

Shawn M. Campbell  
Kenneth P. Shabel  
John R. Holland

# Campbell & Shabel

A T T O R N E Y S   A T   L A W

OF COUNSEL:  
Sean Giovannetti

Sender's Email: [jmoss@gc-lawfirm.com](mailto:jmoss@gc-lawfirm.com)

December 16, 2013

**VIA CERTIFIED MAIL**

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

**RECEIVED**

**DEC 20 2013**

**S.C. Supreme Court**

**Re: Ronnie Goggins, # 264540 vs. State of South Carolina  
2013-CP-42-1197**

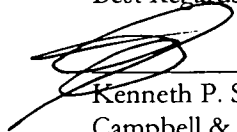
Dear Mr. Shearouse:

Enclosed for filing are an original and a copy of a notice of appeal in the above-referenced case. I have been appointed to serve as attorney for the PCR applicant, Ronnie Goggins, in this action. Also enclosed are the following:

- 1) Proof of service of the notice of appeal on the respondent.
- 2) A copy of the order which is to be challenged on appeal.

Insofar as this is an appeal from a Post-Conviction Relief case, I am not enclosing a filing fee, as I believe such fees are waived in these cases.

Best Regards,

  
\_\_\_\_\_  
Kenneth P. Shabel, Esq.  
Campbell & Shabel, LLC  
P.O. Box 1793  
Spartanburg, S.C. 29304  
Telephone: 864-583-0001  
FAX: 864-583-1199  
Attorney for Appellant

cc: client  
Ms. Suzanne H. White, Assistant Attorney General

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY  
Circuit Court

The Honorable R. Lawton McIntosh

Case No. 2012-GS-42-1197

State of South Carolina,

Respondent

vs.

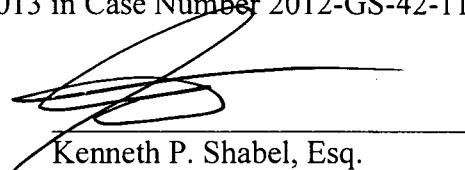
Ronnie Goggins, #264540,

Appellant

NOTICE OF APPEAL

Ronnie Goggins, South hereby appeals the order of the Honorable R. Lawton McIntosh, dated November 26, 2013 in Case Number 2012-GS-42-1197.

December 16, 2013



Kenneth P. Shabel, Esq.  
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Spartanburg, S.C. 29306  
Telephone: 864-583-0001  
FAX: 864-583-1199  
Attorney for Applicant

Other Counsel of Record:

Suzanne H. White  
SC Attorney General's Office  
PO Box 11549  
Columbia, SC 29211

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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
Circuit Court

The Honorable R. Lawton McIntosh

Case No. 2012-GS-42-1197

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State of South Carolina,

Respondent

vs.

Ronnie Goggins, 264540,

Appellant

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S.C. Supreme Court

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**PROOF OF SERVICE**

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I certified that I have served the Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid, on the State of South Carolina, addressed to its attorney of Record, Suzanne H. White, SC Attorney General's Office, PO Box 11549 Columbia, SC 29211.

December 16, 2013



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Telephone: 864-583-0001  
FAX: 864-583-1199  
Attorney for Applicant

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
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 Ronnie Goggins, #264540, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

2012-CP-42-1197

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 S.C. Supreme Court

**ORDER OF DISMISSAL**

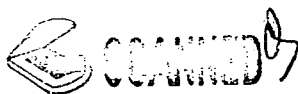
This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 15, 2012. The Respondent made its Return on or about February 21, 2012. An evidentiary hearing into the matter was convened on June 27, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Kenneth P. Shabel, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

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At the hearing, the Applicant testified on his own behalf. Robert B. Hall, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

**PROCEDURAL HISTORY**

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the February 2009 term of General Sessions for armed robbery (09-GS-46-1068). Robert B. Hall, Esquire, represented the Applicant. On



October 28, 2009, the Applicant was convicted of this charge by a jury. The Honorable Roger L. Couch sentenced the Applicant to confinement for fifteen years for armed robbery.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. An Anders brief was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Goggins, Op. No. 2012-UP-092 (filed February 22, 2010). The Remittitur was returned on March 12, 2012.

### ALLEGATIONS

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

1. Ineffective assistance of trial counsel, in that;
  - a. Counsel failed to investigate my case,
  - b. Counsel failed to call my witnesses.

### 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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This 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 (2003).

#### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

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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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

The Applicant claimed that Counsel was ineffective for failing to properly investigate his case and for failing to call witnesses on his behalf at trial. Applicant testified that he met with Counsel soon after his arrest and met a total of three times in jail and once before trial. Applicant testified that he did have a chance to discuss the case and his position with Counsel. Applicant testified that the victim had given two statements to police more than a year apart, which were inconsistent, but Counsel never brought up the second statement during trial. Applicant testified that the 1<sup>st</sup> statement referenced the person with the gun, while the 2<sup>nd</sup>

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statement mentioned "Bull," Applicant's nickname. Applicant introduced both statements as exhibits, as Applicant's #1 (2<sup>nd</sup> statement) and Applicant's #2 (1<sup>st</sup> statement). Applicant testified that there were two photo lineups discussed at the suppression hearing, but the officer who did the 2<sup>nd</sup> lineup testified at the trial, while the officer who did the 1<sup>st</sup> lineup only testified at the suppression hearing. Applicant introduced the incident report, which documents the 1<sup>st</sup> lineup as Applicant's #3. Applicant did acknowledge that he reviewed Counsel's outline for closing and thought Counsel had covered everything during the trial.

Applicant testified that he asked Counsel to interview and subpoena Shawana Carpenter as an alibi witness. Applicant testified that Counsel told him that Counsel spoke with Ms. Carpenter, but did not tell Applicant if she corroborated his story.

Counsel testified that he met with the Applicant in December, February, April, and August prior to the plea. Counsel testified that he did complete research on and file a motion to suppress the photo lineup because Applicant had been the only repeat in the lineups. Counsel agreed that the officer who handled the 1<sup>st</sup> lineup did not testify, but was under subpoena. However, Counsel testified that he thought that the issue was addressed during closing argument.

Counsel testified that the Applicant gave him Ms. Carpenter's phone number and he was able to track her down and meet with her. Counsel testified that Ms. Carpenter informed him that she would not testify to anything at court. Counsel also testified that he spoke with a Ms. Emma Sanders, who was alleged to have been with the Applicant prior to the time of the robbery. Ms. Sanders refused to come to court to testify and during a second conversation, indicated that she had no idea where Applicant had been prior to the robbery.

This Court finds that the Applicant has failed to meet his burden of proof on both claims. In regards to the claim that Counsel failed to investigate or effectively bring out particular issues

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to the jury, this Court finds no evidence that Counsel was deficient. Applicant failed to offer any testimony or evidence as to anything that Counsel could have discovered or used to assist at trial had more investigation been completed. "The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough v. Gentry, 540 U.S. 1, 6, 124 S.Ct. 1, 157 L.Ed.2d 1 (2003). This Court finds that the Applicant failed to offer any testimony or evidence to show that Counsel deviated from the standard expected from an attorney. Therefore, this claim is denied and dismissed.

As to the claim that Counsel was ineffective from failing to interview or call alibi witnesses, this Court finds that the Applicant failed to meet his burden of proof. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 666 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Further, this Court notes that Applicant's alibi defense would not be successful based upon his admitted presence at the scene. Therefore, because the Applicant failed to produce the alleged alibi witnesses to testify and because Counsel's testimony that he spoke to the alleged witnesses and they refused to testify to an alibi is credible, this Court finds that the Applicant has failed to meet his burden of proof. These claims are denied and dismissed.

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Summary

This Court finds that, in regards to the allegations of ineffective assistance of counsel, the testimony of Counsel was most credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. *See* Essier supra. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions 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

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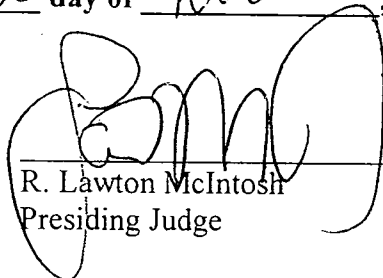
denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**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 this 26 day of Nov, 2013.

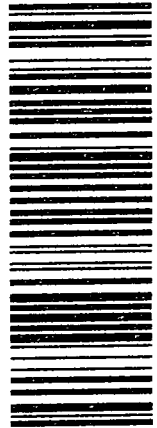
*Anderson, SC*

  
R. Lawton McIntosh  
Presiding Judge

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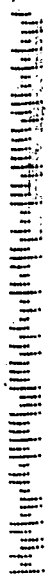
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The Honorable Daniel Shearouse  
Clerk, Supreme Court of South Carolina  
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