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Reply to: Florence Office

Robert T. King †*
Edward A. Love **
Brandon A. Smith †
Charles J. Hupfer, Jr.

January 8, 2013

† CERTIFIED MEDIATOR
* ALSO ADMITTED IN NC
** ALSO ADMITTED IN GA

THE HON DANIEL E SHEAROUSE
CLERK SC SUPREME COURT
PO BOX 11330
COLUMBIA SC 29211-1330

RECEIVED

JAN 09 2014

S.C. Supreme Court

RE: Jamie B. Green #229373 v. State of South Carolina
C/A No. 12-CP-21-00961
Our File 13693.01124

Dear Mr. Shearouse:

Enclosed are the originals and one copy of the following in the above action:

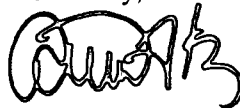
1. Notice of Appeal by Jamie B. Green;
2. Judgment and Order of Dismissal of the Circuit Court; and
3. Proof of Service.

Please file the originals in your records, and return file-stamped copies to us in the enclosed envelope. It is our understanding that the filing fee is waived pursuant to Rule 203(d)(1)(B)(iii), SCACR.

By copy of this letter, we are hereby filing the same with the Clerk of Court for the Florence County Court of Common Pleas and serving the same upon counsel for the Respondent.

Thank you for your assistance with this matter.

Sincerely,



Robert T. King
rking@klslawfirm.com

RTK/
Enclosures

cc: THE HON CONNIE REEL-SHEARIN
JOSHUA L THOMAS ESQ
JAMIE B GREEN #229373

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Case No. 2012-CP-21-3001

RECEIVED

JAN 09 2014

S.C. Supreme Court

Jamie B. Green, #229373,Appellant,

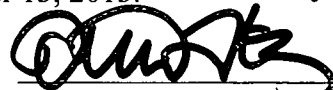
v.

State of South Carolina,Respondent.

NOTICE OF APPEAL

Jamie B. Green appeals the Order of Dismissal of the Honorable William H. Seals, Jr., filed December 11, 2013, and Judgment filed December 12, 2013. Appellant received written notice of the entry of the order and judgment on December 13, 2013.

January 8, 2014



ROBERT T. KING #066237
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ATTORNEY FOR APPELLANT

Other Counsel of Record:

Joshua L. Thomas, Esq.
Office of the Attorney General
PO Box 11549
Columbia, SC 29211-1549
(803) 734-3970 - Tel
(803) 253-6283 - Fax
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JAN 09 2014

S.C. Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Case No. 2012-CP-21-3001

Jamie B. Green, #229373,.....Appellant,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, the undersigned, as attorney for Appellant, do hereby certify that I have served the *Notice of Appeal* this January 8, 2014, upon the Respondent's counsel by depositing the same in a U.S. Postal Box in an envelope, sufficient postage prepaid, properly addressed as follows:

JOSHUA L THOMAS ESQ
OFFICE OF THE ATTORNEY GENERAL
PO BOX 11549
COLUMBIA SC 29211-1549



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ATTORNEY FOR APPELLANT

January 8, 2014

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

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2103001

Jamie B Green

2013 DEC 12 AM 11:34

CUNNIE REEL-SHEARIN
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 43(k), SCRPC (Settled);
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - 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
Cunnie Reel Shearin
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:

Robert Thomas King PO Box 1764 Florence, SC 29503-1764

Joshua Lee Thomas PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

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.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Jamie B. Green, #229373,)

Case No. 2012-CP-21-3001

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
2013 DEC 11 PM 4:37
CORRIE REEL-SHEPHERD
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 12, 2012. Respondent made its Return on or about February 7, 2013. The Court convened an evidentiary hearing into the matter on October 7, 2013, in Marion County. Applicant was present at the hearing and represented by Robert T. King, 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, Henry M. Anderson, Jr., 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 March 2011, the Florence County Grand Jury indicted Applicant for two (2) counts of felony driving under the influence resulting in death and one (1) count of felony driving under the influence resulting in great

