

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Post Conviction Relief

RECEIVED

Rogert M. Young, Sr., Presiding Judge

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JAN 21 2014

Case No.: 2011-CP-10-9423

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S.C. Supreme Court

Reginald Rice #345326 .....Appellant,

vs.

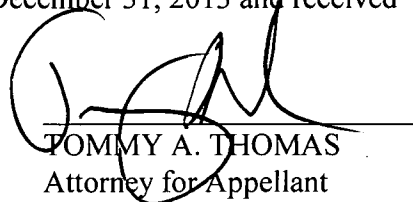
State of South Carolina .....Respondent.

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NOTICE OF APPEAL

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Reginald Rice #345326 appeals the Order of Dismissal of the Honorable Roger M. Young, Sr., signed December 22, 2013 and filed on December 31, 2013 and received on January 3, 2014.



TOMMY A. THOMAS  
Attorney for Appellant  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

Other Counsel of Record:

Ashleigh R. Wilson, Esq.  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent

Irmo, South Carolina  
January 16, 2014

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Post Conviction Relief

Rogert M. Young, Sr., Presiding Judge

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Case No.: 2011-CP-10-9423

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Reginald Rice #345326 .....Appellant,

vs.

State of South Carolina .....Respondent.


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CERTIFICATE OF SERVICE

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I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal with postage prepaid and the return address clearly shown on said envelope to Ashleigh R. Wilson, Esq. with the Office of the Attorney General at:

Ashleigh R. Wilson, Esq.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549

  
Jacquelyn E. Miller  
Secretary to Tommy A. Thomas  
Attorney for Applicant  
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January 16, 2014

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STATE OF SOUTH CAROLINA )  
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COUNTY OF CHARLESTON )  
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Reginald Rice, #345326, )  
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Applicant, )  
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v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2011-CP-10-9423

FILED  
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JAMES J. McSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

**ORDER OF DISMISSAL**

Presiding Judge: The Honorable Roger M. Young, Sr.  
Applicant's Attorney: Tommy Thomas, Esquire  
Respondent's Attorney: Ashleigh R. Wilson, Esquire  
Trial Counsel: Lauren Williams, Esquire  
Date of Hearing: September 19, 2013  
Court Reporter: Amanda Haffenden

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 21, 2011. The Respondent made its Return on February 28, 2012. An evidentiary hearing into the matter was convened on September 19, 2013 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Tommy Thomas, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Present and testifying at the evidentiary hearing was the Applicant, Zenna Foster, Reginald Foster, and defense counsel Lauren Williams, Esquire. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, Respondent's Return thereto, and an exhibit introduced by the Respondent.<sup>1</sup>

<sup>1</sup> State's Exhibit 1 is a Providency Form dated January 17, 2011 and signed by the Applicant and Lauren Williams.

## PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the June 2010 term of the Charleston County Grand Jury for two counts of armed robbery (2010-GS-10-4553, -4569), two counts of burglary- first degree (2010-GS-10-4554, -4565), three counts of kidnapping (2010-GS-10-4555, -4571, -4573), and two counts of possession of a weapon during the commission of a violent crime (2010-GS-10-4570, -4556). Lauren Williams, Esquire, represented the Applicant. On January 19, 2011, the Applicant pled guilty as indicted. The Honorable R. Markley Dennis sentenced the Applicant to confinement for five (5) years for possession of a weapon and thirty (30) years on each of the other charges. The sentences were to run concurrently. The Applicant did not appeal his convictions or sentences.

## ALLEGATIONS

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

1. Ineffective assistance of counsel
  - a. Counsel gave incorrect information about parole.
  - b. Coerced Applicant into pleading guilty.
2. Due process violation in that police violated Applicant's Miranda rights.
3. Conflict of interest.

At the hearing, the Applicant proceeded on the following allegations:

1. Ineffective assistance of counsel
  - a. Counsel advised the Applicant he was facing a 17 to 20 year sentence.
  - b. Counsel failed to motion to recuse the plea judge because of statements made during sentencing about the Citadel.
  - c. Counsel failed to file an appeal.
2. Involuntary guilty plea
  - a. Counsel coerced the Applicant to plead guilty.

This Court finds all allegations other than those raised during the evidentiary hearing are hereby abandoned as the Applicant failed to present any evidence or testimony in support of these allegations.

### **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 evidentiary hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her 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).

