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Suite 303  
Charleston, South Carolina 29407  
Telephone: (843) 571-3515  
Facsimile: (843) 766-5085

**William L. Runyon, Jr.**  
Attorney At Law

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**RECEIVED**  
DEC 19 2013

**S.C. Supreme Court**

December 16, 2013

Daniel E. Shearouse  
Clerk of Supreme Court  
P.O. Box 11330  
Columbia, SC 29211


**In Re: William L. Gainey - Notice of Intent To Appeal  
2012-CP-21-00437**

Dear Mr. Shearouse:

Please find enclosed **Notice of Intent To Appeal To The Supreme Court, Certificate of Service** in the above-captioned matter. Also enclosed are Three (3) copies which I ask that you return certified in the enclosed envelope provided.

Thanking you, I remain

Sincerely,

  
William L. Runyon, Jr.

Enclosure: as stated above

CC: Indigent Defense  
Attorney General

WLRJr/paw

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
2012-CP-21-00437

**RECEIVED**

DEC 16 2013

WILLIAM L. GAINEY, )  
 )  
PLAINTIFF, )  
 )  
VS. )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
DEFENDANT. )  
\_\_\_\_\_ )

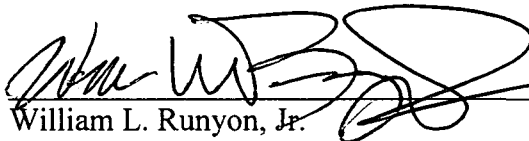
**S.C. Supreme Court**

**NOTICE OF INTENT TO APPEAL  
TO THE SUPREME COURT**

**TO THE HONORABLE ATTORNEY GENERAL OF SOUTH CAROLINA:**

Please take Notice that the Plaintiff above-named hereby serves the Notice of his Intent to Appeal the decision of the Honorable William H. Seals, Jr. in the above-captioned matter from the hearing of October 5, 2013 with the written decision dated November 27<sup>th</sup>, 2013 and served on the 14th day of December, 2013. The undersigned Counsel certifies that Plaintiff has at least One (1) meritorious issue, to wit, Trial Courts failure to Order competency hearing together with such other issues as may be presented.

**AND IT IS** so Noticed this 16th day of December, 2013 at Charleston, South Carolina.



William L. Runyon, Jr.  
#3 Gamecock Avenue, Suite 303  
Charleston, SC 29407  
(843) 571-3515  
(843) 766-5085 FAX





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

**FILED**

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP2100437

William L Gainey

2013 DEC 12 AM 11:28 Date

CONNIE REEL SWEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

12/12/2013  
Date

For Clerk of Court Office Use Only

CERTIFIED: A TRUE COPY  
*Connie Reel Swearin*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

This judgment was entered on **December 11, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **December 12, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

✓ **William L. Runyon Jr.** #3 Gamecock Ave. Ste. 303  
Charleston, SC 29407

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**Tyson A. Johnson Sr.** PO Box 276 Saluda, SC 29138  
✓ **Joshua Lee Thomas** PO Box 11549 Columbia, SC 29211

**ATTORNEY(S) FOR THE DEFENDANT(S)**

*Connie Reel Shearin*

**Connie Reel-Shearin - Clerk of Court**

**Court Reporter**

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

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

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STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

IN THE COURT OF COMMON PLEAS  
FOR THE TWELFTH JUDICIAL CIRCUIT

William Gainey, #347919, )  
Applicant, )

Case No. 2012-CP-21-437

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )  
Respondent. )

2013 DEC 11 PM 4:41  
FILED  
CONNIE REEL-SHEPHERD  
C.C.P. & G.S.  
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief ("PCR") filed February 15, 2012. Respondent made its Return on or about May 4, 2012. The Court convened an evidentiary hearing into the matter on October 8, 2013, in Marion County. Applicant was present at the hearing and represented by William L. Runyon, Jr., Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, John M. Ervin, III, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application, and the return. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. In November 2010, the Florence County Grand Jury indicted Applicant for attempted murder (2010-GS-21-1469). He was represented by John M. Ervin, III, Esquire ("plea counsel"). On September 19, 2011, Applicant pled guilty as indicted. The Honorable Thomas A. Russo sentenced Applicant to

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*Connie Reel-Shepherd*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

confinement for a period of seventeen (17) years. Applicant did not appeal his plea or sentence.

## **II. ALLEGATIONS**

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

1. "involuntary guilty plea"
  - a. "Mr. Williams was not competent during the incident or plea. Counsel failure to represent my case and induce me to plea to something I was not responsible for"
2. "ineffective assistance of plea attorney"
  - a. "And rendered ineffectiveness under the sixth amendment"
3. "Failure to investigate the totality of the circumstances state is made unvoluntarily violate miranda"
  - a. "counsel failed to adequately investigate the totality of the circumstances surrounding the alleged attempted murder and ABWIK and statement violated miranda"

At the PCR hearing, the Applicant proceeded on only the allegations of ineffective assistance of plea counsel for failure to investigate the facts of the case and failure to investigate Applicant's mental condition.