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

bodily injury (2011-GS-21-744). He was represented by Henry M. Anderson, Jr., Esquire ("plea counsel"). On August 2, 2012, Applicant pled guilty as indicted. The Honorable Michael G. Nettles sentenced Applicant to confinement for a period of twelve (12) years on each count, and accepted the State's recommendation that the sentences run concurrent. 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. "Ineffective Assistance of Counsel"
 - a. "Strickland v. Washington, 466 U.S. 668, 686 (1984)"
2. "Defense attorney failed to properly investigate the Case or Call Corroborating [sic] Witnesses"
 - a. "Hill v. Lockhart, 474 U.S. 52 (1985) Henderson v. Morgan, 426 U.S. 637, 645, n.13 (1976) [...]"
3. "Misconduct by the Prosecution including failure to turn over evidence"
 - a. "Solicitor failed to turn over Evidence in my Rule 5, presented new evidence against me"

Applicant's application also included a statement alleging he was "coerced into pleading guilty based on a false promise regarding the potential sentence" he would receive. Applicant also filed a *pro-se* amendment alleging a conflict of interest stemming from plea counsel's former employment of the assistant solicitor handling his case. At the PCR hearing, the Applicant proceeded only on the allegations of ineffective assistance of plea counsel for failure to investigate and failure to disclose a conflict of interest.

III. SUMMARY OF TESTIMONY

Applicant testified plea counsel advised him that a six (6) year sentence was likely. Applicant alleged plea counsel discussed the nature of the accident with himself and his family, and plea counsel stated the judge would give Applicant a six (6) year sentence. Applicant also testified plea counsel advised him to plea in front of Judge Nettles because Judge Nettles had recently sentenced a similarly situated defendant to eight (8) years.

Applicant also testified plea counsel did not thoroughly investigate his case. Specifically, Applicant alleges he gave plea counsel the names of witnesses who could testify the victims (who were passengers in Applicant's car) were fighting the night of the accident. He also alleged plea counsel did not discuss with him the results of the victims' autopsies. Applicant also alleged plea counsel should have investigated other possible causes of the accident, such as weather conditions. Applicant further testified plea counsel did not advise Applicant the assistant solicitor handling the case formerly worked with plea counsel in private practice.

On cross-examination, Applicant admitted plea counsel never advised him there was an offer to plead guilty in exchange for a sentence of six (6) years. He further admitted the plea judge informed him he could receive up to twenty-five (25) years. Applicant also recalled agreeing with the State's allegation he was operating a motor vehicle while under the influence and his actions resulted in the death of two people and serious injury to a third.

Plea counsel testified he was retained by Applicant's family for the purpose of negotiating a plea to the charges. He testified he reviewed with Applicant the State's responses to Applicant's prior attorney's Rule 5/Brady motions. He further testified he gave Applicant a copy of the discovery file, which included a highway patrol report, an autopsy report, and

Applicant's blood alcohol report. Plea counsel also testified he discussed Applicant's version of events and advised Applicant there were no viable defenses to the charges. He also testified he did not further investigate the victims' autopsy reports because there was no question about the cause of death. He testified he did not investigate the cause of the accident because it would not have reduced Applicant's culpability.

Plea counsel testified he attempted to negotiate a plea offer with the State, but the State refused to commit to a negotiated or recommended sentence. Instead, the State only agreed to recommend all sentences run concurrently. Plea counsel further testified he never told Applicant he would be sentenced to six (6) years. He did recall telling Applicant about previous defendants' sentences, including one defendant who received eight (8) years. However, he did not recall telling Applicant the plea judge would agree to any specific sentence. He did recall explaining to Applicant that the plea was without recommendation or negotiation as to the length of the sentence. Plea counsel also testified he was "pretty sure" he discussed with Applicant his prior professional relationship with the assistant solicitor. Plea counsel testified that the assistant solicitor left plea counsel's firm in August 2011 and never had any involvement with Applicant's case because plea counsel was retained in June 2012.