#### **Summary of the Testimony**

The Applicant testified at the evidentiary hearing that he was serving time for burglary, kidnapping, possession of a weapon during the commission of a violent crime, and armed robbery. He testified he was sentenced to thirty (30) years concurrent on all charges. The Applicant testified he retained Lauren Williams to represent him after his arrest. The Applicant testified he met with his attorney frequently. He testified he never reviewed discovery with counsel, but they did review his co-defendants' statements. The Applicant testified he never spoke with his attorney about a theory of defense. He testified his attorney told him he had no defense.

The Applicant testified he gave a statement, signed a proffer agreement, and was seeking a plea offer. He testified he believed a proffer would benefit him and was told if he made a proffer he would get a sentence cap of thirty (30) years. He testified he also received benefitted from the proffer because he did not receive a life sentence. The Applicant also testified he

understood the minimum sentence for burglary-first degree was fifteen (15) years. The Applicant testified counsel said he was facing a seventeen (17) to twenty (20) year sentence. He testified his attorney did not promise he would get seventeen (17) to twenty (20) years, but she promised he would not get a thirty (30) year sentence.

The Applicant testified when he signed the sentencing sheet before his guilty plea, the sentencing sheet already said thirty (30) years. He testified he asked his attorney about the thirty (30) years written on the sentencing sheet and she told him it was a formality. He testified his attorney did not tell him what to say during his guilty plea, but she told him to go along with what the judge said. The Applicant testified he recalled being advised by the Court of the potential sentences he was facing. He testified he recalled waiving his constitutional rights at his guilty plea. He testified he never spoke with his attorney about withdrawing his guilty plea.

The Applicant testified he had never been involved in criminal activity before and his case was a high profile cases involving the Citadel. He testified he spoke with his attorney about the plea judge being biased based on comments he made at the sentencing about the Citadel. He testified his attorney told him the statements were not relevant and after sentencing they could say what they wanted. He testified his attorney never moved to recuse the plea judge.

The Applicant initially testified he did not want to file an appeal and his attorney did not file an appeal. He testified he did not have anything to appeal. The Applicant then testified he asked his attorney for an appeal and she did not file a Notice of Appeal. Lastly, the Applicant testified he felt his plea was not freely and voluntarily given, but his plea was knowingly and intelligently made. He testified he pled guilty based on counsel's promise that he would not be sentenced to thirty (30) years.

Zenna Foster, the Applicant's mother, was also present to testify. She testified she was

not present when the plea offer was conveyed to the Applicant. She testified the Applicant's attorney told her he was facing seventeen (17) to eighteen (18) years. She testified counsel said the Applicant would not receive a thirty (30) year sentence. Foster testified she was not present at every meeting between the Applicant and his attorney.

Reginald Foster, the Applicant's father, also testified at the evidentiary hearing. He testified he spoke with the Applicant's attorney about the guilty plea. He testified counsel told him the Applicant would receive a sentence. He testified counsel mentioned a thirty (30) year sentence, but always went back to seventeen (17) to eighteen (18) years. Foster testified he was not present at every meeting between the Applicant and his attorney.

Plea counsel testified she has been practicing criminal law for eleven (11) years. She testified she was retained to represent the Applicant in June 2010, four (4) months prior to his arrest. Counsel testified she met with the Applicant approximately twenty-five (25) times. She testified she filed Brady and Rule 5 motions on the Applicant's behalf. She testified she reviewed discovery materials with the Applicant on both his city case and his county case. She testified she made the Applicant copies of his discovery. She testified when they reviewed the discovery, she focused on the police reports and the co-defendant's statements.

Counsel testified she discussed with the Applicant elements of the charges he was facing and what the State was required to prove. She testified she also discussed with the Applicant his version of the facts. Counsel testified there was a lot of evidence against the Applicant. Counsel testified in the Applicant's city case, the Applicant was identified by the victim, his co-defendant gave a statement implicating him, and the victim's ring was found in the car the Applicant was driving. She testified in the Applicant's county case, the Applicant was identified by the male victim during the crime and the victim's belongings were found at the Applicant home. Counsel

testified the State also had a text message from the Applicant to one of his co-defendants telling the co-defendant that the police had them and to get rid of the stuff from the robbery. Counsel testified the Applicant had been put on verbal notice by the Solicitor that they were seeking life without parole.

Counsel testified the Applicant had no defense and she prepared the case for trial with the hope that she would be able to challenge the credibility of the State's witnesses on cross-examination. Counsel testified she had the Applicant take a polygraph test and he was found to be truthful. She testified further she had the Applicant mentally evaluated and he was found to have a lack of remorse. She testified she did not want the doctor to make a report or testify at trial about the Applicant's lack of remorse.

