

# The Brooks Law Offices, LLC

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**Charles T. Brooks, III**  
**Attorney**

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

December 12, 2013

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

**RECEIVED**  
DEC 16 2013  
S.C. Supreme Court

RE: Stufon Nixon v State of South Carolina  
Case No. 2010-CP-45-0404

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  
Stufon Nixon, 288195

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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

Case No: 2010-CP-45-0404

Stufon Nixon..... Appellant  
S.C.D.C. No.: 288195

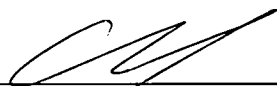
v.

The State..... Respondent

NOTICE OF APPEAL

Stufon Nixon 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

  
Charles T. Brooks, III  
309 Broad Street  
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Sumter, South Carolina 29151  
(803) 418-5708  
Attorney for Appellant

Other Counsel on Record:  
Daniel Gourley, Esquire  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549  
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**RECEIVED**  
DEC 16 2013  
S.C. Supreme Court

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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

Case No: 2010-CP-45-0404

Stufon Nixon.....Appellant  
S.C.D.C. No.: 288195

v.  
The State.....Respondent

**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 DATE MAILED addressed to the following as indicated below:

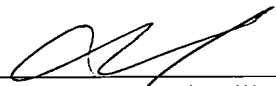
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

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

Stufon Nixon, 288195  
Lieber Correctional Institution  
Post Office Box 205  
Ridgeville, South Carolina, 29472

Dated: December 12, 2013

  
Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
(803) 418-5708

**RECEIVED**

DEC 16 2013

**S.C. Supreme Court**

STATE OF SOUTH CAROLINA )  
 COUNTY OF WILLIAMSBURG )  
 )  
 Stufon Nixon, #288195, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2010-CP-45-0404

**ORDER OF DISMISSAL**

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This matter comes before the Court by way of a post-conviction relief application filed on October 8, 2010 and received by the Attorney General Office on December 3, 2011. Respondent made its Return on May 18, 2012. An evidentiary hearing into the matter was convened on October 3, 2013, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The 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 Williamsburg County Clerk of Court. Applicant was indicted during the December 2009 term of the Williamsburg County Grand Jury for Murder, Attempted Armed Robbery and Possession of a Weapon During Commission of a Violent Crime (2009-GS-45-272). Legrand Carraway, Esquire, represented him. On July 19, 2010, the Applicant pled guilty. He was sentenced by the Honorable Clifton Newman to fifty years imprisonment for Murder, five years imprisonment for Possession of a Weapon During Violent Crime, and twenty years imprisonment for Attempted

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Armed Robbery. Applicant did not appeal his guilty plea or sentence.

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
  - a. "Counsel talked me into pleading guilty."
2. Due Process violation
  - a. "Counsel failed to investigate the evidence."

### SUMMARY OF TESTIMONY PRESENTED

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

During the evidentiary hearing, Applicant testified he met with Counsel one time prior to his guilty plea. Applicant testified he reviewed discovery and discussed possible defenses with Counsel. Applicant recalled telling the plea judge that he was satisfied with Counsel and Counsel had done everything he asked him to do. However, Applicant stated he was lying to the plea judge and in fact was not satisfied with Counsel services. Applicant recalled agreeing to the facts stated by the Solicitor during his guilty plea. Applicant recalled telling the plea judge that he was guilty of this crime. Applicant testified he was lying to the plea judge and is in fact not guilty of this crime. Applicant recalled telling the plea judge that a fight broke out over some drugs and he shot the Kenia Scott (Victim) as a result of the argument. However, Applicant testified he was lying to the plea judge. Applicant testified he was not satisfied with Counsel's services because Counsel failed to subpoena witnesses and experts for his case. Applicant further testified he pled guilty was due to Counsel's lack of preparation in his case. Applicant

