL OTHER ALLEGATIONS**

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. Specifically, Counsel's failure to object to certain testimony, failure to preserve issues for appellate review, and a denial of due



process. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

### 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 notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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** this 26 day of NOV, 2013.

  
\_\_\_\_\_  
R. KNOX MCMAHON  
Presiding Judge  
Third Judicial Circuit

  
\_\_\_\_\_, South Carolina

# The Brooks Law Offices, LLC

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**Irma R. Brooks**  
**Attorney**

December 12, 2013

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

RE: Randall Quinn Sanders v State of South Carolina  
Case No. 2012-CP-43-0520

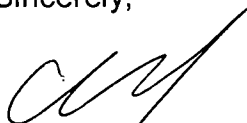
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III  
CTB/jlb

Enclosed as stated

Cc: Daniel Gourley, Office of Attorney's General  
South Carolina Office of Appellate Defense  
Randall Q Sanders, 332675

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DEC 16 2013

**S.C. Supreme Court**

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