Counsel testified she discussed requesting a change of venue with the Applicant, but the Applicant was not inclined to pursue the motion. She testified she told the Applicant she was not a fan of the motion because his case may end up somewhere else. Counsel testified the Applicant initially told her he could have an alibi, but he never gave her any witnesses or leads to investigate. Counsel testified the Applicant later told her the alibi was false so she did not pursue it. Counsel testified she considered challenging the show up identification of the Applicant in the city case, but the rest of the evidence showed the Applicant was identified by the victim prior to the show up.

Counsel testified she started plea negotiations with the State in Fall 2010. Counsel testified the Applicant entered into a proffer agreement and spoke with the State in December 2010, January 2011, and February 2011. Counsel testified the best the State would offer in exchange for the proffer was a cap of thirty (30) years. Counsel testified she communicated the offer to the Applicant. She testified she informed the Applicant of the consequences of pleading

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guilty and advised him of his constitutional rights. Counsel testified she discussed the pros and cons of pleading guilty with the Applicant. Counsel testified they also discussed requesting a plea proceeding separate from the Applicant's co-defendants. Counsel testified she liked the comparison of the Applicant against one his co-defendant who had been charged with criminal sexual conduct.

Counsel testified she told the Applicant that any sentence he received that was less than thirty (30) years would be great. She testified the Applicant knew he was facing a fifteen (15) to thirty (30) year sentence. She testified she does not know anything about a seventeen (17) to twenty (20) year sentence. Counsel testified she also told the Applicant the judge did not have to go along with the State's recommendation. Counsel testified prior to the Applicant's plea the sentencing sheet was not already completed with a thirty (30) year sentence. She testified had that been the case, she would have made an issue of the sentence already being filled in prior to the guilty plea.

Counsel testified the comments made by Judge Dennis during sentencing were not improper and Judge Dennis gave no indication of a conflict of interest. She testified she had no grounds to file a motion to recuse Judge Dennis. Counsel testified the context of Judge Dennis' comments was young people facing heavy sentences and not related to the Citadel. She testified she took Judge Dennis' comments to mean he was presiding over another difficult case. She testified further the fact that Judge Dennis' son-in-law went to the Citadel caused her no concern. Counsel testified at the sentencing proceeding she presented mitigation evidence on behalf of the Applicant. Counsel testified she discussed the filing of a motion to reconsider with the Applicant, but the Applicant did not want to file the motion.



### Involuntary Guilty Plea

The Applicant alleges his guilty plea was not entered freely and voluntarily. This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). 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. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, statements 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. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds that the Applicant's guilty plea was entered freely and voluntarily. The Applicant testified at the evidentiary hearing that it was his decision to plea. This Court finds further that the record reflects the Applicant was thoroughly advised of the waiver of his constitutional rights by both trial counsel and the plea judge. The Applicant was advised of the potential sentences he was facing (Tran. 23-25), his right to a jury trial (Tran. 31-32), his right to remain silent (Tran. 32-

33), and his right to confront accusers (Tran. 21-32). The Applicant also told the Court he was not under the influence and did not suffer from any mental illnesses. (Tran. 22, 26).

This Court finds the Applicant had a full understanding of the consequences of his guilty plea and the charges against him. This Court finds the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made. This Court also finds nothing in the record indicates the Applicant was threatened or coerced to plead guilty. This Court also finds the Applicant's testimony that counsel told him to go along with whatever the judge said was not credible. The record reflects the Applicant told the Court his responses during the guilty plea were truthful and the Applicant affirmed his responses during his sentencing proceeding. (Tran. 44, 63).

**Ineffective Assistance of Counsel**

The Applicant also alleges he received ineffective assistance of counsel. 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).



Courts use a two-pronged test to evaluate 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." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. This Court finds that Applicant understood the State's sentence recommendation.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v.

Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds counsel properly advised the Applicant on the potential sentences he was facing. This Court also finds counsel did not improperly advise the Applicant that he would only be facing a sentence of seventeen (17) to twenty (20) years. This Court also finds counsel did not improperly advise the Applicant that he would not be sentenced to the thirty (30) years cap. This Court finds the testimony of the Applicant and Zenna and Reginald Foster about counsel's advice on sentencing was not credible. This Court finds counsel provided credible testimony that the Applicant was aware of the State's recommendation of a cap of thirty (30) years. This Court also finds credible counsel's testimony that she never told the Applicant he would receive a specific sentence. The record reflects the Applicant told the plea court he discussed with his attorney the offenses he was facing, the fifteen (15) year minimum sentence on burglary- first degree, and the recommendation of a cap of thirty (30) years. (Tran. 23:4-17). This Court finds it is unlikely counsel promised the Applicant a specific sentence when there was no negotiated plea offer.