## **III. SUMMARY OF TESTIMONY**

Applicant testified he was hit in the head several times growing up, either playing ball or riding his moped. He alleged he did not recall assaulting the victim, but remembered turning himself in to police. Applicant testified plea counsel had him evaluated, but he never saw a medical doctor. Applicant recalled two evaluations: one for competency and one for criminal responsibility. Applicant recalled telling the evaluator about his medical history, his head injuries, and his lack of recollection of the assault. He testified he never discussed the findings of the evaluation with plea counsel. On cross-examination, Applicant again testified he "black

out” when assaulting the victim, but admitted he has never “blacked out” before or since the assault.

Applicant testified plea counsel was his family’s attorney and Applicant relied on plea counsel’s judgment. He testified he met with plea counsel two (2) or three (3) times, but never after the evaluation was performed. He further testified Plea counsel never reviewed discovery with him. Applicant did not recall discussing any defenses to the charge. Applicant stated it was his decision to enter a plea of guilty instead of go to trial, but he never discussed the possibility of trial with plea counsel.

Plea counsel testified he was retained by Applicant’s family. He did not recall the exact number of times he met with Applicant, but testified he met with Applicant enough that he was comfortable Applicant understood the nature of the charges against him. Plea counsel testified he discussed with Applicant the evidence and the State’s response to plea counsel’s Rule 5/Brady requests. Plea counsel testified the evidence in the case was overwhelming. Witnesses saw Applicant assault the victim with a knife, and Applicant later turned himself in covered in the victim’s blood and in possession of the weapon used to inflict her injuries. Plea counsel testified he was familiar with Applicant’s prior head injuries and sent him to be evaluated, but plea counsel recalled never having any doubt about Applicant’s capacity.

Plea counsel testified Applicant always indicated he wanted to plead guilty, but plea counsel advised him to wait on the evaluations to be completed. Once the evaluations came back competent, he advised Applicant the only defense to the charge was to plead guilty and beg for the court’s mercy in mitigation. Plea counsel testified there was no other strategic way to overcome the State’s overwhelming evidence. He further testified the State refused to make an

offer to plea to a negotiated sentence length. Plea counsel testified he informed Applicant the plea was without recommendation or negotiation, and the judge would determine the appropriate sentence.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

##### **A. Ineffective Assistance of Plea Counsel**

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The

applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

The Court finds Applicant failed to meet his burden of proving plea counsel ineffective. Applicant's allegation plea counsel failed to investigate his mental condition is not supported by the record. Regarding this allegation, the Court finds plea counsel's testimony to be very credible, and Applicant's to be not credible. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Here, plea counsel had Applicant evaluated for his capacity to conform his conduct to the requirements of the law and for his capacity to assist with his defense. Both evaluations were presented to Judge Russo and made part of the record. (Plea Tr. 16:20-17:25). Accordingly, Judge Russo found Applicant was competent at the time of the assault and at the

time of the plea. Applicant presented no evidence at the PCR hearing to refute these findings. Therefore, he has not shown how any further investigation into his mental condition would have changed the outcome of his case.

Applicant's allegation plea counsel failed to investigate the facts of the case is likewise without merit. The Court finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. The Court finds very credible plea counsel's assertion there was no defense to the charge other than to plead guilty and seek mercy in mitigation. See Arnette v. State, 306 S.C. 556, 557, 413 S.E.2d 803, 804 (1992) (counsel not ineffective for failing to advise of potential defense where no evidence exists to support the defense). The evidence against Applicant was overwhelming, and plea counsel fully explained the benefits of a plea versus the risks of trial. Furthermore, despite his assertion he "blacked out," Applicant freely and voluntarily admitted at his plea hearing he assaulted the victim. He has presented on reason why he should now be allowed to depart from the truth of those statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. (citing Blackledge v. Allison, 431 U.S. 63 (1977))). In sum, Applicant has shown nothing that would have affected counsel's advice to plead guilty. Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, he has not proven plea counsel was ineffective.

#### **B. All Other Allegations**

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present sufficient

evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

**V. CONCLUSION**

Based on the foregoing, the Court finds and concludes 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.


The Court notes that Applicant 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, 409 S.E.2d 395 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, 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 THAT:**

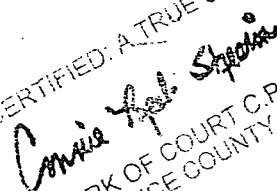
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27 day of Nov.