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 (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 carry his burden of proving plea counsel ineffective. Applicant's allegation counsel failed to investigate the case is without merit. 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). Regarding this claim, the Court finds plea counsel's testimony to be credible, and Applicant's to be not credible. Plea counsel reviewed with Applicant all of the State's evidence. A further investigation into the victims' cause of death would not have been helpful because plea counsel could not have uncovered any further evidence that would have reduced Applicant's culpability. Furthermore, the highway patrol report indicated Applicant was driving over seventy (70) miles per hour when the accident occurred. (Plea Tr. 9:16-18). Even if plea counsel had determined the victims were fighting in the back seat, Applicant was still negligent in driving too fast for conditions. This Court finds plea counsel made a strategic decision to not pursue this line of investigation. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))).

The Court also finds the allegation plea counsel misadvised Applicant of his potential sentence to be without merit. In reaching this conclusion, the Court finds plea counsel's testimony to be credible and Applicant's to be not credible. Plea counsel correctly advised

Applicant of the maximum exposure under the charges and that the plea judge had full discretion in determining the length of the sentence. Furthermore, the plea judge informed Applicant he could receive a sentence between one (1) and twenty-five (25) years. (Plea Tr. 4:2-6). Because neither the plea judge nor plea counsel ever promised Applicant a six (6) year sentence, he "cannot complain that his pleas were not voluntarily and knowingly entered." Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998) (citations omitted); see also Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (any possible errors by counsel regarding sentencing advice cured by plea colloquy). Applicant also had an opportunity to inform the plea judge he expected a six (6) year sentence, and his failure to do so forecloses him from now challenging that sentence. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements." (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976))).

The Court finds Applicant's claim of a conflict of interest to be without merit as well. "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendants." State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005) (citing Fuller v. State, 347 S.C. 630, 557 S.E.2d 664 (2001)). Plea counsel owed no duty to the assistant solicitor because the assistant solicitor left plea counsel's firm almost a year before Applicant retained plea counsel. Accordingly, the assistant solicitor also never worked on Applicant's case because he was not employed by plea counsel during that time. See also Rule 1.11(d)(2)(i), Rule 407, SCACR (government lawyer only conflicted out of matters in which he

“participated personally and substantially while in private practice”). Therefore, the Court finds plea counsel had no actual conflict of interest.

Furthermore, plea counsel provided competent representation in light of the overwhelming evidence against Applicant. Applicant’s blood alcohol level was above the legal limit and he tested positive for marijuana. (Plea Tr. 8:17-18). The highway patrol report indicated Applicant was driving over seventy (70) miles per hour when his car veered off the road. (Plea Tr. 9:16-18). Undoubtedly, these factors combined to cause the death of two victims and the serious injury of a third. Based on this overwhelming evidence, the Court finds Applicant was not prejudiced by plea counsel’s advice to plead guilty. See Stalk v. State, 375 S.C. 289, 302, 652 S.E.2d 402, 408 (Ct. App. 2007) aff’d as modified, 383 S.C. 559, 681 S.E.2d 592 (2009).

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

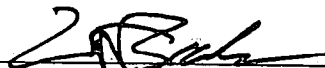
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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), SCRCP, 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.

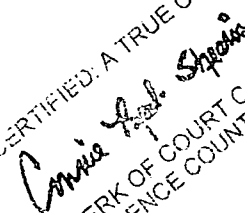
AND IT IS SO ORDERED this 25 day of Nov., 2013.


THE HONORABLE WILLIAM H. SEALS, JR.
Presiding Judge

Mani, South Carolina

2013 DEC 11 PM 4:37
CORNIE REEL-SHEPHERD
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

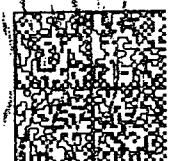
FILED

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

**KING
LOVE &
SMITH, LLC**
ATTORNEYS AT LAW

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