

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM FLORENCE COUNTY  
Common Pleas

THE HONORABLE WILLIAM SEALS, JR.  
JUDGE

RECEIVED

DEC 27 2013

CASE NO.: 2012-CP-21-3198

S.C. Supreme Court

STATE OF SOUTH CAROLINA, RESPONDENT

vs.

THOMAS E. VANHOOSE, JR., #348984, APPELLANT

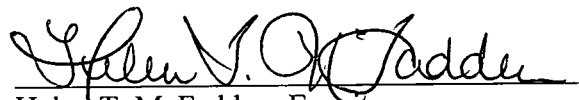
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NOTICE OF APPEAL

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Thomas E. Vanhooose appeals the order of the Honorable William Seals, Jr., dated December 10, 2013, filed December 11, 2013, and served on the appellant by letter dated December 11, 2013, received December 12, 2013.

Pursuant to Section 17-27-100, this appeal is filed seeking a Writ of Certiorari. Because Appellant is indigent and has been permitted to file his Petition for Post Conviction Relief without payment of fees, the undersigned requests that this appeal be filed and docketed without payment of fees.

  
Helen T. McFadden, Esquire  
The Law Offices of Ronnie A. Sabb, LLC  
*Attorneys for the Appellant*

12/23, 2013

215 West Thomas Street  
Post Office Box 658  
Lake City, South Carolina 29560  
Phone: (843) 374-1628  
Facsimile: (843) 374-1707

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

IN THE COURT OF COMMON PLEAS  
FOR THE TWELFTH JUDICIAL CIRCUIT

Thomas Vanhooose, Jr., #348984, )  
Appellant, )

Case No.: 2012-CP-21-3198

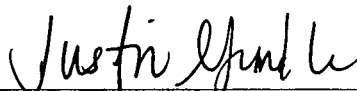
vs. )

**CERTIFICATE OF SERVICE**

State of South Carolina, )  
Respondent. )

I, the undersigned, of the Law Offices of Ronnie A. Sabb, LLC attorneys for the appellant, Thomas Vanhooose, Jr. #348984, do hereby certify that I have served a copy of the notice of intent to appeal by mail on the respondent on December 24, 2013 on this, by depositing in a U.S. Postal Box, to the address clearly shown, postage prepaid, to the respondent's attorney at the following address:

**Joshua L. Thomas, Esquire**  
**Assistant Attorney General**  
**Post Office Box 11549**  
**Columbia, South Carolina 29211-1549**

  
Justin Gamble  
Paralegal

**RECEIVED**

DEC 27 2013

**S.C. Supreme Court**

RONNIE A. SABB  
KIMBERLY V. BARR  
ADRIAN D. DUKES

THE LAW OFFICES  
OF  
**RONNIE A. SABB, L.L.C.**  
ATTORNEYS AND COUNSELORS AT LAW

OF COUNSEL  
HELEN T. MCFADDEN

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LAKE CITY, SOUTH CAROLINA 29560  
TELEPHONE: (843) 374-1628  
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December 24, 2013

**RECEIVED**

DEC 27 2013

**S.C. Supreme Court**

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

RE: Thomas Elbert Vanhooose, Jr. vs. State of South Carolina  
Florence County Case No.: 2012-CP-21-3198

Dear Sir or Madam:

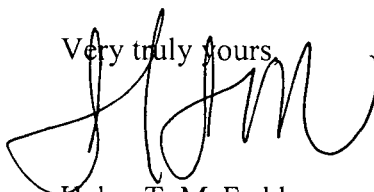
Please find enclosed for filing the original and two copies of the *notice of appeal* in regards to the above referenced matter.

I would appreciate if you would file the original and return the certified and true copies to me in the self-addressed, stamped envelope provided.

Should you have any questions or concerns, please do not hesitate to contact me, or my paralegal, Justin Gamble, at the above referenced number listed.

Wishing you a joyous holiday season, I am

Very truly yours,



Helen T. McFadden

HTM:jg

enclosures: order of dismissal; notice of appeal

DEC 12 2013

FORM 4

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

FILED

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP2103198

2013 DEC 11 AM 11:13

CONNIE REEL SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

Thomas Elbert Vanhose  
Jr

State

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

12/11/2013  
Date

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

**For Clerk of Court Office Use Only**

This judgment was entered on **December 10, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **December 11, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

**Helen Tyler McFadden PO Box 658 Lake City, SC 29560**

**Joshua Lee Thomas PO Box 11549 Columbia, SC 29211**

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

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

*Connie Reel Shearin*

**Court Reporter**

**Connie Reel-Shearin - 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.

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STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

IN THE COURT OF COMMON PLEAS  
FOR THE TWELFTH JUDICIAL CIRCUIT

Thomas Vanhose, Jr., #348984, )

Case No. 2012-CP-21-3198

Applicant, )

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )

2013 DEC 10 PM 12:28  
FILED  
CLERK REGISTRATION  
COP & GS  
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 3, 2012. Respondent made its Return on or about March 20, 2013. 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 Helen T. McFadden, 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 counsels, Scott P. Floyd, Esquire, and William V. Meetze, 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, the return, and the exhibits introduced at the hearing. 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 July 2011, the Florence County Grand Jury indicted Applicant for murder, armed robbery, possession of a weapon during the commission of a violent crime, and conspiracy (2011-GS-21-1209). He was

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

represented by Scott P. Floyd, Esquire, (“Floyd”) and William V. Meetze, Esquire (“Meetze”). On December 13, 2011, Applicant pled guilty to murder, armed robbery, and conspiracy. The Honorable Michael G. Nettles sentenced Applicant to confinement for a period of thirty (30) years for murder, thirty (30) years for armed robbery, and five (5) years for conspiracy. All sentences were to run concurrently. 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. “Denial of Effective Assistance of Counsel”
  - a. “Counsel failed to adequately investigate the case or acquaint himself with facts and case law to prepare for trial.”