2013 DEC 11 PM 4:41  
 FILED  
 CONNIE REEL-SHANNON  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

  
 \_\_\_\_\_  
 THE HONORABLE WILLIAM H. SEALS, JR.  
 Presiding Judge

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

CERTIFIED: A TRUE COPY  
  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 WILLIAM LEE GAINNEY, )  
 SCDL ID 347919, )  
 Applicant, )  
 )  
 versus )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE TWELTH  
 JUDICIAL CIRCUIT  
 CASE NUMBER: 2012-CP-21-437


**CONSENT ORDER  
 SUBSTITUTING COUNSEL**


FILED  
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 CONNIE REEL-SHEARIN  
 CCCP & GS  
 FLORENCE COUNTY, SC

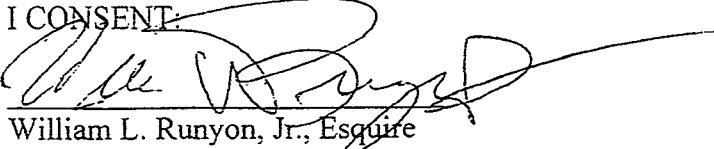
IT APPEARING unto this Court that Ashley Ameika was substituted to represent Plaintiff/Applicant, William Lee Gainey, in this post-conviction relief proceeding however due to her current caseload, inability to put forth the time necessary for this matter, and by consent, the Applicant's attorney will be substituted. It is hereby,

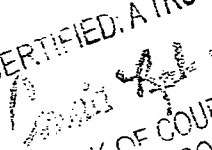
ORDERED, ADJUDGED AND DECREED that William L. Runyon, Jr., Esquire, be and hereby substituted as appointed counsel of record in the above captioned action for the Plaintiff/Applicant, William Lee Gainey. Ashley Ameika, Esquire, is hereby relieved of all duties and responsibilities of representation of the Plaintiff/Applicant, William Lee Gainey, in the above captioned action.

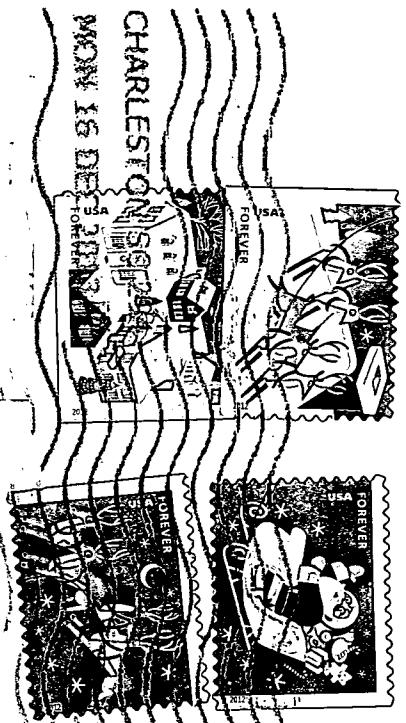
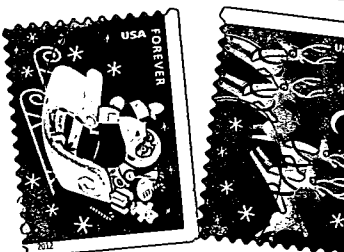
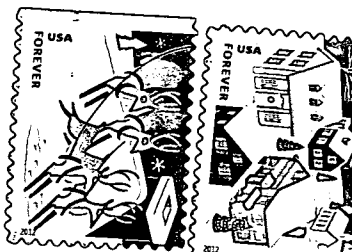
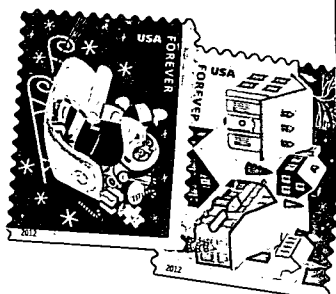
IT IS SO ORDERED this 13 day of February, 2013, at Florence, South Carolina.

  
 Presiding Judge  
 Twelfth Judicial Circuit  
 Court of Common Pleas

I SO MOVE:  
  
 Ashley Ameika, Esquire  
 7555 Northside Drive  
 North Charleston, SC 29420  
 843-820-9719 (o)  
 843-820-9720 (f)

I CONSENT:  
  
 William L. Runyon, Jr., Esquire  
 3 Gamecock  
 Suite 303  
 Charleston, SC 29407  
 843-571-3515  
 843-766-5085 (f)

CERTIFIED: A TRUE COPY  
  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.



William L. Runyon, Jr., Esquire  
# 3 Gamecock Ave., Ste. 303  
Charleston, SC 29407

Daniel E. Shearouse  
Clerk of Supreme Court  
P.O. Box 11330  
Columbia, SC 29211