argued the State had no evidence linking him to the crime. Applicant further testified Counsel promised he would only receive thirty years if he pled guilty.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel testified he was appointed in this case. Counsel estimated that he visited Applicant at least fifteen to twenty times prior to Applicant's guilty plea. Counsel testified he filed for and received discovery in Applicant's case. Counsel testified he reviewed the complete discovery with Applicant and discussed all possible defenses with him. Counsel testified he reviewed Applicant's statement with him. Counsel explained that Applicant admitted to getting into an argument with Victim over drugs. Counsel testified Applicant felt that Victim thought he was better than him because Victim drove a nicer car. Counsel testified Applicant told him that they were only going to rob Victim, but Victim attempted to persuade Applicant not go through with the robbery. Counsel further testified, Applicant got frustrated and shot Victim four to five times. Counsel testified Applicant never denied his statement to police. Counsel testified the State had multiple witnesses who could implicate Applicant in the crime. After meeting and reviewing the discovery with the Applicant, Counsel testified that he felt the State could easily prove Applicant's guilt beyond a reasonable doubt. Counsel characterized the State's evidence against Applicant as "overwhelming." Counsel testified he had enough time to prepare this case for trial if Applicant chose not to plead guilty.

Counsel testified there were plea negotiations with the State, resulting in an indictment for Burglary in the First Degree being dismissed. Counsel testified he never promised Applicant would receive a certain sentence and Applicant was aware of the potential sentences he was facing when pleading guilty. Counsel testified that it was Applicant's decision to plead guilty and he did not coerce Applicant. Counsel further testified that he was prepared to take



Applicant's case to trial had he choose to proceed to trial.

### 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

#### **INEFFECTIVE ASSISTANCE OF COUNSEL**

##### *Plea counsel ineffective for coercing him into pleading guilty.*

Applicant alleges that Counsel was ineffective for coercing him to enter a guilty plea. This Court finds the guilty plea transcript, along with Counsel's credible testimony, reveals Applicant freely and voluntarily pled guilty. Counsel testified he met with Applicant fifteen to twenty times prior to his guilty plea. Counsel testified he reviewed and discussed all discovery material with Applicant prior to his guilty plea. Counsel further testified he discussed the possibility of any defenses, but the evidence against Applicant was "overwhelming." Counsel testified the State *not proessed* a charge of Burglary in the First Degree as part of the plea deal. Further, the plea transcript reveals, Applicant informing the plea court that he was fully satisfied with Counsel. Applicant further informed the plea court that Counsel had done everything that was asked of him and there was nothing left for Counsel to do. Further, Counsel testified he never promised Applicant a certain sentence nor did he coerce Applicant into pleading guilty. Counsel testified he was prepared to take the case to trial, but ultimately Applicant chose to plead guilty. This Court finds that Counsel's performance was reasonable and effective.



Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of Counsel. This Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

*Plea Counsel failed to investigate into the evidence.*

This Court finds Applicant's allegation of ineffective assistance of plea counsel due to Counsel's alleged failure to investigate evidence is without merit. Based on the credible testimony of Counsel, this Court finds that Counsel fully investigated and prepared Applicant's case for trial. Applicant alleged that Counsel should have investigated into potential alibi witnesses, lack of fingerprints, and a lack of gunshot residue. However, Applicant presented no reports, offered no expert testimony, and otherwise provided no evidence to support this allegation. Applicant was unable to even speculate as to what benefit could have been derived by any such investigation. Counsel testified he met with Applicant fifteen to twenty times prior to his guilty plea. Counsel testified he reviewed and discussed all discovery material with Applicant prior to his guilty plea. Counsel further testified that he discussed the possibility of any defenses, but the evidence against Applicant was "overwhelming."

Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). This Court finds that Counsel performed a thorough investigation and was not deficient in regards to his investigation or preparation for trial. Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of counsel. Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after Counsel's competent performance. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.



### ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby 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.

A handwritten signature in black ink, appearing to be the initials 'AB' with a stylized flourish.

**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.

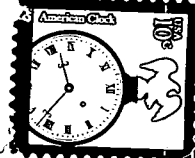
AND IT IS SO ORDERED this 26 day of Nov, 2013.



R. KNOX MCMAHON  
Presiding Judge  
Third Judicial Circuit

Kingston, South Carolina

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