At the PCR hearing, the Applicant proceeded on the allegations of ineffective assistance of plea counsel for failure to investigate.

## **III. SUMMARY OF TESTIMONY**

Floyd testified he and Meetze took over representation of Applicant after his prior attorney became ill. The prior attorney filed numerous Rule5/Brady motions. Floyd testified he reviewed everything in the file after taking the case and believed the State’s discovery response to be complete. He testified the file included recorded copies of each co-defendants’ statements. The State also provided transcripts of the recordings. Some of the transcripts were incomplete. However, Floyd testified he reviewed the recordings themselves and would have noticed any discrepancies between the recording and the transcript.

Floyd testified the co-defendants’ statements did contain some inconsistencies that could have been exploited at trial and he discussed these inconsistencies with Applicant. Specifically,

Floyd recalled there being a disagreement about where the origin of the murder weapon. He admitted these inconsistencies were helpful in plea negotiations. He further testified he would have been prepared to address the inconsistencies at trial.

Floyd testified he did not remember if one co-defendant admitted to owning the murder weapon. He further testified he did not think it was relevant how the gun came to be in Applicant's hands at the time of the shooting. Floyd did not investigate the origin of the gun because Applicant gave at least two statements implicating himself as the person who pulled the trigger. Floyd testified his advice would not have changed if he had discovered the co-defendant did not bring the gun to the victim's residence because it would only have absolved Applicant of the conspiracy charge, not the murder and armed robbery charges.

Floyd denied attempting to guide Applicant into a guilty plea. However, he testified he advised Applicant a plea was in his best interest and Applicant never asked to go to trial. Floyd testified his advice was based in part on one of Applicant's statements, wherein he admitted to shooting the victim. He advised Applicant the State was not willing to reduce the murder charge. Floyd testified that he was, however, able to get the State to agree to not make a recommendation over the minimum thirty (30) years.

Applicant testified he never reviewed discovery materials with Floyd or Meetze. He further testified they never discussed with him the discrepancies in the co-defendants' statements. He further testified he never told them he was not interested in a trial and never asked for their assessment of the strength of his case. Applicant testified neither attorney offered him the opportunity to take the case to trial.

Applicant also testified neither attorney advised him of the nature or number of charges against him. He testified neither attorney discussed with him any defense to the charges other than the murder charge. However, on cross-examination, Applicant agreed he discussed the case with his attorneys at the time he filled out the guilty plea affidavit. He also alleged he wrote a letter to his attorneys requesting they appeal his sentence.

Meetze testified he met with Applicant both individually and with Floyd. He recalled discussing the case and the statements with Applicant at those meetings. He testified Applicant was up front about his guilt and never wanted to take the case to trial. Meetze recalled reviewing the case a final time when Applicant was completing the plea affidavit. He also testified he would have filed an appeal if Applicant had written a letter asking for one. However, he did not recall Applicant writing such a letter, and he could not find one in the file. Meetze also testified he did not advise Applicant of an accident defense because all the evidence indicated Applicant was acting unlawfully at the time of the shooting.

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

This Court has reviewed 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).

##### **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 that 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 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, 59 (1985).

The Court finds Applicant failed to meet his burden of proving ineffective assistance of counsel for failing to investigate the origins of the murder weapon. 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, Applicant has failed to demonstrate any way an investigation would have affected the outcome of his proceedings. In reaching this conclusion, the Court finds Floyd's and Meetze's testimony to be credible, and Applicant's to be not credible. Applicant's attorneys reviewed the inconsistencies in the co-defendants' statements and were prepared to address them at trial. Applicant failed to demonstrate what further information would have been revealed had counsel done further investigation. Furthermore, both attorneys testified a further investigation would not have changed their advice to Applicant that a plea was in his best interest. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it").

Likewise, further investigation of the murder weapon would not have exculpated Applicant from liability for the armed robbery or murder. Even if the weapon had not been brought to the victim's house by the co-defendant, the State possessed strong evidence Applicant shot and robbed the victim. Each co-defendant eventually gave a statement indicating they went to the house with the intent of robbing the victim. (Plea Tr. 11:14-23). Thus, it is immaterial whether the gun was brought to the house by the co-defendant or procured from the victim. State v. Keith, 283 S.C. 597, 598, 325 S.E.2d 325, 326 (1985) ("[W]hen a defendant commits robbery without a deadly weapon, but becomes armed with a deadly weapon before asportation of the

victim's property, a conviction for armed robbery will stand.”). Likewise, both Applicant and the co-defendant who entered the house gave statements indicating Applicant shot the victim. (Plea Tr. 13:18-19; 14:8-15). Thus, Applicant could be convicted of murder even if he did not bring the gun to the residence with the intent to shoot the victim. See State v. Judge, 208 S.C. 497, 506, 38 S.E.2d 715, 720 (1946) (Malice “need not exist for any appreciable period of time before the commission of the act [and] may be conceived at the very moment the fatal blow is given.”). Therefore, the Court finds Floyd and Meetze were not deficient in their representation and Applicant cannot show he was prejudiced by their representation.

#### **B. 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, 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 that 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 (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), SCRCRCP, 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.

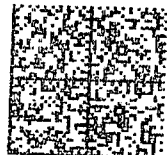
AND IT IS SO ORDERED this 27 day of Nov., 2013.

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

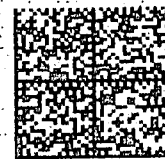
Alvin, South Carolina

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 CORNIE REEL-SHEARMAN  
 & ASSOCIATES  
 P.C. & G.S.  
 FLORENCE COUNTY, SC

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