This Court also finds that any erroneous advice given by counsel was cured by the colloquy between the Applicant and Judge Dennis during the guilty plea. The Applicant was advised during his colloquy with the Court of the potential sentences for all the charges he was facing and that the Court did not have to go along with the State's recommendation of a thirty (30) year cap. (Tran. 23-25). This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel provided erroneous advice with

regard to sentencing.

This Court finds counsel was not ineffective for failing to motion to recuse Judge Dennis based on his comments during sentencing. Pursuant to Canon 3(E)(1)(a) of Rule 501, SCACR, a judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. State v. Jackson, 353 S.C. 625, 627, 578 S.E.2d 744, 745 (S.C. Ct. App. 2003). It is not enough for a party seeking disqualification to simply allege bias or prejudice. Id. The party must show some evidence of that bias or prejudice. Id. The alleged bias or prejudice must stem from an extra-judicial source and result in a decision based on information other than what the judge learned from his or her participation in the case as a judge. Id.

This Court finds the comments made by Judge Dennis during sentencing were not improper. This Court finds these comments simply reflect the difficulty of the case and in no way indicated the presence of any bias or prejudice. This Court finds there was no basis for a motion to recuse the Judge Dennis. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to motion to recuse Judge Dennis.

This Court finds that trial counsel was not ineffective for failing to file an appeal. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). They instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that

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he was interested in appealing.” Id. “[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings.” Id.

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving trial counsel failed to file an appeal on his behalf. The Applicant testified he discussed an appeal with his attorney and provided conflicting testimony as to whether or not he indicated he wanted her to appeal his guilty plea. This Court finds the Applicant has failed to carry his burden of proving he wanted to appeal his guilty plea or that he demonstrated to counsel his desire to appeal. This Court finds this allegation is without merit.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically 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 while representing the Applicant. The Applicant failed to show that counsel’s performance was deficient. Therefore, this Court need not address prejudice. Applicant’s complaints concerning counsel’s performance are without merit and are denied and dismissed.

#### 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 the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

**CONCLUSION**

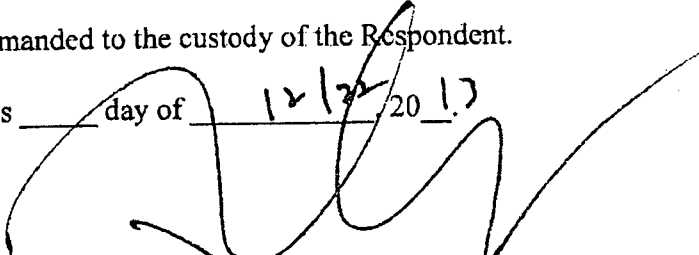
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

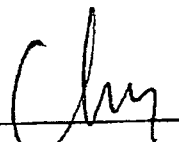
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this \_\_\_\_\_ day of 12/22 2013.

  
\_\_\_\_\_  
The Honorable Roger M. Young, Sr.  
Presiding Judge  
9th Judicial Circuit

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

**Tommy A. Thomas**

**ATTORNEY AND COUNSELOR AT LAW**

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**PLEASE REPLY TO:**  
**PO Box 88**  
**IRMO, SC 29063**  
**INMATE LINE**  
**(803) 732-6542**

January 16, 2014

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

**RECEIVED**

JAN 21 2014

**S.C. Supreme Court**

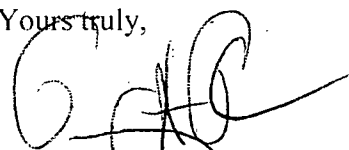
RE: Reginald Rice #345326 v. State of South Carolina  
Case No.: 2011-CP-10-9423

Dear Sir or Madam:

Enclosed please find and Original and a copy of a Notice of Appeal for filing in the above matter.

Kindly return a clocked copy to me in the enclosed envelope. Thank you and should you have any questions, please feel free to contact me.

Yours truly,



Tommy A. Thomas,  
Attorney at Law

TAT/jem  
cc: Ashleigh Wilson, Esq.  
Reginald Rice #345326

Tommy A. Thomas, P.C.  
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